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TO: City Council
FROM: Guillermo Moreno-nunez, Assistant Planner
DATE: August 19, 2024
RE: **Mario Polanco Appeal of the July 11, 2024, Hearing Officer Denial of his Requested Variance for his Property located at 963 S. Latisha Way, Yuma, Arizona.**

Executive Summary

This appeal concerns Mr. Mario Polanco’s variance application, VAR-42764-2024, in which Mr. Polanco seeks a variance to reduce the minimum front yard setback from 20 feet to 8 feet to allow the installation of a metal shade structure in the Low Density Residential (R-1-6) District, for his property located at 963 S. Latisha Way (“Property”). Within this zoning district, the minimum setbacks are as follows: 20-foot minimum front yard setback, 7-foot minimum side yard setback, 10-foot street side yard setback, and 10-foot rear yard setback. This Property is located within the Westridge South Subdivision.

Mr. Polanco constructed a metal shade structure within the front yard setback, resulting in a 0 feet setback along the front property line. Additionally, the property has an 8-foot utility easement along the front and street side yard which must be maintained free of any structures. A code enforcement case against Mr. Polanco was initiated (CODE-BS008943-2023). On December 19, 2023, Mr. Polanco was mailed a notice of violation for the construction of an approximately 400 square foot metal shade structure within the front yard setback without a building permit.

After receiving the notice of violation, Mr. Polanco submitted a variance application to reduce the minimum front yard setback from 20 feet to 8 feet to allow him to install a smaller shade structure within the front yard setback and outside the utility easement.

On July 11, 2024, the Hearing Officer held a hearing on Mr. Polanco’s request for a variance. City Staff filed a report with the Hearing Officer and recommended denial of the request, noting that the applicants request for a variance failed to meet the criteria of §154-03.04(D)(1)(a) of the Yuma City Code. After taking testimony on the variance application, the Hearing Officer denied the variance request.

Pursuant to Yuma City Code § 154-02.02(C) Mr. Polanco appeals the Hearing Officer’s denial of his variance request.

Argument

State law and City code require four conditions for a variance. See A.R.S. § 462.06 and Y.C.C. § 154-03.04(D). Specifically, Y.C.C. § 154-03.04(D)(1) states that the Hearing Officer:

. . . shall grant a variance(s) *only when* findings of fact are made that *all of the following conditions exist*:

- (a) There is a special circumstance(s) or conditions(s) that applies to the property, building, or use referred to in the application, that does not apply to most other properties in the district.
- (b) The special circumstance was not created or caused by the property owner or applicant.
- (c) The granting of the variance is necessary for the preservation of substantial property rights enjoyed by other property owners in the vicinity, under identical zoning designations.
- (d) The granting of the variance will not be materially detrimental to any person residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public health, safety, and general welfare.

Each of the four (4) criteria required for the approval of a variance application must be answered in the affirmative. The inability to answer any one of the four (4) criteria in the affirmative, as a matter of law, must result in the denial of the variance application.

In this case, Staff believes that Mr. Polanco fails to meet three of the four required conditions. The Hearing Officer found that Mr. Polanco failed to meet two of the four required conditions.

I. Is there a special circumstance that does not apply to most other properties in the district?

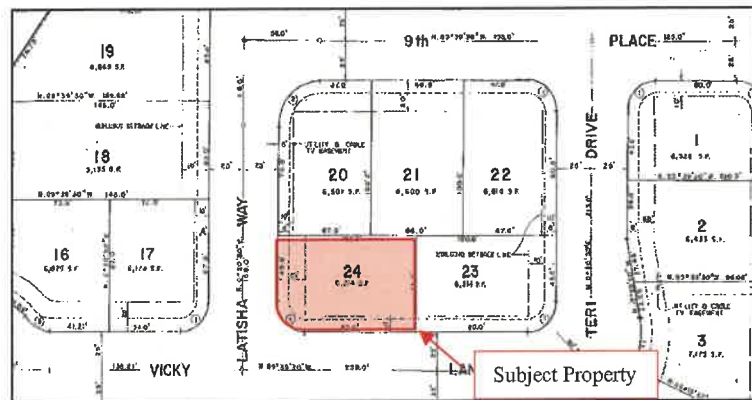
Staff's Position:

Staff was unable to identify a special circumstance or condition that applies to this property which does not apply to most other properties in the district. As depicted in the aerial photo below, the subject property was developed with a single-family residence and a two-car garage. The placement of the existing garage provides the required parking outside the minimum 20-foot front yard setback. In addition, as depicted in the recorded Westridge Subdivision Plat the dimensions of this property are 100 feet along the north property line, 63 feet in rear, 80 feet along street side, 43 feet along the front and 20 feet along the corner curve, resulting in a 6,214 square foot lot and exceeding the minimum lot size requirements for this zoning district.

Hearing Officer's Finding:

Hearing Officer Urias agreed with staff's position, as he was unable to identify a special

circumstance with the subject property, explaining to the applicant that his property is a normal rectangular shape lot and similar in size to other properties in the area.



II. Was the “special circumstance” created by the property owner or applicant?

Staff’s Position:

Staff was unable to identify a special circumstance that applies to this property. The applicant constructed the shade structure within the front yard setback.

Hearing Officer’s Finding:

Hearing Officer Urias stated that there was no special circumstance, and reference back to his answer on criteria number one where he explained shape, size, and development of property being similar to other properties in the area.

III. Would denying the variance prevent the applicant from enjoying substantial property rights enjoyed by other property owners in the vicinity?

Staff’s Position:

The property owners within the Westridge South Subdivision are required to comply with the development standards of the Low Density Residential (R-1-6) District, including minimum required setbacks. Mr. Polanco stated that the proposed structure

would provide shaded parking area to avoid high temperatures when entering his vehicles. However, the property is developed with a two-car garage, which is similar to the adjacent properties in the Westridge South Subdivision. Staff does not believe the denial of this variance request implicates a significant property right enjoyed by others.

Hearing Officer's Finding:

Hearing Officer Urias disagreed with Staff on this factor; he agreed with the applicant and believes that it is a property right to have vehicle shade here in Yuma due to high temperatures, and therefore found that the applicant met criteria number three.

IV. Would granting the variance be materially detrimental to other people residing or working in the area?

Staff's Position:

Granting the variance will not be materially detrimental to any person residing or working in the vicinity, to adjacent property, to the neighborhood and to the public health, safety, and general welfare, as the property owner is proposing to reduce the size of the existing structure by 8 feet to ensure it is not located within the utility easement.

Hearing Officer's Finding:

Hearing Officer Urias agreed with Staff that granting the variance would not be detrimental to the neighborhood since none of the neighbors complained about the existing shade structure or objected to the applicant's proposal to reduce its size to remove it from the utility easement.





Conclusion

The strict requirements for the approval of a variance application required by State law and Yuma City Code § 154-03.04(D) cannot be satisfied by the applicant. The applicant has not demonstrated a special circumstance that applies to the Property. Therefore, Mr. Polanco is not eligible for a variance under State law or City code. As such, the variance application for the Property cannot be approved and must be denied.