



# Board of Adjustment STAFF REPORT

## DEVELOPMENT SERVICES DEPARTMENT

100 NW 1<sup>ST</sup> AVENUE, DELRAY BEACH, FLORIDA 33444

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

### Board of Adjustment

Meeting: May 16, 2019

File No.: 2019-140 VAR-BOA

Application Type: Variance

#### General Data:

**Applicant/Owner:** Thomas Wilbert Jr.

**Location:** 2310 Dorson Way

**PCN:** 12-43-46-07-01-006-0140

**Property Size:** 0.24 Acres

**Zoning:** R-1-AB (Single Family Residential)

**FLUM:** LD (Low Density Residential)

#### Adjacent Zoning:

- R-1-AB (North)
- R-1-AB (West)
- RM – Multiple Family Residential (South)
- R-1-AB (East)

**Existing Land Use:** Single Family Home

**Proposed Land Use:** No change



#### Item before the Board:

The action before the Board is a consideration of a variance to allow the two required parking spaces for a single-family residence to be located in the required 25 ft. front setback.

#### Recommendation:

**Deny** the variance request (BOA 2019-140) to LDR Section 4.6.9(C)(2)(a), to allow the two required parking spaces for a single-family residence to be located in the front setback for the property located at **2310 Dorson Way**, by adopting the findings of fact and law contained in the staff report, and finding that the request is not consistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).

#### Background:

The property consists of Lot 14 Block 6, Delray Shores, as recorded in the Plat Book 24 Page 232, of the Public Records of Palm Beach County, Florida. The 80 ft. wide lot is located in the Single-Family Residential District (R-1-AB). The property contains a one-story 2,227sf (excluding the 450 sf. garage) single-family dwelling unit that was built in 1971. The existing structure has a front setback of approximately 33 ft. 4 in.

Per LDR Section 4.6.9(C)(2)(a), single-family detached residences are required to provide two spaces per dwelling unit; the required parking spaces shall not be located in the front setback for lots with more than 60 ft. wide. The subject property is under code enforcement action for converting the existing two-car garage into additional floor area without the submission of a building permit. The illegal garage conversion created a nonconformity with respect to the subject parking requirement under review. The proposal is to allow the two required parking spaces to be provided where the existing driveway is located, which would encroach approximately 10 ft. in the required 25 ft. front setback (a standard parking space measures 18 ft. deep by 9 ft. wide).

#### Site Plan Analysis:

Pursuant to **LDR Section 2.2.4(D)(4)**, the Board of Adjustment has the authority to grant variances and hear appeals from the provisions of the supplemental district regulations (Article 4.6) except where said authority is expressly prohibited or granted to

#### Project Planner:

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#### Review Dates:

BOA Board: May 16, 2019

#### Attachments:

1. Survey
2. Floor Plan
3. Photos



others.

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

- (a) **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);**

Applicant Justification: "The property has an extra wide driveway, that can hold 2 or more vehicles; more than adequate for the vehicles owned by the residents."

Staff Analysis: The subject property is 80 ft. wide by approximately 135 ft. deep. The neighborhood consists of lots with frontage ranging from 75 ft. to 90 ft. wide. The proposal is to allow the two required parking spaces to be provided within the required front setback due to the conversion of the existing two-car garage. Prior to the conversion of the existing garage, the property had complied with the minimum number of parking spaces required for single family dwelling units. Based on the property size and the amount of land available to continue the development/expansion of the structure in accordance with code requirements, special conditions and circumstances that exist which are peculiar to the lands, structures or buildings involved with this request are not found, and the request does not show a basis for a hardship to grant a variance. Thus, a positive finding cannot be made with respect to finding "a".

- (b) **That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning;**

Applicant Justification: "The regulation is asking me to add to the existing parking which already exist to code."

Staff Analysis: Literal interpretation would require that the subject property continue to provide the two required parking spaces for the single-family residence outside the required 25 ft. front setback. The owner of the subject property identified that the garage conversion was necessary to create an extra bedroom to accommodate an elderly family member, and that the existing garage was not used to park vehicles inside. Parcels which are developed or redeveloped are required to comply with parking requirements. Previous requests in the same zoning to allow the parking requirement to be located in the front setback have been denied. Thus, a positive finding cannot be made with respect to finding "b".

- (c) **That the special conditions and circumstances have not resulted from actions of the applicant;**

Applicant Justification: "The house as is was built in compliance with the existing codes and the parking area has not been altered."

Staff Analysis: The property was originally developed in accordance with the minimum number of parking spaces required per code. A variance is being requested due to an illegal conversion of the existing garage which created an illegal nonconformity; thus, there are no special conditions or circumstances and the situation is a direct result of the applicant and a positive finding cannot be made with respect to finding "c".

- (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;**

Applicant Justification: "In surveying the community, I see no difference in the amount of cars parked in my driveway as others in the community."

Staff Analysis: As stated above, similar requests in the same zoning to convert existing car garages to add additional floor area to the existing structure have been requested and denied when compliance with the applicable parking requirements would not be met. Based on the analysis and the justifications provided by the applicant, granting this variance request would result in the grant of a special privilege. Thus, a positive finding cannot be made with respect to finding "d".

- (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,**

Applicant Justification: "The existing parking does not obstruct the walkway or roadways in front of our property."

Staff Analysis: The land was developed in accordance with the minimum number of parking spaces required for single family dwelling units. Based on the property size and the amount of land available to continue the development/expansion of the structure, additional floor area to the existing structure can be accommodated without eliminating the required parking spaces per code and without the grant of this request. Thus, a positive finding cannot be made with respect to finding "e".



- (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.**

Applicant Justification: "To comply with the existing code conditions, it would force me to alter the uniqueness of the property's landscape; as well as imposing a great financial burden."

Staff Analysis: A minimum of two parking spaces outside the required front setback is required for single family dwelling units so temporary/guest parking can be safely accommodated within the property, and to maintain the existing streetscape and character of Single-Family Residential zoning neighborhoods. By allowing the required parking to be located within the required front setback, temporary parking would not be able to be safely accommodated within the existing driveway (approximately 22 ft. wide by 33.4 ft. deep). Thus, a positive finding cannot be made with respect to finding "f".

**Notice:**

Per LDR Section 2.4.2(B)(1)(F) and 2.4.2(B)(1)(J)(I), The City shall provide notice to the property owners within 500 ft. of the perimeter of the property, which is the subject of the development application, mailed no later than 10 days prior to the public hearing. Notices were mailed and posted at City Hall on May 3, 2019, and posted on the website on May 6, 2019.

**Alternative Actions:**

- A. Move **postponement** of the Variance request (BOA 2019-140) to continue with direction.
- B. Move **approval** the Variance request (BOA 2019-140) to LDR Section 4.6.9(C)(2)(a), to allow the two required parking spaces for a single-family residence to be located in the front setback for the property located at **2310 Dorson Way**, by adopting the findings of fact and law contained in the staff report, and finding that the request is consistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).
- C. Move **denial** the Variance request (BOA 2019-140) to LDR Section 4.6.9(C)(2)(a), to allow the two required parking spaces for a single-family residence to be located in the front setback for the property located at **2310 Dorson Way**, by adopting the findings of fact and law contained in the staff report, and finding that the request is not consistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).