



STAFF REPORT

LAND DEVELOPMENT DIVISION

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Prepared by

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CASE NUMBER

V24-00010

PLANNING & ZONING BOARD HEARING DATE

February 5, 2025

PROPERTY OWNER & APPLICANT

Santiago De Jesus Sermeno Torres,
Owner

PROPERTY LOCATION/ADDRESS

Lot 1, Port Malabar Unit 18, Section 16, Township 29,
Range 37, Brevard County, Florida; containing
approximately .24 acres. Located at the corner of
Waneta St SE and Westlund Ave SE, specifically at
1621 Westlund Ave SE; Tax Account 2934887.

SUMMARY OF REQUEST

A **Variance** to allow a proposed single-family residence to encroach
14.5 feet into the east, 25-foot rear setback, as established by
Section 173.022, Table 173-4 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

0.24 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 is currently unimproved and consists of approximately 0.24 acres in the RS-2, Single-Family Residential District. The property is located on the northeast corner of Waneta Street SE and Westlund Avenue SE.

In September 2024, a building permit application (BL24-11275) was submitted by Quintero's Construction to construct a new home on a corner lot at the intersection of Westlund Avenue SE and Waneta Street SE. The submitted survey showed the proposed structure encroaching 14.50 feet into the rear setback of the lot. The minimum required rear setback for principal structures is 25 feet from the property line in the RS-2 zoning district. The subject property does not have readily available access to city sewer lines and was required to obtain a septic permit from the Florida Department of Health. The Department of Health approved the proposed septic system in the south section of the property, based on surrounding existing septic and well systems. The location of the septic system limits the design options for the size and orientation of the principal structure.

The property owner has opted to pursue a variance to accommodate the proposed dimensions of the principal structure. The applicant is requesting a variance from the 25-foot rear setback, as established by Section 172.025 of the Palm Bay Code of Ordinances; and, proposes 14.5 foot setback for the construction of a new single-family residence on the subject site. The 14.5 feet variance request equals a 58% 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: "Due to the need to properly install both a septic tank and a well water system on the property, the required distances for these systems cannot align with the city's 25-foot setback requirement."

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 developed properties

in the surrounding neighborhood also require septic and well systems, so this is not unique to the subject property. A septic permit was obtained from the Health Department showing the approved location for the tank and drain field in the south section of the subject property, and a well permit was issued in the northeast corner of the subject property. The approved location on the septic permit allows adequate space to place a principal structure that will meet the established setback. A reduction of the structure dimensions or the addition of a second story to accommodate the desired square footage could be proposed to meet the minimum setback requirement.

Section 172.025(A)(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: "These systems have specific regulations regarding the distance between the septic tank, well water, and neighboring properties, and the interplay of these regulations conflicts with the setback requirement for the rear side of the lot."

Staff Review: The location of the septic and well systems determined by the Department of Health do limit the dimensions and orientation of the structure; however, the applicant can adjust the dimensions and layout of the proposed principal structure to adhere to the dimensional standards of the Land Development Code as the structure is proposed and not existing (see attached permit, Exhibit A).

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: "Denying this variance could ultimately prevent the landowner's ability to build a home on this property, which would severely impact my ability to use the land for its intended purpose."

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. The applicant has not provided evidence of hardship as the property can still be developed as a single-family residence using a different layout and dimensions.

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 distance requirements for the septic tank and the well water system leave no reasonable alternative but to request a variance of 14.5 feet from the rear of the home to accommodate both the health and safety regulations for these utilities and the setback requirement."

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: "Granting this variance would not grant any special privileges to the property, as it would only allow the property to meet the legal and health requirements associated with the proper installation of septic and well systems."

Staff Review: Granting of the variance will confer special privileges on the applicant as other residents in community who also have septic and well systems 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 did not provide a response for this item.

Staff Review: While the proposed use of the property is in harmony with surrounding properties, the proposed setback variance may be injurious to the neighboring property as the rear of the principal structure would be only 10.50 feet from the shared property line.

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: No answer

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 V24-00010, based on the facts presented, as required under Section 172.025 of the City of Palm Bay Code of Ordinances. A hardship generally occurs when the physical characteristics of a property are such that it cannot be used for any purpose permitted by the Land Development Code. A hardship may be created by the surroundings, shape, or topographical conditions particular to that specific property. However, the hardship cannot be self-imposed, or the result of the property owner's own action.

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.