



## STAFF REPORT

### LAND DEVELOPMENT DIVISION

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**Prepared by**

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**CASE NAME**

Bougainvillea Addition

**PLANNING & ZONING BOARD HEARING DATE**

February 5, 2025

**CASE NUMBER**

V24-00008

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**PROPERTY OWNER & APPLICANT**

Marchly and Francoise Jean, Owners

**PROPERTY LOCATION/ADDRESS**

Lot 14, Block 654, Section 36, Township 28, Range 36, Brevard County, Florida; containing approximately .23 acres. Located near the intersection of Mayport Ave NW and Bougainvillea St NW, specifically at 299 Bougainvillea St NW; Tax Account 2816330.

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**SUMMARY OF REQUEST**

A **Variance** to allow a proposed home addition to encroach 3.47 feet into 25-foot rear setback, as established by Section 172.022 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

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**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

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## **BACKGROUND:**

The subject property is located at 299 Bougainvillea Street NW and consists of approximately 0.23 acres within the RS-2, Single-Family Residential Zoning District. The property was originally developed in 2003 as a one-story residential structure consisting of 1,703 square feet of air-conditioned space.

In July 2023, building permit BL23-04128 was issued for a 579 square foot addition at the subject site. The permit was issued as an “owner/builder” permit, which allows the homeowner to assume all responsibility for the project and act as their own contractor, pursuant to Florida Statutes, Chapter 489.103(7). The owner submitted a signed and notarized Owner Builder Disclosure which states that as an owner-builder, they are responsible for the proposed construction activity, and must abide by all applicable laws, building codes, and zoning regulations.

The approved survey that was submitted with the building permit application depicted an addition that extended 22.8 feet from the existing home, leaving 25.2 feet to the rear property line. This proposal complied with the required 25-foot rear setback. As such, permit BL23-04128 was issued to complete the work as proposed (dimensions and specifications). Work commenced and the Building Department approved all required inspections, including the final building inspection on March 25, 2024. Upon review of the final survey submitted by the owner, it was discovered that the project has not been built to the approved dimensions; therefore, the final survey was disapproved by the Growth Management Department. The final dimensions, as built, measure 680 square feet and extend 26.80 feet from the existing home, leaving only 21.53 feet to the rear property line. This created the current 3.47-foot encroachment into the required 25-foot rear setback.

The property owners have opted to pursue a variance. The applicant is requesting a variance of 3.47 feet from the required 25-foot rear setback, as established by Section 172.025 of the Palm Bay Code of Ordinances. This is a variance of 3.47 feet, a 14% 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 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:** "There was a miscommunication, and the building was built bigger than I expected."

**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.

Growth Management approved a survey for a proposed addition that complied with the required setbacks, but the owner constructed the addition to different specifications. The owner did ensure that all required inspections were performed, and the Building Department approved all inspections, including final inspections. The property owners were advised that the change in dimensions created an encroachment into the rear setback and was not in compliance with the setbacks outlined in Section 173.022, Table 173-4.

Section 172.025(D)(7) states that 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:** "There was a miscommunication, and the building was built bigger than I expected. I had all my expectations and followed all the rules. Then, at the last minute after I submitted the survey, they said it didn't match the one I sent before. Addition was different than what I sent."

**Staff Review:** The applicant has opted to request a variance rather than rebuild the addition to the originally approved dimensions.

**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:** No 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. Instead,

a literal interpretation and enforcement of the Land Development Code regulations will ensure that the same rights commonly enjoyed by other properties in the same land use category, zoning district or situation are applied equally.

**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:** "Yes, it is only asking for minimal amount."

**Staff Review:** The proposed variance is the minimum necessary to allow the applicant to develop the property as desired.

**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, this is not applicable."

**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:** "It would not be affecting my neighborhood. No, I'm not putting anything that is not in harmony for my neighbors."

**Staff Review:** Granting this variance is not detrimental to the public welfare, however, it may be injurious to surrounding properties who anticipated single-family residences 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:** Applicant did not provide a response to Item 7.

**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 V24-00008, based on the facts presented, as required under Section 172.025 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.

