



DEVELOPMENT SERVICES DEPARTMENT STAFF REPORT

Project Name: N/A

Applicant: Ysidora T. Mueras Boza

Project Location: 5730 NW 27th Street

Hearing No. BA-03-2020

Hearing Date: September 1, 2020

Board: Board of Adjustment

I. RECOMMENDATION:

DENY

II. EXECUTIVE SUMMARY:

The applicant is requesting a variance from City of Margate Ordinance 1500.80 to allow an addition to an existing detached single family dwelling to encroach 7.35 feet into the required 15 feet rear setback. In addition, the applicant is seeking relief from Section 23-11 of the Code of the City of Margate for permission to maintain 400 square feet of tree canopy area when code requires 850 square feet of tree canopy area. Staff is recommending denial because the request does not meet the three criteria specified in Section 2-79(b) of the Code of the City of Margate and the request is contrary to established case law.

III. ANALYSIS:

A) Description.

The subject property has a land use designation of Transit Oriented Corridor, and a zoning designation of One-Family Dwelling (R-1C) zoning district. The property is located within the North Margate subdivision. The rear addition has already been built and received a violation for work without a permit. The property owner filed building permit application #20-578 for the already built addition to a detached single family dwelling. Upon review of the building permit, it was determined that the rear addition did not conform to the required rear setback (Exhibit #3).

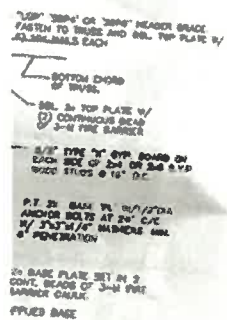
Additionally, Section 23-3 of the Code of the City of Margate provides that the provisions of the landscaping code regarding the installation of new landscaping material shall apply when any existing building is expanded. The property provides 400 square feet of canopy area out of the required 850 square feet. Landscaping on the property primarily consists of fruit trees which are not credited toward the required trees to meet the minimum landscape code. The Board of Adjustment is authorized to hear and grant adjustment of landscaping requirements per Section 23-13 of the Code of the City of Margate.

A variance to deviate from the required 15-foot rear setback and for permission to maintain 400 square feet of canopy area is required prior to issuance of a building permit for the addition. Prior to granting a variance, the approving body shall make a finding that the granting of the variance is in conformance with the three criteria specified in Section 2-79(b) of the Code of the City of Margate.



Exhibit 1: Location Map





Wall

cam
beam
rod



Proposed Floor Plan

1/4" Scale

As-Built Conditions

Not Included

x72.59

*1238

As-Built Condition

Exhibit 2: Proposed Floor Plan Permit #20-578

Exhibit 3: Survey of Subject Property

Replacement Tree Category (See Appendix 1)	Replacement Canopy Area Credit (In Square Feet)
Category 1 Tree	300
Category 2 Tree	150
Category 3 Tree	100
Category 4 Tree	50

Exhibit 5: Tree Category Canopy Area

CATEGORY 3 TREES 6-FOOT MINIMUM HEIGHT FOR TREES 6-FOOT CLEAR TRUNK FOR PALMS	
Common Name	Latin Name
Allspice	Pimenta dioica
Beach acacia	Acacia cyanophylla
* Black ironwood	Krugiodendron ferreum
* Blolly	Guapira discolor
Bottlebrush tree	Callistemon spp.
Brush cherry	Syzygium paniculatum
* Cabbage palm	Sabal palmetto
Canary Island date palm	Phoenix canariensis
Coconut palm	Cocos nucifera
* Cocoplum	Chrysobalanus icaco
Coral bean	Erythrina spp.
Crape myrtle	Lagerstroemia indica
Glossy privet	Ligustrum lucidum
* Jamaica caper	Capparis cynophallophora
Macadamia nut	Macadamia spp.
* Redberry stopper	Eugenia confusa
Royal palm	Roystonea spp.
* Simpson stopper	Myrcianthes fragrans
Snailseed	Cocculus laurifolius
* Spanish stopper	Eugenia foetida
* Wax myrtle	Myrica cerifera
White geiger	Cordia boissieri
* Wild lime	Zanthoxylum fagara
* Native to Florida	

Exhibit 6: Category 3 Tree List



Exhibit 7: Existing Subject Property



B) Compliance with Code.

The zoning code regulates each single-family dwelling within the R-1C zoning district to have a required rear yard setback not less than 15 feet in depth. The rear yard setback from the property line to the non-conforming addition is 7.65 feet (Exhibit 3). The 7.35-foot encroachment into the rear setback is in conflict with Ordinance 1500.80. The petitioner is requesting a variance for permission to maintain an addition that was built without a building permit, and which provides a rear setback of 7.65 feet when Code requires at least 15 feet.

Pursuant to Section 23-3(B) of the Code of the City of Margate provides that the provisions of the landscaping code regarding the installation of new landscaping material shall apply when any existing building is expanded. Section 23-2 of the Code of the City of Margate defines the term building as, "Any structure used for the shelter or enclosures of persons, animals or property of any kind."

Furthermore, when any existing building is expanded the provisions of the landscaping code requires compliance with the minimum landscape requirements for zoning districts in Section 23-11 of the Code of the City of Margate. The minimum landscape requirements for single family dwellings are based on lot size as described in Section 23-11(A)(2) of the Code of the City of Margate. Specifically, the subject property of this variance is a single family lot that is 8,477 square feet in area and is therefore required to provide a tree canopy equivalent of ten percent of the gross lot size rounded up to nearest whole tree requirement. The amount of tree canopy area based on the requirement above is 850 square feet of total tree canopy area. The tree canopy area values are specified in Section 23-20(I)(6) of the Code of the City of Margate and Section 23-23 of the Code of the City of Margate provides list of trees in each category in appendix 1.

The site currently has 4 coconut palms. This species of trees is listed as a category 3 tree (Exhibit 4 & 6). One category 3 tree provides 100 square feet of canopy area for each tree (Exhibit 5). The total tree canopy area on the subject property is 400 square feet. The applicant is requesting a variance for permission to maintain a total of 400 square feet of tree canopy area on the subject property.

Section 2-79(b) of the Code of the City of Margate provides that a decision to grant a variance by the Board of Adjustment must be in conformance with three specified criteria. Those criteria are as follows:

(1) It shall be demonstrated that special conditions and circumstances exist which, if there is a literal and strict enforcement of the provisions of a zoning ordinance, would constitute a hardship or practical difficulty in the use of the property involved.

The following statement was provided by the applicant:

"The hardship not being able to use full addition as completed as additional living space. The practical difficulty in demolishing a significant portion of structure as completed and rebuilding as well as not being aesthetically pleasing and fully functional. If the variance is not approved, the added additional cost of purchasing trees in sufficient heights and trunk sizes, and cost of transportation and installation to satisfy city code would be excessive. "

The applicant did not provide proof of undue hardship that when applying the zoning ordinance, the literal and strict enforcement of such provision would create a circumstance that would deprive them of rights commonly enjoyed by others of the same zoning classification. The site does not demonstrate any special conditions or circumstances that exist which would impede the home owner to build a reasonable addition while meeting the required 15-foot rear setback. The addition was constructed without a permit and without consultation of the required setbacks at the time. The practical difficulty in

demolishing a portion of the structure as completed has occurred as a direct result of the applicant's unilateral and unauthorized action in violation of the existing zoning ordinance.

Staff finds that applying the ordinance to the subject property does not constitute a hardship or practical difficulty in the use of the property because a reasonable addition meeting the rear setback could be materialized on the subject property. The applicants justification fails to demonstrate the hardship or practical difficulty in the use of the property. The applicant's argument fails because the hardship was self-created and therefore does not constitute a viable reason to grant a variance (Town of Ponce Inlet v. Rancourt).

(2) The board shall find that the granting of the variance will not be contrary to the public interest or the general purpose sought to be accomplished by the zoning ordinances.

The following statement was provided by the applicant:

"Additional is 7.65 feet from the corner of structure to rear property line, based on home sits caddy corner within the lot. That small insignificant portion within 15 feet setback accounts for 10% or less of the rear property line. Foot traffic is unobstructed or impeded as one may pass freely. Both neighbors on either side signed notarized statements that they no objections to the variance request and not affected by it. In the 10 years we have been here, we have actually improved the visual appearance of the front yard and our neighborhood and received many compliments"

The general intent of the zoning code is a police power to preserve health, safety, welfare and morals of the community. Historically, zoning setbacks were created as a means to preserve health and safety, by allowing structures to have adequate natural light and ventilation as well as enhance fire safety efforts. The required rear setback of 15 feet is applicable to all single-family homes within the R-1C zoning district. The applicant has provided statements of support from adjoining property owners to declare that the addition does not impact nor affect their own property and stand in support of the subject addition as it stands. The applicant did not provide competent substantial evidence to support the claim.

(3) In granting any variance, the board shall record in its minutes the circumstances and conditions constituting the hardship or practical difficulties upon which the variance is based.

The following statement was provided by the applicant:

"The added expenses, costs and time to tear down and reconstruct the presently completed addition and contained unavailability and full use of the addition as intended in terms of partial demolition of the walls, structure and roof which would constitute a significant hardship. The fact that we would have to purchase additional trees to plant and pay for the installation, delivery and labor would be costly and time consuming"

The applicant states that the "hardship is the added expenses, costs and time to tear down and reconstruct the presently completed addition." The applicant also mentions that the "additional cost of purchasing trees in sufficient heights and trunk sizes, and cost of transportation and installation to satisfy city code would be costly and time consuming." The hardship claimed by the applicant is one of economic disadvantage, which does not constitute a hardship sufficient to warrant the granting of a variance (Burger King Corp v. Metropolitan Dade City).

C) Consistency with Comprehensive Plan.

Policy 4.15 of Element I: Future Land Use, of the Margate Comprehensive Plan provides that the City's land development regulations shall contain performance standards, including minimum setbacks.

"Policy 4.15 Land development regulations shall contain performance standards that, at a minimum:

- a. Address the compatibility of the proposed development with neighboring properties.
- b. Address any detrimental effects of the proposed development on living and/or working conditions in proximity thereto.
- c. Address internal and external vehicular and pedestrian traffic flow.
- d. Address the location, size, and features of structures, with particular reference to their interrelation with neighboring properties.
- e. Address the adequacy of setbacks and buffers from rights-of-way and neighboring properties."

The land development regulations for the R-1C zoning district require a minimum rear yard setback of 15 feet. This regulation is consistent with the Comprehensive Plan. Florida Statute 163.3231 provides that "authorized development shall be consistent with the local governments comprehensive plan and land development regulations".

D) Compatibility with surrounding area.

The surrounding neighborhood consists of single family homes. In addition to the intent to preserve health and safety described above, setbacks are meant to enhance compatibility with neighboring properties. The compatibility would be compromised if this were allowed to stay.

IV. RATIONALE:

In exercising its power and duties, Section 2-78 of the Code of the City of Margate authorizes the Board of Adjustment to grant a variance if the Board finds that special conditions exist on the property which, if there is a literal enforcement of the zoning ordinance, would constitute a hardship or practical difficulty in the use of the property. Further, the Board shall find that the granting of a variance will not be contrary to the public interest or the general purpose sought to be accomplished by the zoning ordinance. The practical difficulty in demolishing a portion of the structure was, in effect, a self-created hardship and does not constitute a viable reason to be granted a variance. Staff finds a variance is unwarranted. For these reasons, staff recommends denial of this variance. Staff has presented a detailed argument that the request is inconsistent with the three criteria. Granting of the variance would not be in accordance with state law because the variance request is not consistent with the Comprehensive Plan. Further, the hardships stated by the applicant and lack of competent substantial evidence are contrary to established case law.



Elizabeth Taschereau
Development Services Director