



# VARIANCE STAFF REPORT

OFFICE OF PLANNING & ZONING

Tab Number: 1

Public Hearing Date: June 13, 2019

Case No. and Project Name: VAR-19-09-4

Applicant: Brian Welke and Theresa Welke

Owner: Brian Welke and Theresa Welke

Requested Action: Variance to Lake County Land Development Regulations (LDR) Section Table 3.03.05 Note 3(a) to allow an accessory structure (detached garage) to be constructed with a secondary front setback of five (5) feet from right-of-way, in lieu of twenty-five (25) feet.

Staff Determination: Staff recommends approval of the variance request with the conditions contained in the draft development order.

Case Manager: Emily W. Johnson, Planner

### Subject Property Information

Size: 0.29 +/- net acres (no wetlands or water bodies on subject property)

Location: Eustis, FL

Alternate Key No.: Exempt per F.S. sec 119.071

Future Land Use: Urban Low Density

Current Zoning District: Rural Residential (R-1)

Flood Zone: "X"

Joint Planning Area/ ISBA: Eustis JPA (Comments Received, attached)

Overlay Districts: Wekiva Study Area

### Adjacent Property Land Use Table

Direction	Future Land Use	Zoning	Existing Use	Comments
North	N/A	N/A	Street	Street
South	Urban Low Density	Rural Residential (R-1)	Residence	Single-Family Residence
East	Urban Low Density	Rural Residential (R-1)	Residence	Single Family Residence
West	N/A	N/A	Street	Street

### Summary of Request.

The applicant has submitted the variance request for lesser setbacks in order to facilitate the issuance of a zoning permit for the accessory structure (detached garage) as the proposed structure does not meet code requirements. The Applicant is requesting a variance to Lake County Land Development Regulations (LDR) Table 3.03.05 Note 3(a) to allow an accessory

structure (detached garage) to be constructed with a secondary front setback of five (5) feet from right-of-way, in lieu of twenty-five (25) feet. The subject property is located within the Eustis Joint Planning Area (JPA); staff from the City of Eustis reviewed the application and did not raise any concern with the proposed five (5) foot setback. Any improvements within the right-of-way, including but not limited to a driveway connection, will require a permit from the City of Eustis.

The plat for the area which the property is located does not identify any drainage or utilities easements on the property. The Department of Public Works reviewed the variance application and did not identify any concerns or objections with the variance request, but did indicate that a lot grading plan would be required at the time of permitting.

Pursuant to Land Development Regulations (LDR) Section 10.01.01, *General Requirements for Accessory Structures*, accessory structures are an allowed use in conjunction with a single-family residence (SFR). The subject property is developed with a SFR; the Property Record Card indicates that the SFR was constructed in 1972.

### **Staff Analysis.**

**LDR Section 14.15.02 states that variances will be granted when the person subject to a Land Development Regulation demonstrates that the purpose of the Land Development Regulation will be or has been achieved by other means, and when application of a Land Development Regulation would create a substantial hardship or would violate principles of fairness.**

#### **1. The purpose of the Land Development Regulation will be or has been achieved by other means.**

The intent of the Code, LDR Table 3.03.05 Note 3(a), is to ensure the adherence of safe distances between structures and secondary front roadways. The Applicant submitted the following statement as proof that the purpose of the Land Development Regulations will be or has been achieved by other means; *"The existing road is a one lane drive for ingress and egress for two homes to the east of our property. Without removing utility poles and trees of a substantial size the road cannot be widened to the south. The road is straight and the proposed structure will not pose a risk, it will not create any blind spots. The current road has served its purpose for over fifty (50) years. The edge of the road is 37 feet from the north side of the current structure [SFR]. Under the proposed plan, the new structure [garage] will be five feet from the current structure [SFR] and 18 feet deep, so the north side of the new structure [garage] will be 12 feet from the edge of the current roadway."*

Staff has found that the accessory structure meets the intent of the code in that constructing the proposed accessory structure at the requested five (5) feet from right-of-way would not impose a negative effect on the safe distance between the structure and the right-of-way. The Florida Department of Transportation (FDOT) has guidelines concerning clear zones on roadways. A clear zone, as defined in The Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (also known as the Florida Green Book), is the area outside of the traveled road available for use by errant vehicles. The type of road is used to determine the minimum width for a roadway clear zone. According to Table 3-13 in the Florida Green Book, rural roads with a speed limit of 25 miles per hour or less have a recommended minimum roadway clear zone of six (6) feet measured from the curb and gutter or edge of through travel lane (when no curb and gutter is present). The proposed addition would be outside of the clear zone area if constructed with a five (5) foot setback from the right-of-way (12 feet from the edge of the curb).

The proposed accessory structure will be set behind the existing single-family residence (SFR), and will be meeting the setback to the front roadway. The proposed accessory structure will not impact the visibility triangle of the intersection.

Due to aforementioned date of approval for the plat of the area and the size of the overall parcel (which is most consistent with the size of parcels in the Medium Residential (R-3) zoning district), the subject property meets the non-conforming guidelines contained in the Land Development Regulations (LDR). LDR Section 1.08.03.D, *Setbacks for Nonconforming Lots*, allows the property to be developed with side and rear setbacks of five (5) feet and LDR Section 1.08.03.F, *Impervious Surface Ratio (ISR) calculated on nonconforming lots*, allows the property to be

developed with an ISR of up to fifty-five (55) percent. The proposed accessory structure will meet the rear setback requirement, and the impervious surface ratio will not exceed the allotted fifty-five (55) percent.

2. **The application of a Land Development Regulation would create a substantial hardship or would violate principles of fairness. For purposes of this Section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. For purposes of this Section, "principles of fairness" are violated when the literal application of a Land Development Regulation affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Land Development Regulation.**

The Applicant submitted the following statement as evidence of a hardship; *"The garage access to our house/current structure is on the north side. The road to the north [ ] is merely a one lane concrete driveway. The house is 25 feet from the setback and 37 feet from the edge of the road. To the south of the current structure there is room to build the proposed new structure within the code requirement, however, to do so a separate access [ ] would have to be created and a driveway approximately 70 feet long would have to be built. The cost of building an access off of [ ] and pouring a 70 foot driveway would be a substantial hardship. If the proposed structure is built on the north side of the current structure we plan to have gravel between the existing roadway and the proposed structure."*

Requiring the applicant to locate the structure on the opposite side of the single-family residence (SFR) would impose a significant financial hardship as a separate access and driveway would need to be created.

## CITY OF EUSTIS COMMENTS



Thu 5/9/2019 8:36 AM

Barnes, Lori <BarnesL@ci.eustis.fl.us>

RE: Variance Request (VAR-19-09-4) in Eustis JPA

To Johnson, Emily

Cc Gierok, Rick; Brisson, Mike; Millan, Daniel

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Message COE RW Permit Ap-Fillable.pdf (101 KB)

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Good morning, Emily:

The City of Eustis has no objection to a 5-foot setback as measured from property line to the proposed structure. Any improvements within the South Avenue right-of-way, including a driveway connection, will require a permit from the City of Eustis. (See attached permit application form).

Thank you,

**Lori Barnes, AICP, CPM**

Development Services Director

City of Eustis

4 North Grove Street, P.O. Drawer 68, Eustis, FL 32727

Phone: (352) 483-5460

Email: [barnesl@ci.eustis.fl.us](mailto:barnesl@ci.eustis.fl.us)

## Final Development Order VAR-19-09-4

### A VARIANCE OF THE LAKE COUNTY BOARD OF ADJUSTMENT AMENDING THE LAKE COUNTY ZONING MAPS; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Brian Welke and Theresa Welke (the “Owners” and “Applicants”) made a variance request to Lake County Land Development Regulations (LDR) Table 3.03.05 Note 3(a) to allow an accessory structure (detached garage) to be constructed with a secondary front setback of five (5) feet from right-of-way, in lieu of twenty-five (25) feet; and,

**WHEREAS**, the subject property consists of 0.29 +/- acres and is located in the Eustis area of Lake County, Florida.

**WHEREAS**, after giving notice of a hearing on a petition for a variance to the Lake County Land Development Regulations, including notice that the variance would be presented to the Board of Adjustment of Lake County, Florida, on June 13, 2019; and

**WHEREAS**, the Board of Adjustment reviewed the petition, staff report and any comments, favorable or unfavorable, from the public and surrounding property owners at a public hearing duly advertised; and

**WHEREAS**, on June 13, 2019, the Lake County Board of Adjustment approved the variance for the above property.

**NOW THEREFORE, BE IT ORDAINED** by the Board of Adjustment of Lake County, Florida, that:

**Section 1. Terms:** The County Manager or designee shall amend the Official Zoning Map to reflect the approval of VAR-19-09-4 to Lake County Land Development Regulations (LDR) Table 3.03.05 Note 3(a) to allow an accessory structure (detached garage) to be constructed with a secondary front setback of five (5) feet from right-of-way, in lieu of twenty-five (25) feet, with the following conditions:

1. A lot grading plan, which demonstrates that no run off will impact neighboring properties or existing structures, must be submitted with the development application and approved by staff from the Department of Public Works prior to issuance of a building permit; and
2. The accessory structure cannot be used as an accessory dwelling unit.
3. Any improvements within the right-of-way, including but not limited to a driveway connection, will require an approved permit from the City of Eustis.

**Section 2. Severability:** If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, the holding will in no way affect the validity of the remaining portions of this Ordinance.

**Section 3. Effective Date. This Ordinance will become effective as provided by law.**

*[Remainder of Page Left Intentionally Blank]*

**ENACTED this 13<sup>th</sup> day of June, 2019.**

**EFFECTIVE June 13, 2019.**

**BOARD OF ADJUSTMENT  
LAKE COUNTY, FLORIDA**

\_\_\_\_\_  
**Lloyd Atkins, Chairman**

**STATE OF FLORIDA  
COUNTY OF LAKE**

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of June, 2019, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_, as identification and who did \_\_\_\_\_ or did not \_\_\_\_\_ take an oath.

**(SEAL)**

\_\_\_\_\_  
**Signature of Acknowledger**