

**PALM BEACH COUNTY  
PLANNING, ZONING AND BUILDING DEPARTMENT  
ZONING DIVISION**



**ADMINISTRATIVE VARIANCE – TYPE I B - PUBLIC MEETING  
STAFF REPORT  
7/18/2013 09:00:00 AM**

AGENDA ITEM	CODE SECTION	REQUIRED	PROPOSED	VARIANCE
AVB-2013- 01465	3.D.1.A Table 3.D.1.A-5 - Property Development Regulations	7.5 foot side interior setback	6.3 foot side interior setback (East property line)	1.2 feet
	3.D.1.A Table 3.D.1.A-5 - Property Development Regulations	7.5 foot side interior setback	6.2 foot side interior setback (West property line)	1.3 feet
SITUS ADDRESS:	3675 Everglades Road, Palm Beach Gardens, FL 33410			
AGENT NAME & ADDRESS:	Seth Behn Lewis Longman & Walker PA 515 N Flagler West Palm Beach FL 33401			
OWNER NAME & ADDRESS:	David F. Creamer & Stephen Raab, Trustees for the Real Property Trust f/b/o David F. Creamer 120 Gibraltar Rd Horsham PA 19044			
PCN:	00-43-41-31-01-012-0140			
ZONING DISTRICT:	Multi-family Residential (RM)			
BCC DISTRICT:	01			
PROJECT MANAGER:	Melissa Matos, Site Plan Technician Barbara C. Pinkston, Principal Site Planner			
LEGAL AD:	Lewis Longman & Walker PA agent, for David F. Creamer & Stephen Raab, Trustees for the Real Property Trust f/b/o David F. Creamer,owner, to allow an existing structure to encroach into the required side interior setbacks. LOCATION: 3675 Everglades Road approximately .045 miles south of South Florida Boulevard and .055 miles east of Bimini Avenue on Everglades Road within the Cabana Colony Subdivision in the RM Zoning District. Control No. 2013-180.			
LAND USE:	Medium Residential 5 (MR-5)	S/T/R: 31-41-43		
PETITION #:	2013-00180			
LOT AREA:	0.14 acres			
LOT DIMENSIONS:	60 feet x 100 feet			
CONFORMITY OF LOT:	Non-conforming			
CONFORMITY OF ELEMENT:	Non-conforming			
TYPE OF ELEMENT:	Single-family dwelling			
ELEMENT SIZE:	Approximately 6,000 square feet			
BUILDING PERMIT #:	B-2012-20857			
NOTICE OF VIOLATION:	C-2012-12180001			
CONSTRUCTION STATUS:	Existing			
APPLICANT REQUEST:	To allow an existing single family dwelling to encroach into the required side interior setbacks.			

STAFF SUMMARY



The subject property is located at 3675 Everglades Road, approximately .045 miles south of South Florida Boulevard and .055 miles east of Bimini Avenue within the Cabana Colony Subdivision in the Multi-family Residential (RM) Zoning District.

Palm Beach County records indicate that the subject dwelling was constructed in 1961. The building permit was approved with side interior setbacks as 6.3 feet on both sides of the dwelling. The structure was constructed according to Section 4.G.1.(c) of the 1957 Zoning Code, which required the following: “Side yards shall be ten percent (10%) of the lot width at the building line with the minimum width six feet (6’) allowable”. The subject property is 60 feet wide, which at 10 percent, would dictate a minimum 6 foot setback. Therefore, the structure was constructed in conformance with the Zoning code and building permit.

The current owner purchased the property on October 25, 2012. On November 14, 2012 the owner submitted and received a building permit for interior renovations; for a bathroom addition and electrical upgrades (see Exhibit 2 Building Permit B2012-20857). During Building Inspections, it was discovered that the existing structure did not meet the current minimum setback requirements. Pursuant to the Unified Land Development Code (ULDC) the required setback for the RM Zoning District is 7.5 feet. Upon receiving a Code Violation (C-2012-12180001), it was discovered the original structure had an open carport, which the previous owner had converted into an enclosed garage without obtaining the proper building permits. The owner was never aware of any violations to current codes at the time of purchasing the property. The property owner is requesting this variance to maintain the enclosed garage, similar to other single-family dwelling units within the surrounding neighborhood.

Approval of the variance will allow the existing single-family structure to encroach 1.3 feet into the west side interior setback and 1.2 feet into the east side interior setback. The parcels to the east and west of the property are not affected by this variance request and there is ample landscaping to buffer impact on adjacent parcels.

Finally, the existing location and configuration of the single-family dwelling is similar to other homes in the area and is consistent with the overall character of the neighborhood. Granting the variance to allow the existing structure to remain as an enclosed garage and granting the 1.3 foot and 1.2 foot variance from interior setbacks result in no greater impact on the neighborhood surrounding area that has existed for over 50 years.

Also, an accessory shed located in the rear yard encroaches required easements. Although the shed meets the required minimum setbacks it encroaches a 12 foot wide utility easement along the North property line (see Exhibit 1 Survey). The applicant has agreed to correct this violation by either relocating or demolishing the shed. There is also an existing solid roof/lattice wall enclosure that was constructed without the proper permits located in the rear of the dwelling. Likewise, the property owner has agreed to have the solid roof/lattice enclosure demolished or to obtain the proper building permits. A condition of approval is included to ensure compliance with this agreement for the two structures.

Therefore, staff supports the owner’s variance request with recommended conditions.



## SURVEY





**STAFF RECOMMENDATIONS**

When considering a Development Order application for a Type IB Variance, the Zoning Director shall consider Standards 1 through 7 under Article 2.D.3.G.2 of the ULDC. The Standards and Staff Analyses are as indicated below.

A Type IB Variance which fails to meet any of these Standards shall be deemed adverse to the public interest and shall not be approved. Based upon the satisfaction of the Standards by the applicant, Staff recommends APPROVAL of the request subject to (3) Conditions of Approval.

**ANALYSIS OF ARTICLE 2, SECTION 2.D.3.G.2 VARIANCE STANDARDS**

**1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME ZONING DISTRICT:**



Yes. Special conditions and circumstances exist that are peculiar to the parcel of land, building structure, that are not applicable to other parcels of land, structures or buildings in the same Zoning District. The applicant purchased the property in 2012 with an existing dwelling that was constructed in 1961, consistent with the 1957 Zoning Code in effect at the time. After purchasing the property the owner obtained building permits for interior renovations. The property owner was cited by Code Enforcement for enclosing a carport without the proper permits and non-compliance with the current minimum setback requirements. The applicant stated to staff and in the justification that he was not responsible for enclosing the carport and was unaware of any existing violations on the property at the time

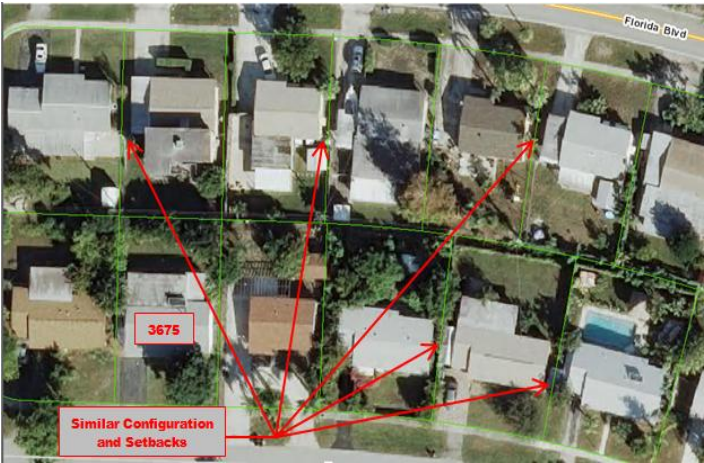
of purchase. The applicant is obtaining a variance to allow the carport to be converted to an enclosed garage and will remove or obtain permits for the accessory structure that encroaches the easement and the addition to the rear of the house or remove them per conditions of approval.

**2. SPECIAL CIRCUMSTANCES AND CONDITIONS DO NOT RESULT FROM THE ACTIONS OF THE APPLICANT:**

Yes. Special circumstances and conditions do not result from the actions of the applicant. The existing dwelling, the solid roof/lattice enclosure and enclosed garage were all built in their current configuration prior to the applicant purchasing the property. The applicant was unaware at the time of the short sale purchase there were any violations of any kind for the existing structure and property.

**3. GRANTING THE VARIANCE SHALL NOT CONFER UPON THE APPLICANT ANY SPECIAL PRIVILEGE DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES IN THE SAME ZONING DISTRICT:**

Yes. Granting the variances shall not confer any special privilege denied by the Comprehensive Plan and the code. The applicant is requesting a variance to allow an open carport converted to an enclosed garage to remain. The existing parcel size and dwelling configuration is similar to other properties on the same street and within the same zoning district. Other homes in the area have carports that have been enclosed and converted into garages or living space. The home was previously built consistent with the Comprehensive Plan and Zoning regulations that were in effect at that time. Therefore granting the variance shall not confer upon the applicant any special privileges.



**4. LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WOULD DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME ZONING DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:**



Yes. Literal interpretation of the ULDC would deprive the applicant of rights commonly enjoyed by the surrounding parcels in the same Zoning District and work an unnecessary and undue hardship. The surrounding parcels are all similar to the subject site and many of them contain enclosed carports. Should the variance be denied the applicant would be required to demolish a portion of the structure and convert it back to its original status as a carport. Partial demolition of an existing structure that is over 50 years old may compromise its structural integrity. Having to demolish the existing garage would result in undue hardship on the applicant. Also denial would penalize the applicant for a condition that he was unaware of at time of purchase and did not create himself.

**5. GRANT OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL MAKE POSSIBLE THE REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:**



Yes. Granting the requested variance is the minimum required to make reasonable use of the structure and property. The request is for no more than the exact setbacks applied to the structure as it was originally constructed in 1961. There are no alternate design options that can eliminate this variance request. The applicant is not requesting to encroach the setback any more than that which has existed for over 50 years. The applicant is seeking to have a reasonable use of his property by being allowed to have it in a manner similar to his neighbors.

**6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES, AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:**

Yes. Grant of the variance will be consistent with the purposes, goals, objectives, and policies of the comprehensive plan and this Code. Approval of the variance to allow the enclosed carport to a garage to remain will be consistent with the surrounding area. Other residents in the neighborhood have enclosed garages. There is an existing landscaping along the property line that mitigates the minor encroachment into the setback. The enclosure of the carport to a garage will allow the property owner to secure his property and improve the visual quality of the site from the street by screening the contents of the garage. An enclosed garage is customarily associated with a single-family dwelling.



**7. THE GRANT OF THE VARIANCE WILL NOT BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:**

Yes. The granting of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The open carport existed for over 50 years in the current configuration. The existing areca palms along the applicant's property line mitigate any impact to the adjacent property.





# EXHIBIT 2

## BUILDING PERMIT B-2012-20857

<b>PALM BEACH COUNTY-WIDE/MUNICIPAL</b> <b>BUILDING PERMIT APPLICATION FORM</b> <small>This application form is approved for use throughout Palm Beach County &amp; the Municipalities by the Building Officials Association of Palm Beach County &amp; The Building Code Advisory Board of Palm Beach County</small>		FOR OFFICE USE ONLY
<div style="display: flex; align-items: center;"> <div style="border: 1px solid black; border-radius: 50%; width: 40px; height: 40px; display: flex; align-items: center; justify-content: center; margin-right: 10px;"> <p style="font-size: 24px; margin: 0;">P</p> </div> <div style="margin-left: 10px;"> <p style="font-size: 24px; margin: 0;">3</p> </div> </div>		APP'N #: <u>12-20857</u>  DATE: <u>11-14-12</u>
<b>1</b> <b>KIND of PERMIT (CHECK ONE):</b> <input checked="" type="checkbox"/> <b>PRIMARY PERMIT</b> <input type="checkbox"/> <b>SUB-PERMIT</b> - If Fee & Value of a Sub-Permit are covered under a Primary Permit, complete boxes 1, 3, 6, & 8 only to apply. If not covered under a Primary Permit, complete the entire application to apply.	<b>2</b> <b>OWNER:</b> <u>David Creamer</u> <b>ADD:</b> <u>3675 Everglades Rd</u> <b>STE:</b> _____ <b>CITY:</b> <u>P.B.C. FLA</u> <b>ST:</b> <u>FL</u> <b>ZIP:</b> <u>33410</u> <b>CNTRY:</b> _____	
<b>3</b> <b>TRADE (CHECK ONE):</b> <input type="checkbox"/> <b>STRCT'L</b> <input type="checkbox"/> <b>ROOF'G</b> <input checked="" type="checkbox"/> <b>ELECT'L</b> <input type="checkbox"/> <b>MECH'L</b> <input checked="" type="checkbox"/> <b>PLMB'G</b> <input type="checkbox"/> <b>OTHER:</b> <u>Building Primary Permit.</u> <b>PRIMARY PERMIT #:</b> _____	<b>4</b> <b>PROJECT:</b> <u>Same address</u> <b>PCN:</b> <u>00-43-41-31-01-012-0140</u> <b>ADD:</b> <u>3675 Everglades Rd</u> <b>STE:</b> _____ <b>CITY:</b> <u>P.B.C. FLA.</u>	
<b>5</b> <b>FURTHER WORK DESCRIPTION:</b> <u>Bathroom Addition. Per (alteration)</u> <u>Attached Plans.</u>		
<b>6</b> <b>VALUE:</b> <u>10,000</u> <b>QTY:</b> _____ <b>NET S.F (for SFD's):</b> <u>0</u> <small>(SEE FEE SCHEDULE) (AS APPLIES) (AS APPLIES)</small>		
<b>7</b> <input type="checkbox"/> <b>OWNER BUILDER PER FL. ST. 489 (AS NAMED ABOVE - PROVIDE CONTACT INFO BELOW, INCL. PHONE/FAX/EMAIL)</b> <input checked="" type="checkbox"/> <b>CONTRACTOR (CERT. HOLDER):</b> <u>Anthony F Agrusa.</u> <b>License #:</b> <u>CRC1328432</u> <b>DBA (COMPANY NAME):</b> <u>Agrusa + Sons Contracting</u> <b>Contact Person:</b> <u>Tony.</u> <b>ADD:</b> <u>4441 North Lake Blvd</u> <b>STE:</b> _____ <b>CITY:</b> <u>P.B.C.</u> <b>ST:</b> <u>FL</u> <b>PHONE:</b> <u>722-4865</u> <b>FAX:</b> <u>624-3739</u> <b>EMAIL:</b> <u>Tony @ Agrusa and Sons. Com.</u>		
Application is hereby made to obtain a permit to do the work and installations as indicated. I certify that no work or installation has commenced prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that a separate permit must be secured for ELECTRICAL WORK, PLUMBING, SIGNS, WELLS, POOLS, FURNACES, BOILERS, HEATERS, TANKS, and AIR CONDITIONERS, etc.		
<b>OWNER'S AFFIDAVIT:</b> I certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.		
<b>8</b> <b>(Signature of Owner or Agent) (including contractor)</b> <u>[Signature]</u> <b>Print Name:</b> <u>David Creamer</u> NOTARY REQUIRED IF \$ 2,500 OR MORE, OR FOR ALL OWNER/BUILDERS REGARDLESS OF \$ VALUE STATE OF FLORIDA COUNTY OF <u>Palm Beach</u> Sworn to (or affirmed) and subscribed before me this <u>14</u> day of <u>November</u> , 2012 <u>David Creamer</u> <small>(Name of person making statement)</small> <u>Melanie Johnson</u> <small>(Signature of Notary Public - State of Florida) (Print, Type, or Stamp)</small> Commissioned Name of Notary Public Personally Known _____ OR Produced Identification <input checked="" type="checkbox"/> Type of Identification Produced <u>Real</u>	<b>9</b> <b>(Signature of Contractor)</b> <u>[Signature]</u> <b>Print Name:</b> <u>Anthony Agrusa</u> NOTARY REQUIRED IF \$ 2,500 OR MORE, OR FOR ALL OWNER / BUILDERS REGARDLESS OF \$ VALUE STATE OF FLORIDA COUNTY OF <u>Palm Beach</u> Sworn to (or affirmed) and subscribed before me this <u>14</u> day of <u>November</u> , 2012 <u>Anthony Agrusa</u> <small>(Name of person making statement)</small> <u>Melanie Johnson</u> <small>(Signature of Notary Public - State of Florida) (Print, Type, or Stamp)</small> Commissioned Name of Notary Public Personally Known <input checked="" type="checkbox"/> OR Produced Identification _____ Type of Identification Produced _____	

## **DEVELOPMENT ORDER**

The Development Order for this particular variance shall lapse on July 18, 2014, one year from the approval date. The property owner shall obtain all required building permits prior to July 18, 2014. (DATE: MONITORING: Zoning)

### **ADMINISTRATIVE VARIANCE – TYPE I B – PUBLIC MEETING CONDITIONS**

1. Prior to July 18, 2014, the property owner shall obtain a building permit for the enclosed garage. The owner shall provide the Building Division with a copy of the Variance Result letter along with copies of the approved survey to the Building Division to be included with the current building permit. (BLDG PERMIT: MONITORING - BLDG - Zoning)
2. Prior to July 18, 2014, the property owner shall have obtained a Certificate of Completion for the open Building Permit B2012-20857 for bathroom addition. (BLDG PERMIT: MONITORING – BLDG – Zoning)
3. Prior to issuance of the Certificate of Occupancy for the enclosed garage, the property owner shall completely remove or obtain building permits for the existing shed that is currently in an easement along the North side of the property. The property owner shall also completely remove or obtain the proper building permits for the solid roof/lattice wall enclosure located at the North East corner of the dwelling unit. (BLDG PERMIT: BLDG – Zoning)