

**POLK COUNTY
LAND USE HEARING OFFICER
STAFF REPORT**

DRC Date	March 14, 2024	CASE #:	LDLVAR-2024-9 (Lake Millsite Dr. W) Variance
LUHO Date	April 25, 2024	LDC Section:	Chapter 2, Section 209

Request: The applicant is requesting a variance to reduce the interior side setback from five (5) feet to two (2) feet for a detached garage that was converted into an accessory dwelling unit (ADU).

Applicant: Nancy Oliva

Property Owner: Nancy B Oliva Living Trust
Nancy Oliva

Location: The subject property is located south of Crystal Beach Road, north of Sheffield Road, east of Old Bartow Eagle Lake Road, west of Highway 17 North, west of the City of Eagle Lake, in Section 11, Township 29, Range 25.

Parcel ID#: 252911-000000-022020

Size: ±2.46 acres

Land Use Designation: Residential Low-3 (RL-3)

Development Area: Urban Growth Area (UGA)

Case Planner: Malissa Celestine, Planner II

Summary:

The applicant is requesting a variance to reduce the interior side setback from five (5) feet to two (2) feet for the conversion of a detached garage into a habitable space. The existing detached garage (758 sq. ft.) was built in 1979, two (2) feet from the interior side property line. The property is located within the Residential Low-3 (RL-3) land use district, where the required interior side setback for detached accessory structures are five (5) feet. While the garage is considered to be grandfathered in, changing it to an accessory dwelling unit (ADU) requires the structure to comply with the current Land Development Code (LDC).

The applicant purchased the subject property in 2021 and wishes to utilize the structure as an ADU. The proposed structure is slightly ahead of the residence but meets the intent of being in the side yard (*Exhibit 5*). A variance to setbacks requires a public hearing and approval by the Land Use Hearing Officer (LUHO), in accordance with Section 931 of the LDC for the reduction of the interior side setback. This process is required to bring the structure into compliance with the LDC. Staff recommends approval.

Staff recommends approval of LDLVAR-2024-9 as the request meets the following criteria listed in Section 931:

- The request **will not be injurious to the area involved or otherwise detrimental to the public welfare.** The detached garage was constructed two (2) feet from the property line in 1979 and remains in the same location. Although it has been converted into a habitable space since then, the applicant has provided a maintenance agreement with the homeowner to the south. The request is not anticipated to negatively affect the surrounding property owners, or the neighborhood as adequate space remains for maintenance purposes.

Development Review Committee

The Development Review Committee, based on the criteria for granting Variances, finds that the applicant's request as written **IS CONSISTENT** with **Section 931** of the Polk County Land Development Code.

Development Review Committee Recommendation: Based upon the application, and a recent site visit, the Development Review Committee recommends **APPROVAL of LDLVAR-2024-9**, with the following conditions:

CONDITIONS OF APPROVAL:

1. Approval of this variance is to reduce the side setback from five (5) feet to two (2) feet for the ADU as described in the staff report and site plan. All further additions or structures placed on the property shall be required to meet the requirements of the LDC or be granted approval via another variance from the Land Use Hearing Officer.
2. The applicant shall obtain a recorded easement granting them the right to maintain the exterior portions of the proposed structure prior to building permit approval. The width of the easement shall be enough distance to provide five feet of space from the structure wall.
3. If the primary residence or the accessory dwelling unit were to be rebuilt, the structures will be required to come into compliance with the current Land Development Code (LDC).
4. The applicant shall have one (1) year from the date the Land Use Hearing Officer's Final Order is rendered to apply for all necessary building permits and pay all associated fees for the proposed addition.
5. This variance does not authorize any encroachments into easements, and the applicant shall be responsible to make certain there are no encroachments unless approval is granted by the easement holder and/or any applicable permitting agencies. The property owner(s) is also responsible for compliance with any restrictions of record pertaining to lots and/or land and this approval shall not be used to supersede authority over those restrictions.

GENERAL NOTES

NOTE: This staff report was prepared without the benefit of testimony and evidence submitted by the public and other interested parties at a public hearing.

NOTE: Approval of this variance shall not constitute a waiver or an additional variance from any applicable development regulation unless specifically noted in the conditions of approval and consistent with LDC.

NOTE: All conditions of approval, unless otherwise specified, shall be met prior to the effectiveness and validity of the variance approval.

NOTE: All written commitments made in the application and subsequent submissions of information made during the application review process, which are on file with the Land Development Division, shall be considered to be binding upon the applicant, provided such commitments are not at variance with the Comprehensive Plan, LDC or other development regulations in effect at the time of development.

NOTE: Issuance of a development permit by the county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

**DEMONSTRATIONS OF THE CRITERIA FOR GRANTING VARIANCES
SUMMARIZED BELOW:**

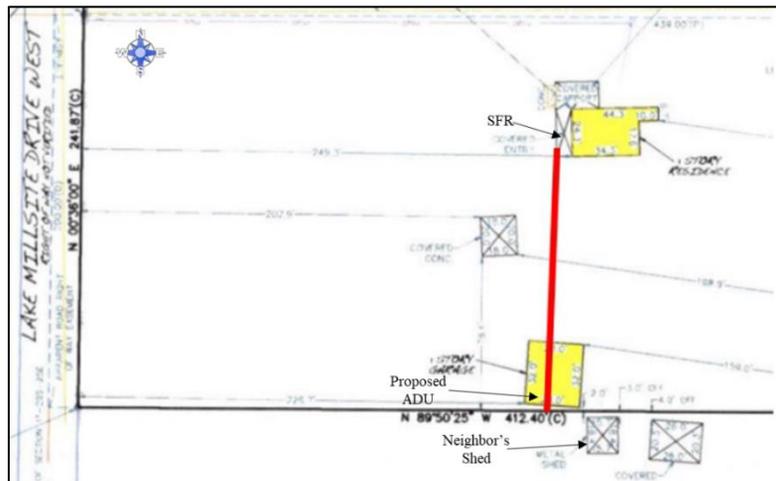
1. *Whether granting the variance will be in accordance with the general intent and purpose of this Code, and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare;*

The applicant is requesting a variance to reduce the interior side setback from five (5) feet to two (2) feet for a detached garage that was converted into an accessory dwelling unit (ADU). According to the applicant, this conversion occurred prior to obtaining ownership of the parcel. A pre-inspection was conducted by the Building Division on December 8th, 2023, and confirmed that the 784 square foot garage was converted into a guest house but appeared to be well constructed and maintained (*Exhibit 7*). Staff was unable to locate building permits for the structure.

The proposed ADU meets the ten (10) foot habitable structure separation requirement but there is a shed on the southern parcel that is within close proximity to the detached garage (*Exhibit 6*). Even so, the applicant has obtained a five (5) foot maintenance agreement with the property owner to the south which can be found in the County’s Accela database, or via a Public Records Request. At the time of permitting, the document will need to be recorded with the Clerk of Courts.

In accordance with Chapter 2, Section 209 of the LDC, “accessory structures shall be located in the side or rear yard meeting the required setbacks. Carports, garages, and any other structures intended for the storage of vehicles which have both a rigid roof and a permanent foundation may be permitted in the front yard, provided the front yard setbacks are met.”

This circumstance required management to determine if the proposed ADU meets the intent of being in the side yard because the structure is slightly in front of the primary residence. To the right is a depiction that aids in determining this notion. If the applicant’s request is approved, a complete set of as-built plans, sealed by an engineer or architect, will be



required to have this structure re-classified as an ADU. It is the applicant’s intent to eventually tear down the primary residence and build a newer home. If either structure were to be completely torn down and rebuilt, staff would require the customer to meet the setback and locational criteria outlined in Section 209 (Accessory Structures) of the LDC and as conditioned in the staff report.

2. *Whether 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 applicable land use district;*

According to the Polk County Property Appraiser's website, the parcel has been developed with a site-built residence since 1953. The detached garage was constructed in 1979, at two (2) feet from the interior property line. Ordinance 71-01 identified setbacks, but no building permits were found to verify what standards the structure was built to. Nevertheless, the applicant did not construct the existing principal structure and had no input on the location of the detached garage.

A discussion with the owner suggests that the primary residence will be torn down and rebuilt in the future. While the home is being constructed, the hope is to reside in the ADU with the understanding that the primary residence will be built forward of the ADU. Likewise, if the ADU were to be destroyed and rebuilt, it would have to meet the accessory structure setbacks and be located to the side or the rear of the residence, as required by the code.

3. *Whether provided the special conditions and circumstances present in the request do not result from the actions of the applicant;*

According to the applicant, the garage conversion occurred prior to obtaining the warranty deed in 2021. The intent of the request is to clear up the setback non-conformity and proceed with the building permit process.

4. *Whether granting the requested variance will not confer on the applicant any special privilege that is denied by the provisions of this Code and will constitute unnecessary and undue hardship on the applicant;*

According to Chapter 2, Section 209 of the LDC, a garage is permitted to be in the front of the primary residence, but an accessory dwelling unit cannot. If this variance is approved, staff does not foresee the desired structure impacting public welfare or safety. The structure is existing (see *Exhibit 6*), and an accessory dwelling unit is a reasonable use of the individual's property. As mentioned earlier, the owner intends to rebuild the primary residence; at which time the structures will be more conforming to the requirements of the LDC.

5. *Whether the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;*

The approval of this variance is the minimum variance needed to allow the applicant to apply for the necessary building permits. While the timing of the garage conversion is unknown, denial of the request will prohibit the applicant from bringing the property into conformance with the LDC.

6. *Whether that in no case shall a variance be granted which will result in a change of land use that would not be permitted in the applicable land use designation;*

Granting this variance will not result in a change of land use. The proposed structure is considered an accessory to the primary residence.

7. *Whether that in no case shall the Land Use Hearing Officer or the Planning Commission grant a variance which would result in creation of any residual lot or parcel which does not meet the requirements of this Code; and*

Granting this request will not result in the creation of a lot or parcel that does not meet the requirements of the Code. This variance request will not change the size, shape, or use of the property.

8. *Whether that the granting of the variance does not circumvent a condition, or the intent of a condition placed on a development by the Planning Commission or the BoCC.*

Granting this request will not circumvent any conditions of approval.

Surrounding Future Land Use Designations and Existing Land Use Activity:

The table to follow provides details of abutting uses and their regulatory parameters.

<p>Northwest: Residential Low-3 (RL-3) ±0.64 acres Site-Built Residence</p>	<p>North: Residential Low-3 (RL-3) ±1.45 acres Applicant owned</p>	<p>Northeast: Lakes</p>
<p>West: Residential Low-3 (RL-3) ±2.44 acres Site-Built Residence</p>	<p>Subject Property: Residential Low-3 (RL-3) ±2.46 acres Site-Built Residence</p>	<p>East: Lakes</p>
<p>Southwest: Residential Low-3 (RL-3) ±2.44 acres Site-Built Residence</p>	<p>South: Residential Low-3 (RL-3) ±0.90 acres Site-Built Residence</p>	<p>Southeast: Lakes</p>

The applicant wishes to obtain building permit approval for a detached garage conversion. The garage was built in 1979, two (2) feet from the interior side property lines, necessitating the need for a variance. There is currently a site-built residence (1,596 sq. ft.) on the premises which will be rebuilt to the requirements of the LDC in the future. The site is surrounded by site-built residences within the RL-3 land use district. The applicant has also submitted a maintenance agreement with the abutting parcel to the south that will need to be recorded with the Clerk of Courts during the permitting process.

If the request is approved, a complete set of as-built plans, sealed by an engineer or architect, will be required to have this structure re-classified as an ADU. During the permitting process, the as-built plans must either affirm that this structure meets all the requirements for a single-family dwelling per, the 2020 Florida Building Code, or they must illustrate and specify what must be done to bring this structure into compliance.

Based on the character of the surrounding neighborhood, information provided by the applicant, and the findings analyzed by staff, the proposed variance is not anticipated to change the existing land use, create an incompatible situation with the surrounding development, or circumvent the intent of any requirements pertaining to the property. Staff recommends approval of the applicant’s request.

Comments from other Governmental Agencies: None

Exhibits:

Exhibit 1 - Location Map

Exhibit 2 - Future Land Use Map

Exhibit 3 - Context Aerial

Exhibit 4 - Aerial Close-up

Exhibit 5 - Applicant Site Plan

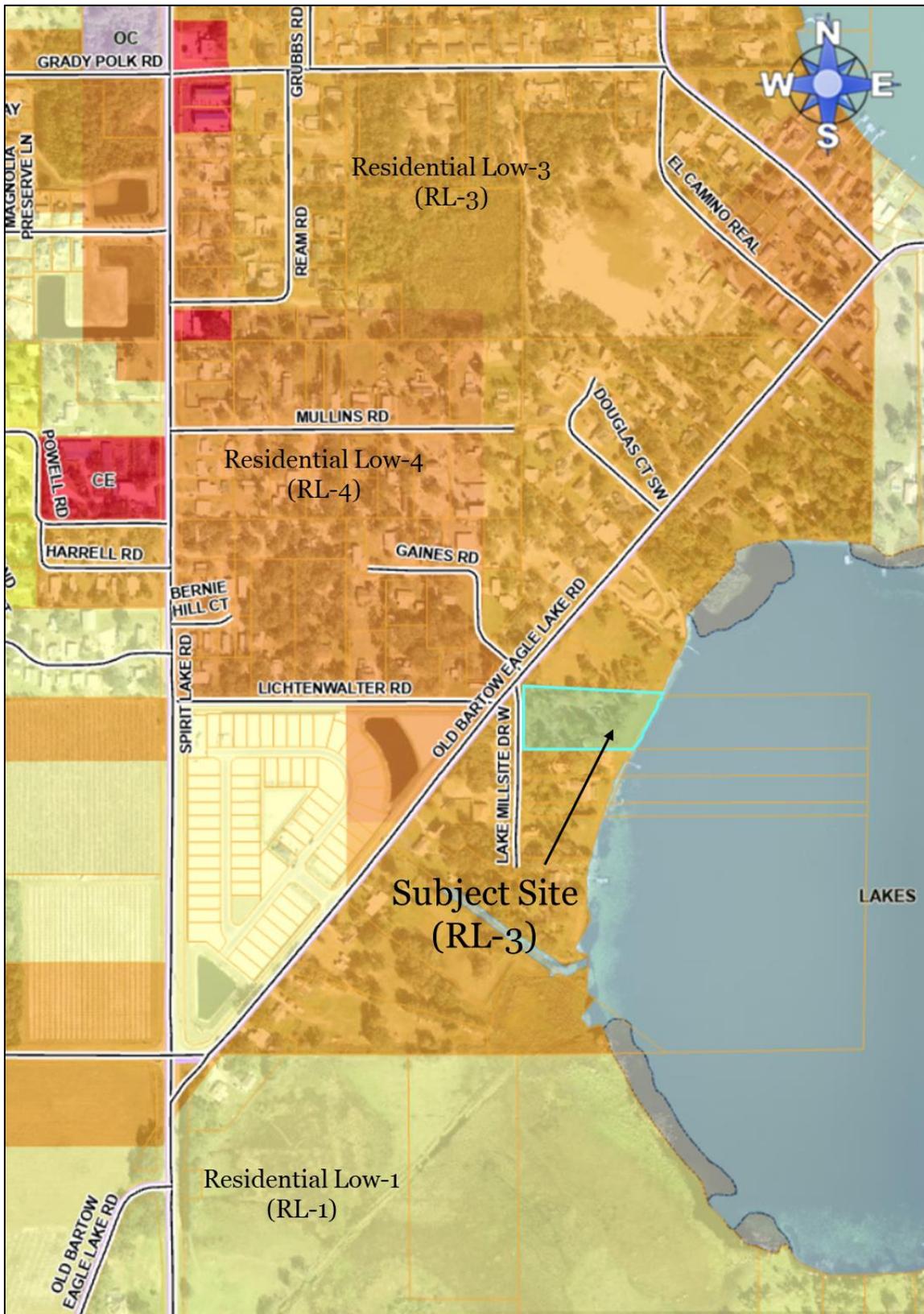
Exhibit 6 - Site Visit

Exhibit 7 - Interior of Structure

Exhibit 8 - Applicant's Justification



Location Map



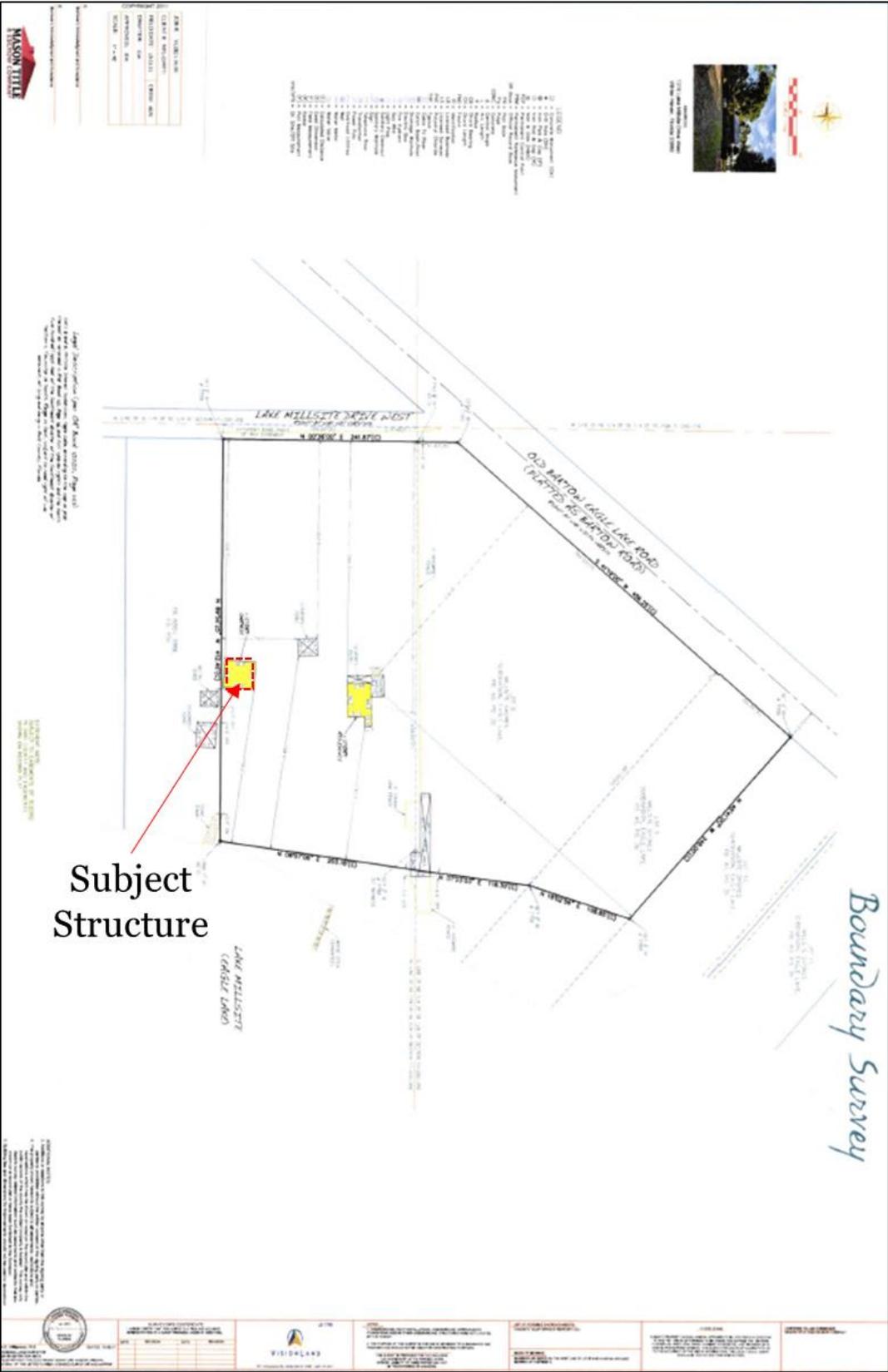
Future Land Use



2023 Aerial Context



2023 Aerial Close Up



Subject Structure

Boundary Survey

Site Plan



Site Visit



Interior of Structure

CRITERIA FOR GRANTING VARIANCE

Will the variance be injurious to the area involved or detrimental to the public welfare?
no

What special conditions exist that are peculiar to the land, structure, or building involved?
need a 5 ft variance but only 2 ft

When did you buy the property and when was the structure built? Permit Number?
bought 11/2021
Built 1979

What is the hardship if the variance is not approved?
Will not be able to correct a permitting issue by not permitting it as an existing ADU unit

Is this the minimum variance required for the reasonable use of the land?
yes

Do you have Homeowners Association approval for this request?
no

Applicant's Justification