



Board of Adjustment

STAFF REPORT

DEVELOPMENT SERVICES DEPARTMENT

100 NW 1ST AVENUE, DELRAY BEACH, FLORIDA 33444

PLANNING & ZONING DIVISION: (561) 243-7040 • BUILDING DIVISION: (561) 243-7200

Board of Adjustment

Meeting: April 7, 2022

File No.: 2022-116 VAR-BOA

Application Type: 2138 SW 12th Court

Item Before the Board

Variance request to allow a car to be parked in the front setback.

Property Owner: Patrick Fitzgerald

Location: 2138 SW 12th Ct

PCN: 12-43-46-19-02-002-0130

Property Size: 0.1478 Acres

LUM: LD (Low Density 0-5 Dwelling Units/ Acre)

Zoning: R-1-A (Single-Family Residential)

Adjacent Zoning:

- North:** R-1-A
- East:** R-1-A
- South:** R-1-A
- West:** R-1-A

Existing Land Use: Single-Family Home

Proposed Land Use: No Change



Optional Board Motions for Action Items:

1. Move to continue with direction.
2. Move **approval** of the Variance request for 2138 SW 12th Court (2022-116 VAR-BOA) from LDR Section 4.6.9(C)(2) **to allow parking in the front setback** by finding that the request is consistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).
3. Move **denial** of the Variance request for 2138 SW 12th Court (2022-116 VAR-BOA) from LDR Section 4.6.9(C)(2) **to allow parking in the front setback** by finding that the request is inconsistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).

Background:

The property consists of Lot 13, Block 2, Delray Beach Highlands Section 1, according to the plat thereof as recorded in Plat Book 26, Page 29, of the Public Records of Palm Beach County, Florida. The lot is zoned Single-Family Residential (R-1-A) and located within the Rainbow Homes Neighborhood.

The one-story original structure was built 1961 and remains on the property. The single-family homes in Rainbow Homes Neighborhood were built with either a single car garage or a carport for one car. Many of the homes have been modified throughout the years to provide additional living space and parking with larger driveways. Records indicate that there are no variances in this development for any of the existing modifications. The proposal consists of an addition to the single-family home by enclosing the carport. The addition will be flush with the front of the home, therefore creating a nonconformity to current code requirements pursuant to **Land Development Regulation 4.6.9C(2)(a) Single family detached residences**; Two spaces per dwelling unit. Tandem parking

Project Planner:

Jennifer Buce, Planner

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561-243-7138

Review Dates:

BOA Board:

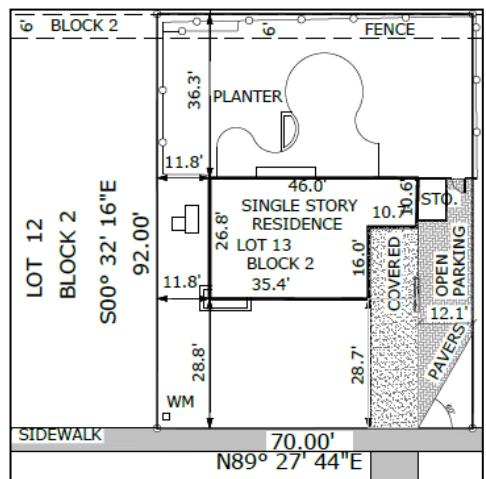
April 7, 2022

Attachments:

1. Site Plans
2. Justification Narrative pictures
- 3.



may be used in the Single Family (R-1) Residential Districts or Low Density Residential (RL) District. Required parking spaces shall not be in the front setback or side street setback areas. The diagram to the right, demonstrates that the applicant proposes parking on the east side of the home at twelve feet one inch. However, building requires three to five feet for drainage run off which may make this difficult to accomplish. Therefore, the applicant proposes the parking spaces in the front setback of the driveway. A current permit for the addition has been submitted to the Building Department (21-199117). On October 7, 2021, the building permit (21-199117) was disapproved for the addition.



Variance Analysis:

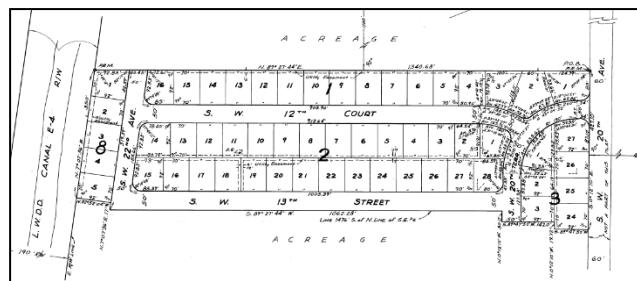
The subject request is for relief to allow parking in the front setback pursuant to LDR Section 4.6.9(C)(2) Single Family detached homes are required to provide two parking spaces that shall not be in the front setback. In the R-1-A zoning district the front setback requirements is 25 feet. The survey indicates that there is 28.7 feet provided from the property line to the proposed addition. The applicant's justification letter is attached.

Pursuant to **LDR Section 2.2.4(D)(4) and (c)**, the Board of Adjustment has the authority to grant variances and hear appeals from the provisions of the General Development Standards (Article 4.3).

Pursuant to **LDR Section 2.4.7(A)(5)(a) through (f), Variance Findings**, the following findings must be made prior to the approval of a variance:

- That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings subject to the same zoning (The matter of economic hardship shall not constitute a basis for the granting of a variance).

The property is in the R-1-A zoning district in the Rainbow Homes Neighborhood. Pursuant to LDR Section 4.3.4(K), the standard for lot width and depth in the R-1-A is 60 feet wide and 100 feet deep. The property measures 70 feet wide by 92 feet deep and is a lot of record. The original plat "Delray Beach Highlands" was recorded in January of 1961 with many of the lots platted at 70 feet wide by 92 feet deep. The homeowner is currently parking one car on the eastside of the home on a designated paved area and the other required parking space is in the carport. The front setback for R-1-A zoning district is 25 feet. The addition of the carport into living space will create a new nonconformity with respect to the required parking, as the new parking space will encroach into the front setback parked in the driveway.



- That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning.

The Rainbow Homes Neighborhood was developed in 1961 with similar models that either had a single car garage or a carport. The current requirements pursuant to LDR Section 4.6.9(C)(2)(a); require two parking spaces per dwelling unit. The required parking spaces shall not be located in the front setback. This is applied city wide. The carport is built for a single car; If the applicant was not adding living space on the carport the required parking is still problematic to achieve as the only other location for another car is in the driveway which is in the front setback.





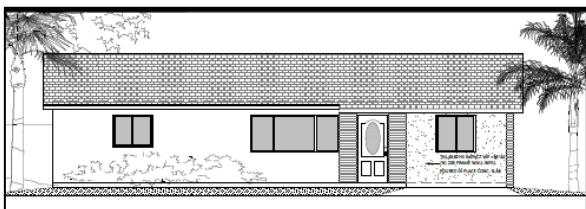
c) That the special conditions and circumstances have not resulted from actions of the applicant.

The actions are the direct result of the applicant. The property owner purchased the property with the original structure in 2018. There is an existing nonconformity with regards to LDR Section 4.6.9(C)(2)(a), with one car in the front setback currently. However, with the addition of the carport to living space, this increases the existing nonconformity.

d) That granting the variance will not confer onto the applicant any special privilege that is denied to other lands, structures, and buildings under the same zoning. Neither the permitted, nor nonconforming use, of neighborhood lands, structures, or buildings under the same zoning shall be considered grounds for the issuance of a variance.

Each variance submitted is to be reviewed and stand on its own. However, in 2017, 309 SW 5th Avenue and 706 SW 2nd Street received variances to allow parking in the front setback. There are no documented variances in the Rainbow Homes Neighborhood, however there are several conversions of the garages and carports to living space that created nonconformities with respect to the parking in the front setback.

e) That the reasons set forth in the variance petition justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; and,



The applicant has reasonable use of the property with the existing home built in 1961 without the need of a variance. A second-floor addition or rear addition could be considered for the desired additional living space area and meet the setbacks of the R-1-A zoning district. If the variance is not granted, the addition of the living space will not be approved and the existing nonconformity of the car in the front setback will remain. If the variance is granted, the addition of the living space can be approved, the car will remain in the front setback and the exiting nonconformity is increased.

f) That the granting of the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

While the variance request to allow parking in the front setback is increasing an existing nonconformity; the overall appearance of the neighborhood and general purpose and intent of the existing regulations is not being affected. The variance will not be detrimental to the public welfare, in fact the cars will remain in the driveway and not parked on the swale which could impose a danger to the neighborhood.

The purpose and intent of the Single-Family Residential Districts states that "the Single-Family Residential Districts have been created in order to provide areas where the traditional single family detached residence can be established and maintained and be protected from the unwarranted intrusion of other inappropriate uses." Further, the Single-Family Residential Districts are established in compliance with provisions of Goal HOU 2 of the Housing Element of the adopted Comprehensive Plan which calls for the preservation and maintenance of stable neighborhoods. The parking of a car in the front setback will not be an intrusion or an inappropriate use in the neighborhood as the neighborhood was developed with single car garages and carports. At the time of development, a second vehicle was not considered.

Notice

Pursuant to LDR Section 2.4.2 (B)(1)(f), the City shall provide notice of the public hearing in accordance with Section 2.4.2(B)(1)(j) (i), (ii), and (iv) for variances before the Board of Adjustment.

LDR section	Date Posted
2.4.2 (B)(1)(j)(i) - Written notice provided to property owners within 500 feet	March 25, 2022
2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior	March 25, 2022
2.4.2 (B)(1)(j)(iv) - Notice posted at City Hall	March 25, 2022