

TO: Planning Commission
FROM: Peter Gansen, Planning & Zoning Administrator
RE: Staff Report for V-24-012
DATE: October 08, 2024 Regular Meeting



Variance Application V-24-012

Applicant: BRIAN LEE

Property Address: 9168 INDIAN HILL

Legal Description: LOT 27 3RD ADDITION TO BREEZY POINT ESTATES

Parcel ID: 10161098

Zoned: R-3 Original Neighborhood/Sewered

- Applicant has filed the appropriate application.
- 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 given to the DNR, as the property is in the shoreland district.

Variance Request:

- Is requesting a variance from the maximum allowed impervious surface coverage of 30% to 43% to construct a 270 SQFT patio.

Summary of the property

This property was platted\subdivided in 1963 as the Third Addition to Breezy Point Estates prior to land use ordinance adoption and minimum lot size requirements.

The property is in a residential zoned area with small seasonal cabins surrounded by resort commercial zoned property and fronted by a large street and parking area on both sides.

The adjacent neighbor's properties are similarly developed with single-family year-round/seasonal cabins.

The City has established structural setbacks with minimum residential structure sizes and the proposed project appears to meet these standards.

However, the property exceeds the maximum 30% impervious surface allowance in the R-3 zoning district.

Based on the information presented at this time and in the applicants survey it appears the subject property is affected by parking and sidewalk that has encroached onto the property.

If the parking and sidewalk areas that encroach onto the applicant's property were not considered in the impervious surface calculations the project would not require a variance.

Please see the impervious surface table on the site plan drawing.

There are other remedies that exist that could be explored to alleviate the need for the variance these include but are not limited to.

The applicant could install engineered pervious product that would not require a variance.

The applicant could look into if there were alternatives to remove or relocate the parking and sidewalk that is encroaching on the property.

The applicant could pursue a rezone to resort commercial zoning which is the majority of the zoning classification in this area. This would allow the applicant 50% impervious coverage and not require a variance.

These options seem to be more extreme and expensive options than crediting the applicant areas affected by the parking area and sidewalk.

All the same, there are many non-conforming properties that are bought and sold and have very limited or no expansion opportunities. It is also the landowner's responsibility to be aware of development limitations with property's as rules change over time.

The proposed project in the application material submitted at this time appears to meet the spirit and intent of ordinance. Meaning the lot appears to have the capacity to support a reasonably sized patio that would remain under the impervious limits if there was not a parking area and sidewalk encroaching onto the property, which is outside both the former and current owner's control.

Please keep in mind that granting a variance does not create or set a precedence. The Planning Commission is the venue for deciding whether unique circumstances exist that create a practical difficulty and justify variance approval.

The Commission can grant a variance on one property and not on another, given they follow the proper procedure and adopt the appropriate findings. This is based on prior case law and the findings of fact can be considered uniquely and applied to the subject property in different place and time.

Staff recommends the Commission consider approval based on the plans submitted in the application with the following proposed condition.

- 1) **All stormwater runoff associated with the patio must be mitigated and maintained onsite.**

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 lot would be considered maxed out on impervious surface coverage due to the encroaching parking area and sidewalk. If the encroaching parking area and sidewalk were not on the property the impervious amounts would be within ordinance allowances.

- (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 patio's location is conforming, and the proposed structure dimensions meet residential structure size requirements.

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

Yes, patios are allowed in this zoning district.

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

The proposed request is residential similar to the adjacent neighbors and shares the same setbacks. The immediate neighbors have decks and or patios and the rest of locality is a highly developed resort that allows 50% impervious surface coverage.

- (5) The variance is not for economic reasons alone, but reasonable use of the

property does not exist under the ordinance.

Yes, without the variance the landowner would not be allowed a patio. The current or prior owners did not create practical difficulty or hardship. The hardship and practical difficulty was created when the parking areas and sidewalks were installed. This circumstance is unique to this property as most properties do not have parking areas that encroach onto them. See findings 1-5.

The following are recommended conditions.

- 1) All stormwater runoff associated with the patio must be mitigated and maintained onsite.**