



STAFF REPORT

LAND DEVELOPMENT DIVISION

120 Malabar Road SE • Palm Bay, FL 32907 • Telephone: 321-733-3042

landdevelopmentweb@palmabayflorida.org

Prepared by

Tania Ramos, Principal Planner

CASE NUMBER

V23-00001

PLANNING & ZONING BOARD HEARING DATE

March 6, 2024

PROPERTY OWNER & APPLICANT

John J. and Colleen Pechulis

PROPERTY LOCATION/ADDRESS

Lot 15, Block 2124 Port Malabar Unit 42, Section 27, Township 28, Range 36, Brevard County, Florida, containing approximately .22 acres. Located at the northeast corner of Camden Avenue NW and Lynbrook Street NW, specifically at 937 Camden Avenue NW. Tax Account 2809847

SUMMARY OF REQUEST

A **Variance** to allow an existing shed to encroach 5.3 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

Approximately 0.22 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 consists of approximately 0.22 acres in the RS-2, Single-Family Residential District. The property was originally developed in 1992 and was purchased by the current owners in 2015.

The applicant is requesting a variance of 5.3 feet from the 10-foot rear setback for accessory structures to allow an existing shed to remain in its current location. The accessory structure also encroached into a 10-foot Public Utilities and Drainage Easement, which was vacated via Ordinance 2023-105.

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. An application must demonstrate that items 1 through 7 of Section 169.009 of the Code of Ordinances have been met. A review of these items is 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."*

The applicant states, "The shed at 937 Camden Avenue NW was constructed/erected on a concrete slab by the previous homeowner. The previous owner of our property foreclosed and subsequently lost the home to the bank. The home sat in foreclosure for more than 5 years. During that time, vandals and scrappers stole and damaged many parts of the property, including the shed."

Staff finds no building permits or surveys on file indicate that a slab or shed was previously permitted in the area where this variance is requested.

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

The applicant states, "The shed at 937 Camden Avenue NW was constructed/erected on a concrete slab by the previous homeowner. The previous owner of our property foreclosed and subsequently lost the home to the bank. The home sat in foreclosure for more than 5 years. During that time, vandals and scrappers stole and damaged many parts of the property, including the shed."

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."*

The applicant states, "After we purchased the property, we had many items repaired or replaced, eventually repairing the shed. Code enforcement approached us in March of 2023 concerning the shed. We were informed the shed was not in compliance as there was no record of a permit. Since it was pre-existing, it is presumed to be in compliance. We were made aware of what was needed to have the shed permitted and began the process shortly after."

The literal interpretation and enforcement of the Land Development Code would require the applicant to relocate the shed to meet the required 10-foot rear setback. Since the shed is existing, requiring it to be relocated would create an unnecessary and undue hardship. The applicant has already obtained a vacation of easement for the encroachment into the 10-foot Public Utilities and Drainage Easement to bring the shed into compliance in its current location.

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

The applicant states, "We have applied for the easement vacation, obtained all "No-objection letters from the utilities and were granted the easement vacation by Council in December 2023."

The area of the easement vacated is slightly larger than the area necessary to make possible the reasonable use of the land, building, or structure. An area of 19' x 6' was vacated, and the area of the shed encroaching into the setback is 14.3' x 5.3'. The minimum variance necessary to make possible the reasonable use of the structure is 14.3' x 5.3'.

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."*

The applicant states, "We have applied for a variance for the shed due to the pre-existing location and we have all necessary documentation to apply for the building permit to be in compliance."

Staff finds that granting of the variance will not confer on the applicant any special privilege. An aerial view of the surrounding properties on the Brevard County Property Appraiser's website shows several sheds similarly situated on neighboring properties.

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."

Granting of this variance will not be injurious to the surrounding properties or detrimental to the public welfare.

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."*

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 approval of V23-00001, 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. Under 59.05(A)(14) of the City of Palm Bay Code of Ordinances, "The quasi-judicial body shall direct the clerk or [city] attorney acting as the body's legal counsel to prepare the necessary and appropriate written order in accordance with the purpose of the hearing and findings of the quasi-judicial body. Pursuant to Florida Statutes, in the event relief is denied to the applicant, the specific provision of statute or code that was deficient shall be stated for record."



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



SITE LOCATION MAP CASE: V23-00001

Subject Property

Northeast corner of Camden Avenue NW and Lynbrook Street NW, specifically at 937 Camden Avenue NW



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ZONING MAP CASE: V23-00001

Subject Property

Northeast corner of Camden Avenue NW and Lynbrook Street NW, specifically at 937 Camden Avenue NW

Current Zoning Classification

RS-2 – Single-Family Residential



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FUTURE LAND USE MAP CASE: V23-00001

Subject Property

Northeast corner of Camden Avenue NW and Lynbrook Street NW, specifically at 937 Camden Avenue NW

Future Land Use Classification

LDR – Low Density Residential