



MEMORANDUM DATE: September 8, 2021

AGENDA DATE: September 15, 2021

TO: Chair and Members of the Historic Resources Preservation Board

RE: **1029 North Palmway**

FROM: Jordan Hodges, Senior Preservation Coordinator
Abraham Fogel, Preservation Planner
Department for Community Sustainability

TITLE: **HRPB Project Number 21-12400003:** An Appeal of the Development Review Official's decision regarding the expansion of a legal non-conforming garage apartment at 1029 North Palmway; PCN #38-43-44-21-15-298-0090. The subject property is located in the Single-Family Residential (SF-R) Zoning District and is a contributing resource to the Northeast Lucerne Local Historic District.

Owner: Brian Sher
315 North Ocean Breeze
Lake Worth Beach, FL 33460

Applicant: Geoffrey Harris
Geoffrey B. Harris Architecture

PROPERTY DEVELOPMENT HISTORY:

The single-family structure fronting North Palmway was constructed c. 1940 in a Masonry Vernacular architectural style. Coral Gables architect, H. George Fink, designed the structure at a cost of \$4,500. The architectural drawings illustrate a single-story single-family structure of masonry construction with a smooth stucco exterior finish and a gable tile roof. The garage apartment, fronting 11th Avenue North, was constructed c. 1949 in a Masonry Vernacular architectural style. The structure was constructed at a cost of \$3,500. The architectural drawings illustrate a single-story garage apartment structure with a smooth stucco exterior finish, hip roof, and casement windows. The floor plan illustrates an apartment, a single-car garage, and rear laundry facilities. The original architectural drawings for both structures are included as **Attachment A**. Recent improvements include roof replacement in 2017 and window and door replacement in 2018 that were approved by staff administratively. Current photos of the property are included as **Attachment B**.

PROJECT BACKGROUND:

- On May 4, 2021, Code Compliance Case #21-1843 was established based on a citizen complaint. The property was cited for the conversion of the garage stall in the detached rear building into additional living space. Unpermitted exterior alterations included removal of the driveway and garage door. The property owner at the time was Joseph Resendiz.

- On May 6, 2021, the property was sold to Brian Sher.
- On June 10, 2021, in response to an inquiry, staff emailed Mr. Sher to indicate that the expansion of the legal non-conforming apartment into the garage stall was in conflict with the City's Land Development Regulations. The property owner was informed that a zoning verification request should be submitted if he sought to appeal this determination. An appeal cannot be pursued without a formal zoning determination or application in which a decision is being challenged.
- On June 29, 2021, the property owner's agent, Mr. Harris, emailed staff to ask whether a zoning verification request was required and what other options were available.
- On June 29, 2021, staff replied to Mr. Harris to provide 2 options that offered the option to pursue an appeal:
 - Option 1: Zoning verification request
 - Option 2: Applying for a Certificate of Appropriateness (COA)
- On July 9, 2021, a COA Application and associated plans were submitted.
- On July 22, 2021, the Development Review Official's (DRO) determination was issued. The letter indicated that the proposal to expand the +/- 300 square foot apartment into the +/-240 square foot garage stall is in violation of LDR Section 23.5-3(e)(2). The DRO's zoning determination is included as **Attachment C**. Staff also outlined the procedure to appeal the decision.
- On July 19, 2021, Code Compliance Case #21-1843 was established to issue the violations to the new property owner.
- On August 4, 2021, Mr. Harris submitted the notice of appeal and the basis of appeal, included as **Attachment D**.
- The appeal of the DRO decision was scheduled for the next available hearing.

PROJECT DESCRIPTION:

The applicant, Geoffrey Harris, is appealing a decision by the City's Development Review Official (DRO) denying the request to expand the +/- 300 square foot non-conforming apartment into the +/-240 square foot garage stall. The subject property is a 50'x135' (6,750 square feet) platted lot of record located on the southwest corner of North Palmway and 11th Avenue North, in Lake Worth Beach. The subject property is located within the Single-Family Residential (SF-R) zoning district and retains a Future Land Use (FLU) designation of Single Family Residential (SFR).

The application will require the following approval:

1. **Appeal** interpreting the City's Land Development Regulations to allow the expansion of the legal non-conforming garage apartment.

STAFF RECOMMENDATION:

The DRO denied the request to expand the +/- 300 square foot non-conforming apartment into the +/-240 square foot garage stall. Staff recommends that the Board interpret LDR Section 23.5-3(e)(2) in a manner consistent with the DRO's decision based on the zoning analysis in the following section.

PROPERTY DESCRIPTION:

Owner	Brian Sher
General Location	Southwest corner of North Palmway and 11 th Avenue North
PCN	38-43-44-21-15-298-0090
Zoning	Single-Family Residential (SF-R)
Existing Land Use	Single Family Residence
Future Land Use Designation	Single Family Residential (SFR)



ZONING ANALYSIS:

The subject property is located in the Single-Family Residential (SF-R) zoning district. The maximum density allowed under the current Land Development Regulations in the SF-R zoning district, for a 50' x 135' parcel (6,750 square foot), is one (1) unit. The existing two (2) units are considered existing legal non-conformities and are grandfathered subject to the regulations in LDR Section 23.5-3, *Nonconformities*:

(e) Nonconforming uses of building and structures. A nonconforming use of a major building or structure is an activity primarily occurring within such building or structure, but which may also include the use of surrounding premises including land or nearby minor buildings. Such activity shall have been lawfully permitted at the time of its inception. The decision of the development review officer as to whether a nonconforming use is a nonconforming use of land or a nonconforming use of a building or structure, as each is described in this section, shall be final unless reversed by the planning and zoning board or historic resources preservation board, as applicable. Such nonconforming use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- 1. No existing building or structure devoted to a use not permitted by these LDRs may be extended, enlarged, reconstructed, moved, or structurally altered except as necessary to change the use of the building or structure to a use permitted by these LDRs or except to change the building or structure to a conforming building or structure.*
- 2. No nonconforming use of a structure may be extended to any portion of a building or structure not previously put to such use prior to the adoption of the regulation giving rise to the nonconformity. Further, such use shall not be extended to occupy any land outside such building or structure.***
- 3. In the event a nonconforming use of a building or structure is discontinued for any period however brief and replaced by a permitted use, the nonconforming use shall not be resumed.*
- 4. When a nonconforming use of a structure or building ceases for six (6) consecutive months, or for eighteen (18) months during any three-year period, and is not replaced by a permitted use, the structure or building shall not thereafter be used except in conformance with the regulations of the district in which it is located. The issuance or existence of a required license, permit or other governmental authorization to conduct such nonconforming use shall not mean that the use has not ceased, but the lack of such license, permit or authority shall create a rebuttable presumption that the use has ceased. Actions or activities of the owner of a property attempting to lease or rent the property shall not be considered a use of the property in determining whether a nonconforming use of a structure or building has ceased.*
- 5. Where nonconforming use status applies to a building or structure, removal or destruction of the building or structure shall eliminate the nonconforming use, including any and all related activities on the surrounding premises including land or nearby minor buildings. Destruction for the purpose of this section is defined as damage to an extent of more than fifty (50) percent of the current replacement value of the building or structure, as determined by the building official.*

As the second unit is a legal non-conforming use in the Single-Family Residential zoning district, the unit may not be extended to any portion of the building or structure not previously put to such use prior to the adoption of the regulation giving rise to the nonconformity. Therefore, the proposal to expand the +/- 300 square foot apartment into the +/-240 square foot garage stall is in violation of LDR Section 23.5-3(e)(2). The application plan set is included as **Attachment E**.

HISTORIC RESOURCES PRESERVATION BOARD (HRPB) AUTHORITY:

Pursuant to LDR Section 23.2-17, *Appeals*:

- a) *To planning and zoning board and historic resources preservation board. An applicant may appeal a final decision of the development review official to the planning and zoning board or the historic resources preservation board, as applicable, within thirty (30) days of the official's written decision.* The appeal shall be in writing on a form provided by city staff and accompanied by the applicable fee and filed with the development review official. The appeal shall be heard at a quasi-judicial hearing and be based on the record made in the proceeding below.

As indicated LDR Section 23.2-17(a), the Historic Resources Preservation Board (HRPB) has the authority to review appeals of a final decision of the DRO.

PUBLIC COMMENT:

At the time of publication of the agenda, staff has received no public comment.

CONCLUSION:

As Section 23.5-3, *Nonconformities* of the City's LDRs expressly states that "No nonconforming use of a structure may be extended to any portion of a building or structure not previously put to such use" and based on the data and analysis in this report, staff recommends that the Board interpret LDR Section 23.5-3(e)(2) in a manner consistent with the DRO's decision.

POTENTIAL MOTION:

I MOVE TO **APPROVE** HRPB Project Number 21-12400003: An Appeal of the Development Review Official decision, interpreting the City's Land Development Regulations to allow the expansion of the legal non-conforming garage apartment. The project will require subsequent Board review if exterior alterations are proposed.

I MOVE TO **DENY** HRPB Project Number 21-12400003: An Appeal of the Development Review Official decision, interpreting the City's Land Development Regulations to disallow expansion of the legal non-conforming garage apartment.

ATTACHMENTS

- A. Property File Documentation
- B. Current Photos
- C. DRO Decision
- D. Notice of Appeal and Basis of Appeal
- E. Application Plan Set