

TO: Planning Commission
FROM: Peter Gansen, Planning & Zoning Administrator
RE: Staff Report for V-24-001 Suarez
DATE: June 11, 2024 Regular Meeting



Variance Application V-24-001

Applicant: Linda and Larry Suarez

Property Address: 30392 Creek Circle

Legal Description: LOT 55 BLOCK 2 WHITEBIRCH SEVEN

Parcel ID: 10170665.

Zoned: R1 Low Density Residential

- Applicant has filed the appropriate application for an after-the-fact variance.
- Applicant has paid the appropriate fee for the application.
- Public notice of the Hearing was published in the legal newspaper and all property owners within 350' were mailed a notice of hearing.
- Public notice was not given to the DNR, as the property is not in a shoreland overlay district.

Variance Request:

- An after-the-fact variance from the required side yard setback distance of 15 feet to 12 feet for an existing residential structure.

Summary of the property

LOT 55 BLOCK 2 WHITEBIRCH SEVEN was platted in 1979 is located at 30392 Creek Circle north of Whitebirch Drive. The property is in a residential neighborhood bordered by a golf course which is zoned resort commercial.

The residence was finished in 2021 and built under the ownership of Curt Hawkinson.

The property boundary was surveyed after the build and that is when the setback encroachment was identified.

The current owner did not build the structure and is before the Commission today seeking relief from the required property line setback for an after-the-fact variance.

If the Commission applies the strict interpretation of Chapter 153 and the Codes of the City, the applicant at their own expense could be required to remove the existing encroachment from within the setbacks at the landowner's expense.

Due to the de minimis nature of the encroachment staff recommends the Commission consider after-the-fact approval, based on the information presented at this time.

The following are recommended findings the Commission can adopt.

Notice of Decision and Findings of Fact

The Planning Commission shall consider the following in its decision and make written findings concerning the variance approval or denial.

- (1) The strict interpretation of the ordinance would be impractical because of circumstances relating to lot size, shape, topographic or other characteristics of the property not created by the land owner;

Yes, the encroachment was created by a prior landowner.

- (2) The deviation from the ordinance with any attached conditions will still be in keeping with the spirit and intent of the ordinance;

Yes, the encroachment into the setback is minimal.

- (3) The land use created by the variance is permitted in the zoning district where the property is located;

Yes, Seasonal/Year round residential use is allowed in the zoning district.

- (4) The variance will not alter the essential character of the locality;

Yes, the proposed request is residential similar to the adjacent neighbors.

- (5) The variance is not for economic reasons alone, but reasonable use of the property does not exist under the ordinance.

Yes, the existing owners did not create the encroachment, the prior owner did. If the strict application of the ordinance was applied the existing owners would be required to remove the encroaching elements of the structure at their expense.

The following are recommended conditions.

- 1) **None.**