



REVISED

STAFF REPORT

LAND DEVELOPMENT DIVISION

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Prepared by

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CASE NUMBER

V24-00001

PLANNING & ZONING BOARD HEARING DATE

August 7, 2024

PROPERTY OWNER & APPLICANT

Stefani J. Tennyson, Owner (Green Hammer Concrete, Reps)

PROPERTY LOCATION/ADDRESS

Lots 26, Block 1709, Port Malabar Unit 36 Section 03, Township 29, Range 36, Brevard County, Florida, containing 0.23 acres. Located north of Scottish Street SW, in the vicinity east of Hurley Boulevard SW. Tax Account 2903302

SUMMARY OF REQUEST

A **Variance** to allow an existing 11-foot by 16.9-foot concrete slab and a proposed shed to encroach 1.5 feet into the 6-foot side setback and 4.3 feet into the 10-foot rear setback for an accessory structure, as established by Section 185.118 of the Palm Bay Code of Ordinances.

Existing Zoning

RS-2, Single-Family Residential

Existing Land Use

LDR, Low Density Residential

Site Improvements

Single-Family Residence

Site Acreage

0.23 acres

SURROUNDING ZONING & USE OF LAND**North**

RS-2, Single-Family Residential; Single-Family Residence

East

RS-2, Single-Family Residential; Single-Family Residence

South

RS-2, Single-Family Residential; Single-Family Residence

West

RS-2, Single-Family Residential; Single-Family Residence

BACKGROUND:

The property was originally developed in 2023 and consists of approximately 0.23 acres in the RS-2, Single-Family Residential District.

In October 2023, building permit BL23-12920 was submitted for a back patio and a shed slab at 1275 Scottish Street SW. Green Hammer Concrete submitted a survey for (2) concrete slabs showing them in compliance with all required setbacks. The building department approved a pre-pour inspection and then failed the final inspection due to the shed slab encroaching into the ten (10) foot rear utility easement. A complaint started as to why the pre-pour passed if the slab was encroaching at that time. The contractor and property owners were advised that the easiest solution would be to remove the section that is encroaching and re-do the slab as shown on the survey. Otherwise, a vacate of easement and a variance would be required due to a structure being placed on the slab.

The property owners have opted to pursue a vacating request and variance. The request to vacate the south six (6) feet of the north ten (10) foot Public Utility & Drainage Easement, less the west 57 feet and the east three (3) feet thereof, containing 120 square feet, is scheduled for approval via Ordinance 2024-29 on August 1, 2024. The applicant is now requesting a variance of 1.5 feet from the 6-foot side setback and 4.3 feet from the 10-foot rear setback for an accessory structure, as established by Section 185.118 of the Palm Bay Code of Ordinances. This is a variance of 1.5 feet, a 25% reduction from the code requirement for the side setback, and a variance of 4.3 feet, a 43% reduction from the code requirement for the rear setback.

ANALYSIS:

Variances from the terms of the Land Development Code may be granted when special conditions exist that would result in unnecessary hardship if the provisions of the Land Development Code were enforced. However, a variance may not be granted when the public health and safety would be compromised as a result of the variance. A variance request must demonstrate that all criteria in Section 169.009(B)(1) - (7) of the Code of Ordinances have been met, as follows:

Item 1 - *"Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, buildings or structures in the same land use category, zoning district, or situation."*

Applicant Response: >> "To be honest, I'm not sure. I'm not familiar with the zoning to other lands, structures or buildings in this area, so I am unable to say if my particular property has special conditions or not. I'm still learning about our property as my family and I are new to the home and area. When purchasing our home we were never briefed on property easements or

anything of that nature and honestly where we moved from I didn't even think to ask. What I can say is that three quarters of my back yard is leach field which from what I've learned prohibits any structures from being placed on this particular area."<<

Staff Review: There are no special conditions and circumstances peculiar to the land, structure, or building involved and which are not applicable to other lands, buildings or structures in the same land use category, zoning district, or situation. This is a standard sized lot with the ability to meet all code requirements for the desired accessory structures.

The building department approved a pre-pour inspection and then failed the final inspection due to the shed slab encroaching into utility easements. The contractor and property owners were advised that the easiest solution would be to remove encroachment and re-do the slab as shown on the approved survey. Section 169.009(C) states, "Financial disadvantages or inconvenience to the applicant shall not of themselves constitute conclusive evidence of unnecessary and undue hardship and be grounds to justify granting of a variance."

Item 2 - *"The special conditions and circumstances identified in Item 1 above are not the result of the actions of the applicant."*

Applicant Response: >> "We were not aware we couldn't place concrete structures on the leach field until months after we purchased the home. Anaerobic septic systems are new to us and not something we are educated about. We were told however that we could never put an underground pool in the area, which is completely understandable."<<

Staff Review: The applicant is not willing to allow the contractor to move the shed slab. She has opted to request a vacating of easement and variance rather than allow the slab and future shed location be brought into compliance.

Item 3 - *"Literal interpretation and enforcement of the Land Development Code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district or situation under the terms of the Land Development Code and would work unnecessary and undue hardship on the applicant."*

Applicant Response: >> "Again, I cannot speak to other properties because I honestly don't know. What I can tell you is that I have a multigenerational family in my household and we need extra storage desperately. This concrete slab will allow us to place a 10x16ft shed, increasing the storage on our property tremendously. Currently, I have a storage unit down the street but that's not feasible long term. We still have items inside the home that needs stored and many items outside the home sitting in the elements that I would like to have storage for as well. The feeling of having a cluttered/ unorganized home really weighs on me mentally as a mother and a person. I do not function well in this type of environment and it causes me to feel in a constant state of chaos. I feel having an adequate storage structure not only would help with this but would also allow me to give my family a healthier living

environment while saving the items that hold memories as well as the items we have worked so hard to give our family over the years.”<<

Staff Review: The literal interpretation and enforcement of the Land Development Code will not deprive the applicant of rights commonly enjoyed by other properties in the same land use category, zoning district or situation under the terms of the Land Development Code. This is a standard sized lot with the ability to meet all code requirements for the desired accessory structures.

Item 4 - *"The variance, if granted, is the minimum variance necessary to make possible the reasonable use of the land, building, or structure."*

Applicant Response: >> "I feel the variance distance we originally requested is the minimum needed due to the fact that any structure placed on this concrete slab will have an over hanging roof. I do not have the shed as of yet so I cannot speak to exact measurements. I do know that I don't want to have the shed declined in the future because we changed the variance to the exact specs of the concrete slab how it sits now."<<

Staff Review: The requested variance is not necessary to make possible the reasonable use of the land, building or structure. The slab and proposed shed could meet the required setbacks on this property.

Item 5 - *"Granting of the variance request will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings or structures in the same land use category, zoning district or situation."*

Applicant Response: >> "I cannot speak to this except for what I have heard. I have spoken to a nice gal with the city who stated in an email, "These requests are not uncommon nor unfamiliar to the Planning & Zoning Board and City Counsel. While I have no way of knowing how P&Z Board and City Counsel will vote, I will say that historically, they've approved similar requests". We also have a Rockledge Sheriff a few doors down whom used to be a contractor in Palm Bay and is familiar with the process. He offered his opinion from previous jobs he's been on and does not think there should be a problem especially now that the utilities are going underground."<<

Staff Review: Granting of the variance will confer special privileges on the applicant as other residents in community are expected to comply with all Land Development Code regulations.

Item 6 - *"The granting of the variance will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare."*

Applicant Response: >> "We have visited many of our surrounding neighbors on our block

and the block behind us and all folks we have spoken to have given us their blessing. Our next door neighbor who is closes to this concrete slab has no issues with it either. This will not affect public welfare negatively at all. If anything in my opinion it will increase my property value and in turn the property values around me. It will also help my family and I contain our items to keep the property looking clean and well maintained thus making the neighborhood look more appealing for future residents."<<

Staff Review: Granting this variance may be injurious to surrounding properties who anticipated accessory structures in their neighborhood would meet the required setbacks.

Item 7 - *"The variance represents a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has reasonably burdened the applicant's property, based on the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act."*

Applicant Response: >> " I feel with all utilities now being placed underground, this then clears the variance/vacate area in its entirety of utilities. The slab is on the east side of the property and the utilities will now be routed underground on the west side of the property. I understand the responses to the 7 statements in Section 169.009 were not to be made personal. Honestly, there is no way for this to not be personal to me as this has been going on since November of 2023. I'm sure you all are aware of this particular situation but for those that might not be please let me explain.

In November of 2023 I hired Green Hammer Concrete to pour a back patio and shed slab on our property. They pulled the permits, came out and framed both the patio and shed slab and then called for a pre-pour inspection from the city. The inspector came out, gave Green Hammer Concrete the go-ahead to pour the concrete, the concrete was then poured and a final inspection was called in. The city inspector then came back out for the final inspection and approved the back patio and failed the shed slab. Please keep in mind from the pre-pour inspection to the final inspection there was only 4 or 5 days. From what I understand the city inspector missed the fact that the easement was 10ft instead of the initial thought of 5ft. I am not sure if they have change recently and used to be 5ft? My contractor Green Hammer Concrete then called and informed me of the situation in its entirety and offered to move the slab as they too missed the 10ft easement. I then asked what my options are and Green Hammer said I could either move the slab or file the vacate and variance. At this point I was frustrated and called the city. It was my feeling that city inspectors are put in place to catch these discrepancies before contractors move forward with jobs. I also felt that maybe since this was missed by the inspector that there would be an exception to the rule. I then spoke to one of the city managers and was informed that I would still unfortunately need to go through the process of the vacate and variance. I let Green Hammer Concrete know that I did not want to move the concrete slab. My reasoning is due to the fact I only have a very small portion of

my back yard that I can put structures on. I desperately need storage for my family so having the shed slab to put a shed on is a must I feel. I also promised my daughter I would replace her play structure/ swing set because she was heartbroken when we couldn't bring her other one to Florida. As the shed slab sits right now I can fit a play structure right next to the slab. If this variance doesn't get approved and I am forced to make a choice between removing the concrete slab that will allow for adequate storage for my family to create a healthier living environment or breaking a promise to my daughter, I really don't want to make the choice if I don't have to. So, when I was given the option to move the slab or go through all the motions to get the vacate and variance approved, I chose to go through the motions. I can't imagine breaking a promise especially to my daughter nor do I want to continue to feel suffocated with our lack of space to store belongings. We have now been going through the motions since January of 2023 and it has been a very long and frustrating process. I'm sure many of you have seen the emails back and forth and maybe even been apart of them. I understand that my situation may not meet Sections 169.009 but that doesn't mean I don't have good reasoning. I just want to have the things that will allow my family and I to enjoy the home we were so excited to buy. I am asking you all ever so kindly to try to understand my position on this. Thank you, Stefani Tennyson."<<

Staff Review: Staff has not received a claim made upon this property, with respect to the "Bert J. Harris Act," or any development order, as indicated above. Therefore, Item 7 is not applicable to this variance request.

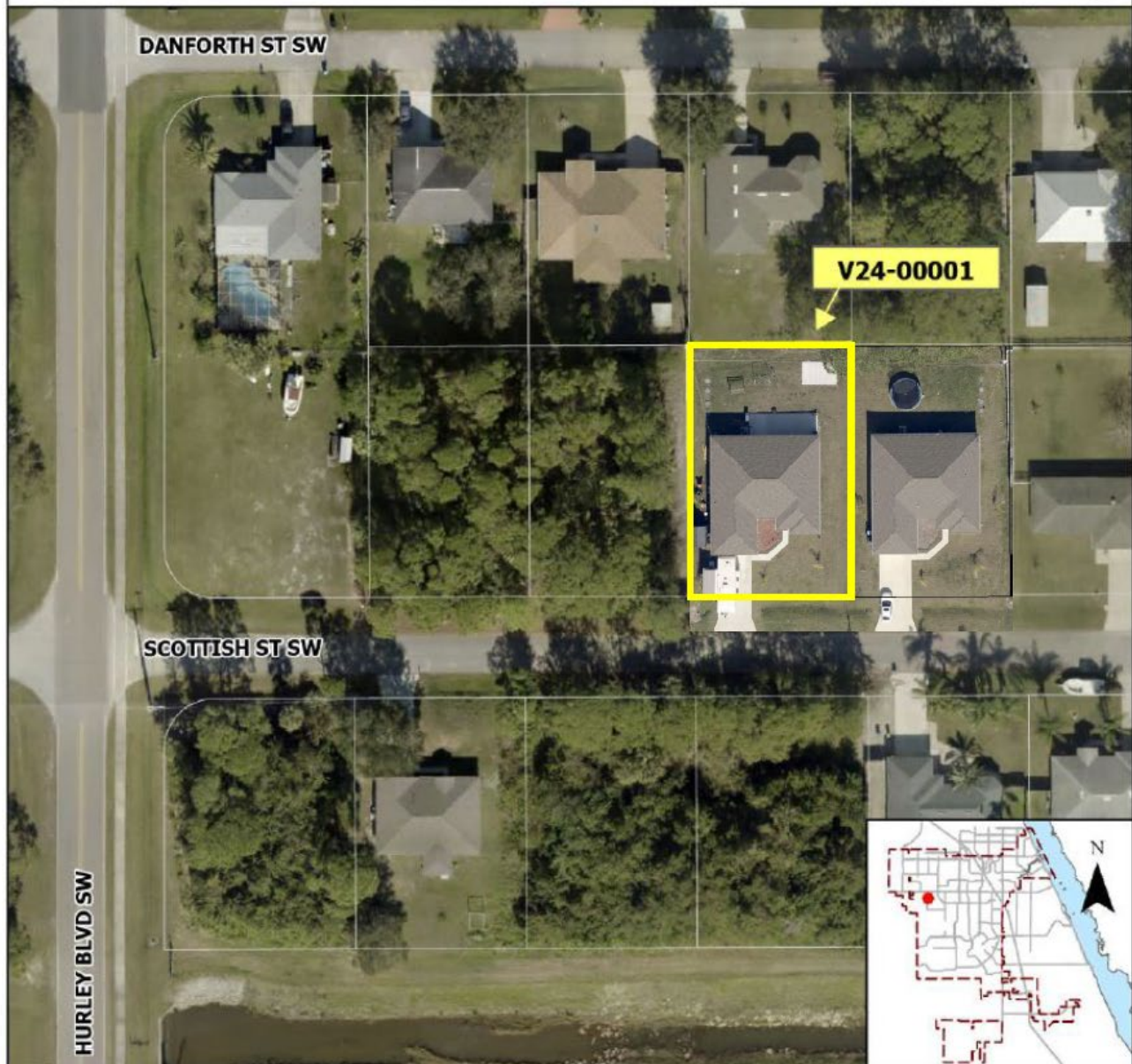
STAFF RECOMMENDATION:

Staff recommends denial of V24-00001, based on the facts presented, as required under Section 169.009 of the City of Palm Bay Code of Ordinances.

The Planning and Zoning Board must determine, based on the facts presented, to what degree, if any, of minimal relief, is required to meet the needs of the variance being requested, as required under Section 169.009 of the City of Palm Bay Code of Ordinances, and make recommendations to City Council for a final review.



Map is not to scale—for illustrative purposes only; not to be construed as binding or as a survey.



SITE LOCATION MAP

CASE: V24-00001

Subject Property

Located north of Scottish Street SW, in the vicinity east of Hurley Boulevard SW, specifically at 1275 Scottish Street SW

