



HIGHLAND BEACH BUILDING DEPARTMENT

3614 S. Ocean Boulevard
Highland Beach, FL 33487
Ph: (561) 278-4540

Board of Adjustment and Appeals STAFF REPORT

MEETING OF: November 12, 2024

TO: BOARD OF ADJUSTMENT AND APPEALS (BOAA)

FROM: INGRID ALLEN, TOWN PLANNER

SUBJECT: APPLICATION BY MICHAEL MARSHALL, ESQ., FOR A VARIANCE TO ALLOW A REDUCTION OF THE REAR SETBACK, AS PROVIDED IN SECTION 30-64 OF THE TOWN CODE OF ORDINANCES, FROM THE REQUIRED 20 FEET TO 4 FEET IN ORDER TO ACCOMMODATE AN OPEN-WALLED ROOFED ACCESSORY STRUCTURE FOR THE PROPERTY LOCATED AT 2474 SOUTH OCEAN BOULEVARD. (PZ-24-11)

I. GENERAL INFORMATION:

Applicant (Property Owner): Marla and Stephen Garchik
2474 South Ocean Boulevard
Highland Beach, FL 33487

Applicant's Agent: Michael Marshall, Esquire
100 S. E. 3rd Avenue, Suite 2700
Fort Lauderdale, FL 33394

Property Characteristics:

Comprehensive Plan Land Use: Single Family

Zoning District: Residential Single Family (RS)

Property Location: 2474 South Ocean Boulevard

Parcel PCN#: 24-43-46-28-09-000-0131

Adjacent Properties:

PARCEL	ZONING DISTRICT	FUTURE LAND USE DESIGNATION
North	Residential Single Family (RS)	Single Family
South	Residential Single Family (RS)	Single Family
East	Residential Single Family Estates Lots (RE)	Single Family
West	NA (Intracoastal Waterway)	NA (Intracoastal Waterway)

Property History:*2023-2024:*

On September 13, 2023, a building permit request was submitted to the Building Department for an “exterior pergola structure” (Permit No. APP23-2129).

On December 27, 2023, a Town Code violation (No. CC2023-12-017) was issued for the construction of a pergola without a permit.

On January 19, 2024, the permit application was cancelled by the Town’s Building Official, Jeff Remas, citing that the pergola was built without a permit.

On March 12, 2024, the Code Enforcement Board assessed a daily fine of \$250.00 per day commencing on May 12, 2024 and continuing to accrue until the property is brought into compliance.

On July 9, 2024, the Code Enforcement Board granted an extension on the date of compliance to October 10, 2024.

On July 29, 2024, the BOAA denied an appeal of Town staff’s interpretation regarding customary yard accessories as they pertain to an open-walled roofed accessory structure (PZ-24-2).

1997-1998:

On January 8, 1997, the Planning Board gave preliminary approval for construction of a new single family residence with notation that the minutes reflect discussion showing the Board’s awareness of the non-conformance on the property regarding the boat basin.

On January 14, 1997, the Board of Adjustment held a workshop regarding a request that the pre-existing boathouse and garage located on the north property line be allowed to remain as an accessory structure to a new residence.

On February 11, 1997, the Board of Adjustment granted a variance that the pre-existing boathouse and garage located on the north property line be allowed to remain as an accessory structure to a new residence.

On February 12, 1997, the Planning Board gave final approval for construction of a new single family residence.

On September 25, 1997, the Community Appearance Board grants final approval for additional building structure (gazebo) with the understanding that the four sides would not be enclosed and only transparent rollups be used for enclosure at times of inclement weather.

On November 20, 1997, the Community Appearance Board accepted a letter from R.M. Rankin, Inc. withdrawing the application for a gazebo previously approved by the Board on September 25, 1997.

On May 28, 1998, the Community Appearance Board gives final approval for issuance of certificate of occupancy.

Request and Analysis:

The Applicant's request is for an after-the-fact variance to allow a reduction of the rear setback, as provided in Section 30-64 of the Town Code of Ordinances ("Town Code"), from the required twenty (20) feet to four (4) feet in order to accommodate an open-walled roofed accessory structure. As noted above, on December 27, 2023, a Town Code violation (No. CC2023-12-017) was issued for the construction of a pergola without a permit. *Note that the above-referenced code violation as well as the Applicant's initial permit application (APP23-2129) references the structure in question as a "pergola."* This structure measures 231.575 square feet with a height of 10 feet.

Section 30-131 of the Town Code defines accessory structure as follows:

Structure, accessory means a detached building or other improvement which is clearly incidental to the principal structure, and is subordinate in area, extent, size, or purpose and serves only the principal structure.

Pursuant to Section 30-40(a) of the Town Code, the purpose of a variance is to grant a reduction in the dimensional requirements of the Zoning Code (Chapter 30), including, but not limited to, lot width, lot depth, lot size, size or percentage of open space, building coverage, building height, **building setbacks**, or required number of parking spaces. Section 30-40(b)(1) of the Town Code, states that the Board of Adjustment and Appeals (BOAA) shall consider all variance requests for new and existing single-family homes. As a basis for consideration of an application for variance approval, the BOAA must determine that an application is consistent with the criteria listed below:

- (1) Special conditions. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.
- (2) Hardship. The special conditions and circumstances truly represent a hardship and are not created by any actions of the applicant.

- (3) Literal interpretation. Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.
- (4) Special privileges. The grant of a variance will not confer upon the applicant any special privilege denied to any other owner of land, buildings, or structures located in the same zoning district.
- (5) Minimum variance. The variance granted is the minimum variance that will make possible the use of the land, building, or structure.
- (6) Purpose and intent. The grant of the variance will be in harmony with the general intent and purpose of this chapter.
- (7) Financial hardship. Financial hardship is not to be considered as sufficient evidence of a hardship in granting a variance.
- (8) Public welfare. The grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

The Applicant has provided responses to each criteria listed above in their Variance Application (see attached). The following analysis is provided by staff:

- The Applicant indicates in their response to criteria (a) that gazebos “...are not permitted in the applicant’s yard.” In addition, in response to criteria (b), the Applicant states that gazebos are prohibited “...in the rear yard without a variance.” Note that the Town’s Zoning Code does permit accessory structures to include gazebos in the rear yard of a property; however, such structures shall comply with the rear building setback given the Town Code does not permit such structures to encroach the setback.
- In the Applicant’s response to criteria (c), it is noted that “...other homes have covered outdoor areas.” Pursuant to Section 30-40(k) of the Town Code, evidence of nonconforming use of neighboring lands, structures, or buildings in the same zoning district or the permitted use of lands, structures, or buildings in other zoning districts shall not be considered grounds for the authorization of a variance.

Pursuant to Section 30-40(g) of the Town Code, the vote of at least four (4) members of the BOAA is necessary to grant a variance. In addition, the BOAA shall make the following findings as provided in Section 30-40(m):

That the reasons set forth in the application 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.

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

If the BOAA should decide to approve the Applicant’s variance request (including survey date stamped received by the Building Department on August 28, 2024), the Applicant will be required to obtain, in this case, an after-the-fact building permit from the Town of Highland Beach Building Department.

Should you have any questions, please feel free to contact me at (561) 637-2012 or iallen@highlandbeach.us

Attachments: Application

Application backup materials

Aerials

Photo of accessory structure

Survey

Public Comment submitted by Applicant