



STAFF REPORT

LAND DEVELOPMENT DIVISION

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Prepared by

Tania Ramos, Principal Planner

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: The applicant has not provided a response.

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: The applicant has not provided a response.

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: The applicant has not provided a response.

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: The applicant has not provided a response.

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: The applicant has not provided a response.

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: The applicant has not provided a response.

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: The applicant has not provided a response.

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