



**BOARD OF ADJUSTMENTS
3048 S. Atlantic Avenue
Daytona Beach Shores, Florida
Monday, March 25, 2013
9:00 a.m.
AGENDA**

CALL TO ORDER

VARIANCE REQUESTS - PUBLIC HEARING/BOARD DETERMINATION

ZV2013-1 Oceanside Inn COA, Inc. 1909 S. Atlantic Avenue

DISCUSSION

REMARKS OF BOARD MEMBERS

ADJOURNMENT

NOTICES: Notice is hereby given to all interested parties that if any person should decide to appeal any decision made at the aforementioned meeting of the Board Of Adjustments, such person will need a recording of the proceedings conducted at such meeting, and for such purpose he or she may need to ensure that a verbatim record of the proceedings was made; such record to include testimony and evidence upon which any appeal shall be based. Individuals covered by the Americans with Disabilities Act of 1990 in need of accommodations for this public meeting should contact the City Clerk, City of Daytona Beach Shores, at least five working days prior to the meeting.



**STAFF REPORT FOR THE
BOARD OF ADJUSTMENTS
MARCH 25, 2013**

SUBJECT:	Zoning Variance ZV2013-1
SITE ADDRESS:	1909 S. Atlantic Avenue, Daytona Beach Shores
APPLICANT/OWNER:	Oceanside Inn COA, Inc.
STAFF CONTACT:	Stewart Cruz, City Planner
REQUEST:	<ol style="list-style-type: none">1. <i>Variance from Section 14-21.4 open space requirements to allow the existing 16.4% open space in lieu of required 20%.</i>2. <i>Variance from Section 14-21.4 front yard setback requirements to allow the existing 28.1 foot front yard setback in lieu of required 30 feet; Marquee overhang setback of 17.6 feet in lieu of required setback of 18 feet.</i>3. <i>Variance from Section 14-21.4 rear yard setback from seawall requirements to allow existing rear yard setback from seawall of 45.2 feet in lieu of required 50 feet.</i>4. <i>Variance from Section 14-21.4 side yard setback requirement to allow the existing side yard setbacks.</i>5. <i>Variance from Section 14-21.4 breezeway/visual corridor requirements to allow existing 25% visual corridor in lieu of required 30%.</i>6. <i>Variance from Section 14-21.4 maximum north-south width requirement to allow the existing/proposed 84% north-south width in lieu of the maximum 65%.</i>7. <i>Variance from Section 14-21.4 maximum lot coverage by building requirement to allow the existing/proposed 83.6% of lot coverage in lieu of the required 35%.</i>8. <i>Variance from Section 14-48.6 minimum off-street parking space requirements to allow proposed 151 spaces in lieu of required 192.</i>9. <i>Variance from Section 14-48.5 dimensional requirements for off-street parking space stall depths and drive aisles to allow the existing nonconforming parking space stall depths and drive aisle widths.</i>

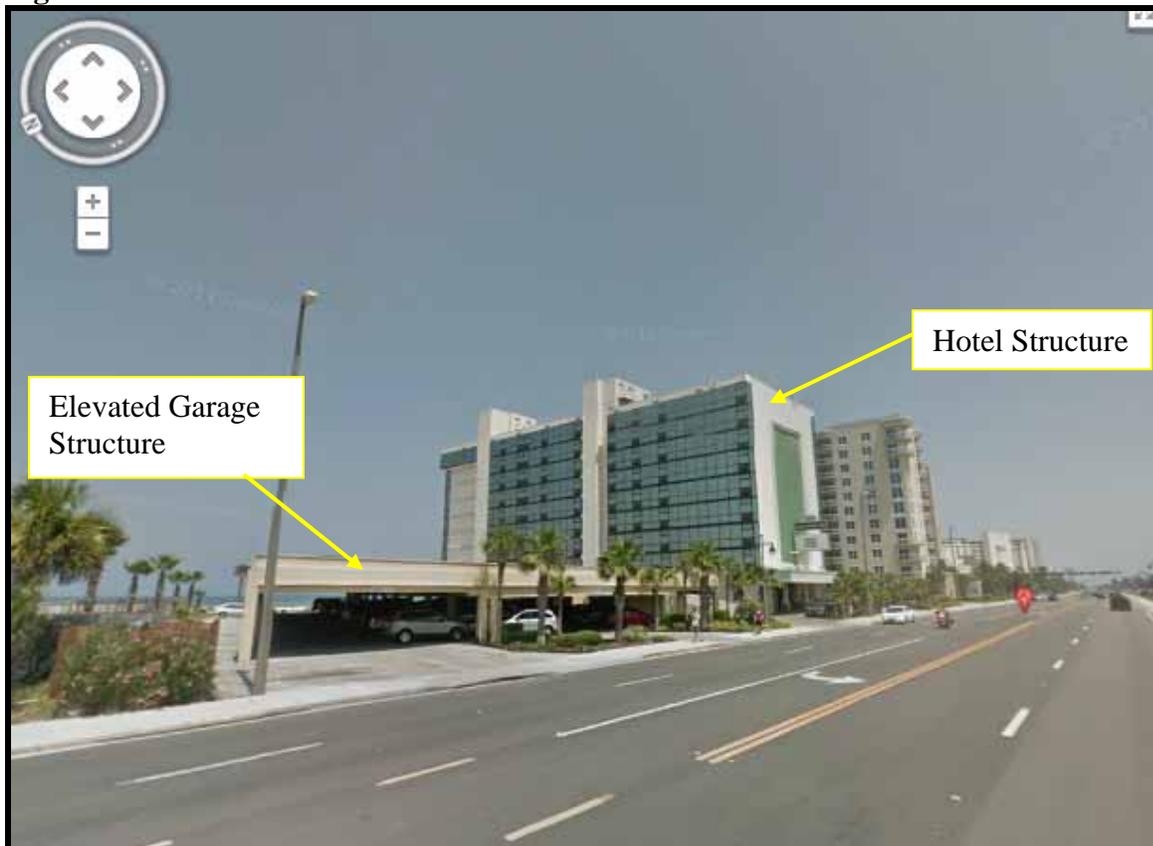
A. PROJECT BACKGROUND

The Oceanside Inn located at 1909 S. Atlantic Avenue was constructed in the 1970s for the purposes of a hotel/motel use. In 2004 the hotel ownership changed to a condominium form. The land use however is still hotel/motel. Since the construction and use of the structure, the existing elevated garage structure on the north side of the property has deteriorated to a point that it is now unsafe and unusable. Consequently, on July 23, 2012 the City received a completed site plan application from Oceanside Inn Condominium Association, Inc., owner of Oceanside Inn, to demolish and reconstruct the existing elevated garage structure “as is.” On August 3, 2012 City Staff advised the applicant that the garage structure would either have to be reconstructed to meet current Land Development Code standards or seek relief/variance with the City’s Board of Adjustments per Sec. 14-69.2 Daytona Beach Shores Land Development Code (LDC). Therefore, on February 14, 2013 the City received a completed variance application from James S. Morris, Esq., attorney representing Oceanside Inn. The subject variance application, if approved, would permit the applicant/owner to reconstruct the existing parking structure as it was previously approved and built.

B. SITE LOCATION AND DESCRIPTION

The subject property (1909 S. Atlantic Avenue) is located just north of the Ocean Vistas residential condominium. As seen in **Figure 1** below, the 1.85 acre property houses a 9-storey hotel containing 191 units and an elevated garage. The site has a total of 154 parking spaces on site, with 55 parking spaces located on the elevated parking structure.

Figure 1: Street View of 1909 S. Atlantic Avenue



Source: Google Maps, 2013.

C. ZONING AND LAND USE

Table 1 below provides a narrative description of the zoning district classifications and current land uses (i.e., existing development) for the subject property and surrounding area.

Table 1: Surrounding Zoning and Land Use

Location	City Zoning	Current Land Use
Subject Property	T-RMF-1*	Hotel/Motel
North	T-RMF-1*	Vacant Lot
South	T-RMF-1*	Ocean Vistas Residential Condominium
East	N/A	Beach/Atlantic Ocean
West	GC-RD+	Convenience Store (w. gas) & Christian Adventures International

NOTES: *T-RMF-1 = Hotel/Motel-Multifamily Residential (High Density) District; GC-RD+ = General Commercial-Redevelopment District.

Figure 2: Aerial View of 1909 S. Atlantic Avenue



Aerial Photo Source: Volusia County PALMS, 2013.

Hotel/motel uses and accessory uses & structures are permitted in the T-RMF-1 District. Per Sec. 2-2 of the City’s LDC, the elevated parking garage is an accessory structure and use to the hotel/motel. Further, the property is designated as *High Intensity* on the City’s Future Land Use Map (Comprehensive Plan Update, 2020). The *High Intensity* land use permits hotel/motel and related uses; therefore the intended use of the property is consistent with the City’s Adopted Comprehensive Plan and Future Land Use Map.

D. VARIANCE ISSUE

Pursuant to Sec. 14-11.3 of the City’s LDC, should a “*nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than fifty (50) percent of its fair*

market value at the time of destruction, at the expense of the owner it shall not be reconstructed, except in conformity with the provisions of this Ordinance...” The applicant is proposing to reconstruct the entire existing elevated garage structure as it was previously approved and constructed under old standards that existed at the time of construction in the 1970s. Consequently, the nine (9) inconsistencies with the City’s current land development standards discovered during the site plan review process must be addressed. The aforementioned inconsistencies concern minimum open space, front yard setback, rear yard setback, side yard setback, minimum breezeway/visual corridor, maximum north-south building width, maximum lot coverage, minimum off-street parking, and dimensional requirements for off-street parking. The applicant has not proposed redesigning a garage structure to meet the City’s current standards nor has the applicant proposed an offsite parking alternative, hence the request for the nine (9) variances.

E. REVIEW AND COMMENTS

Section 14-69.2 of the City’s Land Development Code outlines the criteria for the Board of Adjustments to consider when evaluating variance requests. To justify a variance request, the applicant must demonstrate the following¹ [please note staff’s comments are underlined]:

- a) *Special conditions or circumstances exist which are peculiar to the land, structure or building involved and which are not applicable generally to other lands, structures or buildings in the same zoning classification.*

The applicant notes that the parking structure was legal and approved by the City when it was constructed. Pursuant to Sec. 14-11.3 of the City’s LDC, should a “nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than fifty (50) percent of its fair market value at the time of destruction, at the expense of the owner it shall not be reconstructed, except in conformity...” The purpose of this section is to ensure that reconstruction conforms to the City’s overall development vision. Without this provision, nonconforming structures would continue to exist forever and the City’s vision of development would never be realized.

The applicant also notes that the parking deck is a unique way to provide guest parking in a limited area of real estate and that there is no additional property to provide the needed parking. The subject property is the only site in the City that currently has an elevated garage on a hotel property. Considering the aforementioned, the current layout and development of the site, Staff agrees the site is limited for the design proposed. However, an alternative parking design and/or alternative offsite parking option may be possible. Staff believes it may be possible to construct a LDC compliant underground and/or aboveground parking structure. Further, the City’s Land Development Code provides for required off-street parking to be provided offsite given certain parameters. It is uncertain whether these options have been contemplated by a professional agent of the applicant.

- b) *The special conditions or circumstances do not result from the actions of the applicant and are not primarily economic or financial in nature.*

¹ The applicant’s application (and verbatim responses) is attached as **Exhibit A**.

The lot size and configuration relative to the existing building and garage structure footprints do not permit the reconstruction of the parking structure “as is” to meet today’s development standards. However, an alternative parking design and/or alternative offsite parking options may still be possible. It is uncertain whether these options have been contemplated by a professional agent of the applicant. Therefore, it is uncertain whether the stated special condition is a result of the applicant’s own action.

- c) *Literal interpretation or enforcement of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification under the terms of this Ordinance.*

All new or redeveloped properties in the “T” District must meet the current required LDC development standards, including but not limited to: minimum open space, front yard setback, rear yard setback, side yard setback, minimum breezeway/visual corridor, maximum north-south building width, maximum lot coverage, minimum off-street parking, and dimensional requirements for off-street parking. In addition, any property in the “T” District may build a parking structure as an accessory use to a hotel providing the LDC development standards are met. Therefore, the literal interpretation or enforcement of the provisions of this Ordinance would not deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification under the terms of the LDC as an alternative parking design and/or alternative offsite parking option may be possible.

- d) *The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.*

The variance, if authorized, may not represent the minimum variance that will afford relief and may not represent the least modification possible of the regulation at issue. Staff believes that offsite parking and/or an alternative design for the parking structure may be possible, thereby reducing the intensity or number of variances needed or eliminating the need for variances. Staff is uncertain if these options have been considered. It should be noted however, an alternative design would probably be more costly than the reconstruction option being proposed.

- e) *The variance sought will not authorize or extend any non-conforming use or other non-conformity with respect to the land or structures in question.*

Based on the information provided, it does not appear that the variances sought will authorize or extend any non-conforming use or other non-conformity with respect to the land or structures in question.

- f) *The granting of the variance will be in harmony with the general intent and purpose of this Ordinance, will not be injurious to the area involved, or surrounding properties, and will not authorize a use of the property not permitted by its zoning classification.*

The granting of the variances, if authorized, does not appear to be in harmony with the general intent and purpose of the Ordinance. However, if authorized, the variances will not authorize a use of the property not permitted by its zoning classification. It also appears that the variance, if authorized, would not be injurious to the area involved or the surrounding properties.

- g) *The variance sought will be consistent with the City’s Comprehensive Plan, its enabling legislation and regulations adopted pursuant thereto.*

Policy 1-1.1.4 of the Daytona Beach Shores Comprehensive Plan (2020 Update) states “The land development regulations shall maintain and enforce performance standards that address buffering and open space requirements, especially between condominium and hotel/motel developments.” The open space variance sought would be inconsistent with the City’s Comprehensive Plan, enabling legislation and regulations adopted pursuant thereto.

Based on staff’s interpretation of the facts and evidence provided, **Table 2** below was derived to assist the Board’s decision-making process:

Table 2: Authorization Criteria Summary (per Section 14-69.2 LDC)*

Criteria	A	B	C	D	E	F	G	Total
Criteria Met		?		?	X			1
Criteria Not Met			X					1
Criteria Partially Met	X					X	X	3

NOTE: * Pursuant to the April 26, 2005 Board of Adjustments Workshop “Authorization Criteria for Variances,” the City Attorney advised that a successful variance application can only be achieved if all evaluation criteria are met.

E. RECOMMENDATION

Staff recommends denial of variance application ZV2013-1, until such time that a professional agent of the applicant can demonstrate to staff the infeasibility of LDC compliant designing/constructing alternative garage options and/or offsite parking.