



STAFF REPORT

LAND DEVELOPMENT DIVISION

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Prepared by

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CASE NAME

Werner Proposed Carport

PLANNING & ZONING BOARD HEARING DATE

March 5, 2025

CASE NUMBER

V24-00007

PROPERTY OWNER & APPLICANT

Evan and Amanda Werner

PROPERTY LOCATION/ADDRESS

Lot 19, Block 46, Port Malabar Unit 2, Section 25, Township 28, Range 37, Brevard County, Florida; containing approximately .25 acres. Located at the southeast corner of Jackson Avenue NE and Abeto Street NE, specifically at 3202 Jackson Avenue NE

SUMMARY OF REQUEST

A **Variance** to allow a proposed carport to encroach 25 feet into the 25-foot side corner setback in an RS-2, Single-Family Residential District by granting relief from the requirement that no accessory structure shall be erected within five feet of any building on the same lot, as established by Section 174.002(A)(5) 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 0.25 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 subject property consists of approximately 0.25 acres in the RS-2, Single-Family Residential District. The property was originally developed in 1960 and was purchased by the current owners in 2005.

In 2020, Ordinance 2020-46 established the requirement for recreational vehicles parked on the street side of a corner lot to be screened by an opaque fence in residential. The applicant has been a boat owner since 2005, and did comply with the new regulation by fencing his lot. He explained that his boat was damaged by constant sun exposure, and this is the reason he is requesting the variance – to provide shade cover to his boat.

The applicant is requesting a variance from the requirement that no accessory structure shall be erected within five feet of any building on the same lot (Section 174.002(A)(5)) and is proposing 2.72 feet from the primary structure.

ANALYSIS:

The applicant is requesting a variance from the required five-foot building separation distance between a primary and accessory structure. However, it should be noted that approval of the request, as currently proposed, will also require approval of three additional variances. The location of the proposed carport will need a variance from the required 25-foot side corner setback. Other variances to allow a metal and accessory structure within the setback area will also be needed (see table below). Further, metal accessory structures over three hundred (300) square feet or over twelve (12) feet in height in residential zoning districts shall be designed to simulate non-metal construction, treated with a textured coating on all four sides or painted to match the color scheme of the primary residence (174.002(G)).

Provision	Required	Proposed	Variance
Separation distance between buildings	5 feet	2.72 feet	50%
Side corner setback for accessory structures <i>Table 174-1</i>	25 feet (RS-2 District)	2.72 feet	91%
Placement of accessory uses and structures	Shall not be erected within any required side yard setback.	Allow a carport to be built within the required side yard setback.	100%
Metal structures <i>Table 174-1</i>	Metal structures shall not be erected within side or front yard setbacks.	Allow a metal structure to be built within the side yard setback.	100%

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 172.025(D)(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: "Ordinance was changed around 2020 no allowing me park my boat in front of the house and now had to move it to the side. i also complied by building a fence to comply with the new ordinance."

"A hardship is in order to save my boat from the damage the sun has done to it is move it to a covered storage unit which in turn would cost hundreds of dollars a month."

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. All corner lots in RS-2 zoning are required to adhere to building distance separation and setback regulations in the Palm Bay Code of Ordinances.

Financial disadvantages or inconvenience to the applicant shall not constitute conclusive evidence of unnecessary and undue hardship nor 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: "I also moved to a non HOA to be able to store my boat here properly and am now not aloud to provide coverage for my boat."

Staff Review: There are no special conditions and circumstances identified in Item 1.

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: "A hardship is in order to save my boat from the damage the sun has done to it is move it to a covered storage unit which in turn would cost hundreds of dollars a month."

"Also, a hardship is the money that will have to be spent to replace the interior of boat when

with old ordinance i could have left it in front of the house and built a awning cover for it.”

Staff Review: The literal interpretation and enforcement of the Land Development Code would require the applicant to maintain a five-foot distance between the primary structure and the proposed carport (accessory structure). Building distance separation requirements and setbacks are established, in part, for public safety.

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 minimum variance necessary would leave me with 2.72 feet on either side of the structure.”

Staff Review: The variance, if granted, is not the minimum necessary for reasonable use of the land. The applicant currently has reasonable use of his single-family residential 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: “No drainage problems will occur due to roof pitch being front to back not side to side. Also, no utilities are in conflict.”

“I also moved to a non HOA to be able to store my boat here properly and am now not aloud to provide coverage for my boat.”

Staff Review: Approving all variances needed to erect the carport in the proposed location and providing 50% relief from the building distance separation, over 90% relief from the side yard setback requirement, and allowance of a metal accessory structure in a required side corner setback area would be considered special privilege.

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 sight triangle will not be affected cause there is already a fence there and there is clear view when sitting at the stop sign.”

Staff Review: Granting of this variance will not be in harmony with the general intent and purpose of this code and may 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.”

Applicant Response:

Staff Review: City Attorney’s Office reviewed the response from the applicant and determined the "Bert J. Harris Act" is not applicable to this variance request.

STAFF RECOMMENDATION:

Staff recommends denial of V24-00007, based on the facts presented, and giving full consideration of the application review criteria found in Section 172.025(D) of the City of Palm Bay Code of Ordinances.

BOARD ACTION REQUESTED:

Upon receipt of a recommendation concerning disposition of a requested variance, the Planning and Zoning Board shall hold a public hearing and may grant, deny or grant with conditions any variance request upon finding that the request meets the review criteria (Section (172.025(C)(3)).

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 172.025 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.



AERIAL LOCATION MAP

CASE: V24-00007

Subject Property

Located at the corner of Abeto St NE and Jackson Ave NE, specifically at 3202 Jackson Ave NE