



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: July 29, 2024

TO: BOARD OF ADJUSTMENT AND APPEALS (BOAA)

FROM: INGRID ALLEN, TOWN PLANNER

SUBJECT: APPLICATION BY MICHAEL MARSHALL, ESQ., FOR AN APPEAL OF A TOWN INTERPRETATION REGARDING CUSTOMARY YARD ACCESSORIES FOR THE PROPERTY LOCATED 2474 SOUTH OCEAN BOULEVARD (PZ-24-2)

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:

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 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. *Note that the Applicant is scheduled to go back before the Code Enforcement Board on July 9, 2024.*

Request and Analysis:

Pursuant to Section 30-40(p) of the Town Code of Ordinances (“Town Code”), appeals of a decision, order, requirement, determination, or interpretation of the building official or other Town official regarding the provisions of Chapter 30 (Zoning Code) shall be filed with the BOAA. The Applicant’s appeal is specific to a code violation issued on December 27, 2023 for the construction of a pergola without a permit (No. CC2023-12-017).

The above-referenced code violation as well as the Applicant’s permit application (APP23-2129) references the structure in question as a “pergola;” however, in the appeal narrative submitted by the Applicant’s authorized agent, Michael Marshall, Esq., the structure is referred to as a “free-standing accessory structure.” For the purposes of this analysis the applicant’s free-standing accessory structure will be referred to as ‘structure’. 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.

Section 30-68(c)(2) of the Town Code provides for the following permitted encroachments under the subheading of ‘accessory uses’:

Encroachments. Fences, walls, vegetation, poles, and other customary yard accessories, pool decks, ornaments, and furniture may be permitted in any yard subject to height limitations and visibility requirements.

The Applicant states that the structure, which measures 231.575 square feet with a height of 10 feet, is a customary yard accessory as provided in Section 30-68(c)(2). Staff finds that the Applicant’s structure is not comparable, in terms of size and scale, to the customary yard accessory examples provided in Section 30-68(c)(2) to include fences, walls, vegetation, and poles. Other permitted encroachments including pool decks, ornaments and furniture are also not comparable to the Applicant’s structure (*Note that Section 30-68(f)(1)b. of the Town Code requires swimming pool decks to be set back at least four (4) feet from rear or side lot lines*). In addition, the structure is located within the required 20-foot rear setback for the RS zoning district. According to the Applicant’s survey, the structure is located four (4) feet from the rear property line. The Town Code does not permit the Applicant’s structure to encroach the required setback.

For reference purposes, Section 30-66(c) of the Town Code allows for the following additional encroachments into setbacks for all residential zoning districts:

(1) Unless otherwise provided in the Code, the following structures are allowed in the side or rear required setbacks as set forth herein.

- a. Walkways, patios, and other hard surfaces for walking, gathering and sitting.*
- b. Overhangs.*
- c. Air conditioner condensers, pool heaters, pool equipment or heat pumps.*
- d. Steps/stairways for the principal building.*
- e. Electric meters, fuse boxes, generator control boxes, tankless hot water heaters, and hose bibs.*
- f. Screen enclosures (only if the rear of the property line borders a body of water, then may extend to not less than five (5) feet from the right-of-way line or bulkhead line, whichever is further landward).*

(2) Unless otherwise provided in the Code, the following structures are allowed in front, side or rear required setbacks as set forth herein.

- a. Fences, walls, and hedges.*
- b. Generators.*
- c. Buried propane tanks.*

It’s worth noting that Section 30-68(i) of the Town Code requires a dune walkover structure to comply with the setbacks of the zoning district in which it is located. However, this requirement may be waived by the building official if one of the following applies:

- a. A beach access easement or similar easement exists which would allow for construction of such structure; or*
- b. An alternative location, as determined by DEP, results in less damage to affected coastal dune and vegetation.*

Pursuant to Section 30-40(p) of the Town Code, the vote of at least four (4) members of the BOAA is necessary to grant an appeal or to reverse the decision, order, requirement, determination, or interpretation of the building official or other Town official. An aggrieved person may appeal a final decision of the BOAA regarding a decision, order, requirement, determination, or interpretation within thirty (30) days of a decision or order, by seeking judicial review of the final decision with the Fifteenth Circuit Court in and for Palm Beach County. Aggrieved persons may include the applicant, an affected party, or the Town manager.

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
Building permit application (APP23-2129)
Public Comment