



## *City Council Staff Report*

**Meeting Date: August 17, 2020**

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**TO:** Marco Island City Council

**FROM:** Daniel J. Smith, AICP, Director of Community Affairs

**DATE:** August 3, 2020

**RE:** Variance Petition 20-000129, 1390 Jamaica

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### **PROJECT DESCRIPTION:**

Mr. Pelling is requesting a variance to Sec. 30-1024 (1) a., to install a thirty (30) foot flagpole seven (7) feet from the rear property line and forty-nine (49) feet from each side property line. The maximum allowed height for a flagpole is twenty-five (25) feet and the flagpole must be located seven and one-half (7 ½) feet from the property line. Please note the request does not include flagpole location at seven feet from the rear property line. Attached to this report is the application and applicant's site plan.

### **PLANNING BOARD SUMMARY AND RECOMMENDATION**

The Planning Board held a public hearing and considered this request at their July 10, 2020 meeting. The applicant was not present. During the consideration, there was discussion about how the pole height is measured, which is ground level. There was discussion about setting precedence if approved and how it is based on a case by case basis. There was clarity that this application is for a flagpole height variance, not a flag. There was discussion about the strength of the pole and how one of the adjacent neighbors, Island County Club, does not have an issue. There were no public comments. The Planning Board voted 6-1 to deny the requested variance and forward the denial to the City Council for their consideration.

City Staff received a letter from Mr. Pelling regarding the action and we have attached that letter for City Council review.

### **OWNER:**

John B Pelling, Jr., as Trustee, or his successors in interest under the  
John B. Pelling, Jr., Revocable Trust dated June 12, 2003  
1390 Jamaica Rd.  
Marco Island, FL 34145

### **AGENT:**

Same as Owner

### **PROJECT ADDRESS:**

Street Address: 1390 Jamaica Rd. Marco Island, FL 34145  
Zoning District: RSF-4  
Legal Description: Lot 5, Block 6, Marco Beach, Unit 1, Plat Book 6, Pages 9-16,  
Public Records of Collier County, Florida  
Folio Number: 56654080006

**SUBJECT PARCEL ZONING MAP:**

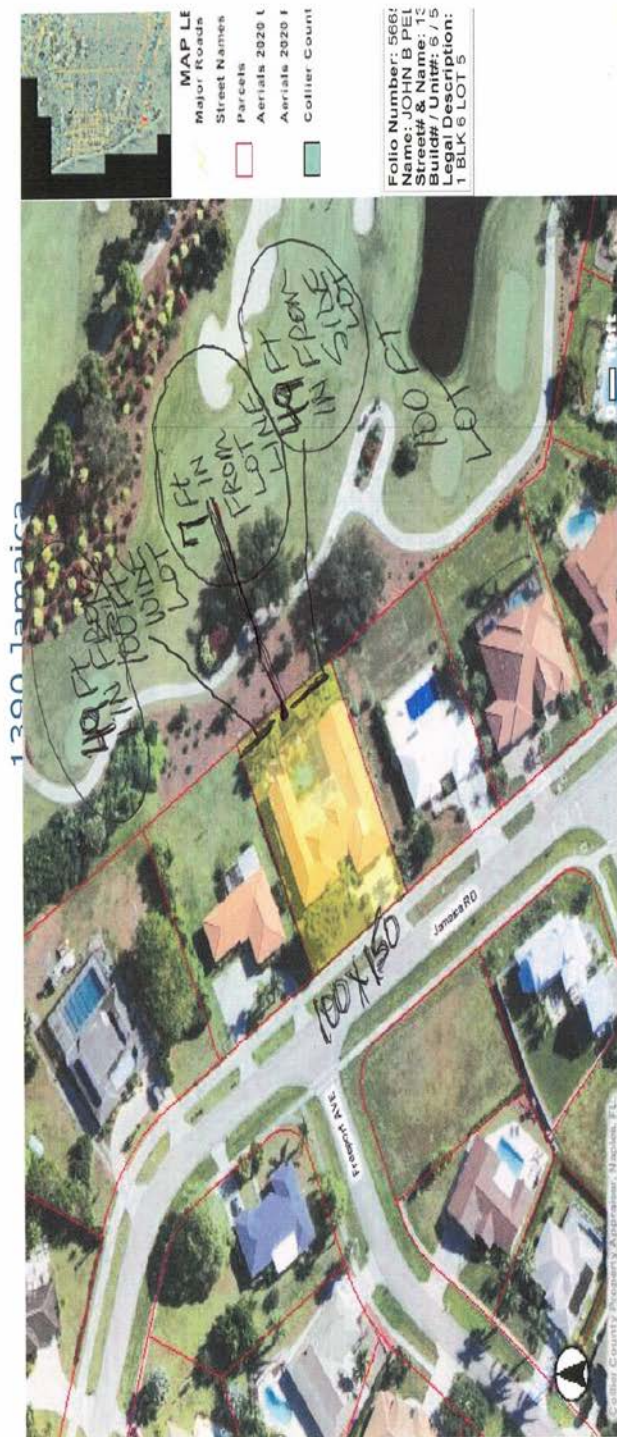


**SUBJECT PARCEL AERIAL/SITE PLAN:**



[http://maps.collierappraiser.com/mapprint.aspx?pagetitle=1390 Ja...](http://maps.collierappraiser.com/mapprint.aspx?pagetitle=1390%20Ja...)

1390 JAMICA  
http://maps.collierappraiser



2004, Collier County Property Appraiser. While the Collier County Property Appraiser is committed to providing the most accurate and up-to-date information, no warranties are provided for the data herein, its use, or its interpretation.

LOT SIZE 100 X 150  
POLE LOCATED 9' IN FROM BACK LOT LINE  
POLE LOCATED 49' IN FROM BOTH SIDE LOT LINES



**APPLICANT'S RESPONSES TO THE STANDARDS TO REVIEW VARIANCE:**

For variance requests for *existing structure(s)*, please provide the following information:

1. What is the requested encroachment?

NO ENCROACHMENT REQUESTED

2. When property owner purchased property

5/20/05

3. When was the existing structure built (include building permit number if possible)?

1969 POOL + DECK 2012

4. How existing encroachment created?

N/A

5. What is the certified cost estimate for bringing the existing structure(s) into compliance?

N/A

6. What extenuating circumstances exist related to the existing structures encroachment?

N/A

7. Are there any life/safety concerns related to the existing structure(s)?

NO

For variance requests for *proposed structure(s)*, please provide the following information:

1. What is the proposed encroachment?

REQUEST 30' FLAG POLE V.S. 25'

2. Why is the encroachment is necessary?

POLE IS ALREADY PURCHASED + ON SITE  
ADDED HEIGHT NEEDED FOR VISIBILITY  
DUE TO DOWNWARD SLOPE OF SITE  
AND HEAVY ISLAND CLUB LANDSCAPING

3. What extenuating circumstances exist related to the proposed structure encroachment?

HOME BACKS TO HEAVILY LANDSCAPED  
13<sup>TH</sup> HOLE OF ISLAND COUNTRY CLUB AND  
NOT IMPACTING OR VISIBLE BY NEIGHBORS

**NATURE OF PETITION**

Please note that staff and the Marco Island Planning Board shall be guided in their recommendation to City Council acting as the Board of Zoning Appeals, and that City Council shall be guided in its determination to approve or deny a variance petition by the below listed criteria. Please provide a narrative response to the listed criteria and/or questions. Attach additional pages if necessary.

1. Are there special conditions and circumstances existing which are peculiar to the location, size and characteristics of the land, structure or building involved?

OWNER DESIRES AN ATTRACTIVE AND PATRIOTIC  
POLE + LARGER FLAG VISIBLE FROM THE COURSE

2. Are there special conditions and circumstances which do not result from the action of the applicant such as pre-existing conditions relative to the property which is the subject of the variance request?

ONLY PRE-EXISTING CONDITION IS MY LACK OF KNOWLEDGE  
OF 25' ORDINANCE PRIOR TO ORDERING A VERY STRONG  
30' POLE RATED 260 MPH W/O FLAG + 150 MPH  
W/FLAG. I PURCHASE + RECEIVED POLE AND WOULD  
LIKE TO INSTALL

3. Will a literal interpretation of the provisions of this zoning code work unnecessary and undue hardship or create practical difficulties on the applicant?

DELIVERED POLE WAS \$5,000. NOT SURE ABOUT COST  
OF SHIPPING AND REPLACEMENT WITH A 25' POLE OR  
STRUCTURAL INTEGRITY OF CUTTING EXISTING POLE.  
PLEADING FOR UNDERSTANDING + LENIENCY IN  
THIS CASE. POLE IS STRUCTURALLY SUPERIOR TO  
MOST 25' POLE, HIGHLY WIND RATED, AND WITH  
NO NEIGHBORS IMPACTED FRONT, SIDE OR REAR  
BACKS TO GOLF COURSE.

4. Will the variance, if granted, be the minimum variance that will make possible the reasonable use of the land, building or structure and which promote standards of health, safety or welfare?

YES

5. Will granting the variance requested confer on the petitioner any special privilege that is denied by these zoning regulations to other lands, buildings, or structures in the same zoning district?

NO, NOT TO MY KNOWLEDGE  
THERE EXISTS A SIMILAR POLE ALSO ON  
JAMAICA BACKING TO THE GOLF COURSE  
AT 1584 JAMAICA

6. Will granting the variance be in harmony with the intent and purpose of this zoning code, and not be injurious to the neighborhood, or otherwise detrimental to the public welfare?

YES. SAFETY WILL NOT BE COMPROMISED  
WITH THE POLE. NEIGHBORS WILL NOT BE  
IMPACTED, PLAYERS AT ISLAND CLUB APPRECIATE  
BEAUTY, PATRIOTISM + WIND DIRECTION OF A TALL  
BEAUTIFUL LIGHTED FLAG + FLAG-POLE,

7. Are there natural conditions or physically induced conditions that ameliorate the goals and objectives of the regulation such as natural preserves, lakes, golf course, etc?

THE ADDED HEIGHT (30' VS 25') ACCENTUATE  
THE BEAUTY AND VISIBILITY FROM THE  
GOLF COURSE RISING ABOVE LARGE CLUB  
LANDSCAPING WELL BEHIND THE HOME  
NO NEIGHBORS ARE IMPACTED,

8. Will granting the variance be consistent with the growth management plan?

MANY QUESTIONS DO NOT SEEM TO APPLY TO  
A FLAG POLE 5' VARIANCE, BUT GRANTING  
ME THIS VARIANCE WOULD BE VERY APPRECIATED  
AND BRING AESTHIC BEAUTY + PATRIOTISM  
TO MARCO ISLAND

**STANDARDS FOR REVIEW OF A VARIANCE:**

Section 30-65 (g) (3) a.-h. provides standards for review of a variance in deciding action. Below are the standards, the applicant's response and Staff response. These are repeated below exactly as provided by the Applicant. Staff has made no attempt to correct typos, grammar, or clarify the Applicant's comments.

- (1) That there are special conditions and circumstances existing which are peculiar to the location, size and characteristics of the land, structure, or building involved;

**Staff response:** There are no special conditions or circumstances related to this property.

- (2) That there are special conditions and circumstances which do not result from the action of the applicant such as pre-existing conditions relative to the property which is the subject of the variance request;

**Staff response:** There are no pre-existing conditions relative to the property.

- (3) That a literal interpretation of the provisions of this LDC works an unnecessary and undue hardship on the applicant or creates a practical difficulty on the applicant;

**Staff response:** As a planner, we do not take economics into consideration when reviewing a request to deviate from our codes. The literal interpretation of this LDC provision will not create an unnecessary or undue hardship on the applicant other than economic.

- (4) That the variance, if granted, will be the minimum variance that will make possible the reasonable use of the land, building or structure and which promote standards of health, safety or welfare;

**Staff response:** A variance is not needed to make reasonable use of the land.

- (5) That granting the variance requested will not confer on the petitioner any special privilege that is denied by this LDC to other lands, buildings, or structures in the same zoning district;

**Staff responses:** Granting this variance would confer a special privilege since the standards used to review a variance are not met.

- (6) That granting the variance will be in harmony with the intent and purpose of this zoning code, and not be injurious to the neighborhood, or otherwise detrimental to the public welfare;

**Staff response:** Granting the variance does not appear to be contrary to the intent or purpose of the LDC nor detrimental to the public welfare.

- (7) That there are natural conditions or physically induced conditions that ameliorate the goals and objectives of the regulation such as natural preserves, lakes, golf course, or similar circumstances; and

**Staff response:** There are no natural or physical conditions further the regulations.

- (8) That the granting of the variance will be consistent with the comprehensive plan.

**Staff response:** Granting of the variance will not be consistent with the Comprehensive Plan since the request does not meet the standards outlined in the LDC for granting a variance.

### **STAFF ANALYSIS**

It does not seem that granting the variance to allow for the additional five feet would be detrimental to the health, safety, and welfare of the community, however the request does not meet any of the standards for granting a variance and that is how Staff reviews variances. As a result, Staff is recommending denial.

### **STAFF RECOMMENDATIONS:**

Staff recommends the Planning Commission deny VP-20-00129 based on the below findings:

#### **Findings:**

- (1) There are no special conditions or circumstances related to this property.
- (2) There are no pre-existing conditions relative to the property.
- (3) The literal interpretation of this LDC provision will not create an unnecessary or undue hardship on the applicant.
- (4) A variance is not needed to make reasonable use of the land.
- (5) Granting this variance would confer a special privilege since the standards used to review a variance are not met.
- (6) There are no natural or physical conditions further the regulations.
- (7) Granting of the variance will not be consistent with the Comprehensive Plan since the request does not meet the standards outlined in the LDC for granting a variance.