

Justification for the Variance to Locate Pool in the Front Setback

Pursuant to LDR Section 4.6.15(G), Yard Encroachment:

“Swimming pools, the tops of which are no higher than grade level, may extend into the rear, interior or street side setback areas but no closer than 10’ to any property line, except as provided in subsection (2) and (4) below. Swimming pools may not extend into the front setback area noted in Section 4.3.4(k).”

We request a Variance from the above cited LDR section so that the proposed pool can be located in the front setback area 13’1” from the north property line along S Vista del Mar.

Regarding Section 2.4.7(A)(5) Findings necessary to obtain the granting of a Variance:

- (a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings subject to the same zoning (The matter of economic hardship shall not constitute a basis for the granting of a variance); **There are special conditions and circumstances which are peculiar to the property. Without a Variance the pool would have to be located in the rear of the property. Although the current address of the house is 212 Seabreeze, the historic and most public side of the property is on S Vista del Mar and the Seabreeze side of the property is considered to be the rear. However, the rear of the property facing Seabreeze Avenue has an existing driveway and with the driveway and accompanying proposed garage so there is no appropriate space for a pool in the rear yard on the Seabreeze side. The existing driveway and proposed garage cannot be re located anywhere else on the Seabreeze side due to the fact that the lot is ‘landlocked’ with the exception of the relatively small section of about 18’ that is accessible from Seabreeze Ave and where the existing driveway is located. In addition, the proposed garage addition is required to be located in the rear or least public side of the property in general by the Development Standards LDR 4.5.1E, especially LDR 4.5.1E(9) and by the Visual Compatibility Standards LDR 4.5.1(E)(8)(m)1. and LDR 4.5.1(E)(8)(m)2., leaving the S Vista del Mar front yard setback as the only logical pool location alternative.**
- (b) That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning; **Literal interpretation of the regulations would deprive the applicant of a pool, a common amenity expected by a modern homeowner, since the pool would be required to be located in the rear (Seabreeze) side of the property which is unavailable for the reasons discussed in (a) above.**

- (c) That the special conditions and circumstances have not resulted from actions of the applicant. **The special conditions and circumstances of the property are historic in origin and existed at the time the property was acquired by the applicant and have not resulted from any action of the applicant.**
- (d) That granting the variance will not confer onto the applicant any special privilege that is denied to other lands, structures, and buildings under the same zoning. Neither the permitted, nor nonconforming use, of neighborhood lands, structures, or buildings under the same zoning shall be considered grounds for the issuance of a variance; **The granting of the Variance to locate the pool in the front setback will not confer onto the applicant any special privileges as nearly all of the properties in the area have pools located in both the front and rear yards.**
- (e) That the reasons set forth in the variance petition justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; **The reasons cited justify the granting of the Variance which is the minimum variance necessary to locate the pool in the front setback in order for the applicant to make reasonable use of the property. The granting of the Variance would be the sole and simplest accommodation in order for the applicant to have the reasonable use of a pool.**
- (f) That the granting of the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare. **The granting of the Variance is consistent with and in harmony with the general purpose and intent of the existing regulations by allowing the applicant to have use of a common amenity enjoyed by the majority of homeowners in the area. The pool would not be injurious to the neighborhood or create any issue that could be considered detrimental to the public welfare.**

We also request support for the Variance based on the following discussion of **Section 2.4.7 (A)(6) Alternate Findings of the Historic Preservation Board** necessary to grant the Variance:

- (a) That a Variance is necessary to maintain the historic character of the property and demonstrating that the granting of the Variance would not be contrary to the public

interest, safety or welfare.-**The granting of the Variance has minimal effect on the historic character of the property and does not affect the public interest, safety or welfare.**

6.(b) That special conditions and circumstances exist, because of the historic setting, location, nature, or character of the land, structure, appurtenance, sign, or building involved, which are not applicable to other land, structures, appurtenances, signs or buildings the same zoning district which have not been designated as historic sites or a historic district nor listed on the Local register of historic Places”.-**There are special conditions and circumstances on the property. The rear of the property facing Seabreeze Avenue has an existing driveway and with the driveway and accompanying proposed garage so there is no appropriate space for a pool in the rear yard on the Seabreeze side. The Seabreeze driveway cannot be re located due to the fact that the lot is ‘landlocked’ on the Seabreeze side. Therefore, the only available space is in the front yard setback on the S Vista del Mar side. Locating the proposed garage and addition in the rear Seabreeze portion of the property, and as a result locating the pool in the front setback, is dictated by the LDR Section 4.5.1(E)(8)Visual Compatibility Standard (m) 1. which states that “Additions shall be located to the rear of least public side of a building and be as inconspicuous as possible.”, and also (m) 2. which states that “Additions or accessory structures shall not be located in front of the established front wall plane of a historic building”. Therefore, in order to preserve the historic character of the property by locating the proposed garage and addition to the rear of the property, a Variance to accommodate the pool location in the front setback is consistent with the relevant LDR 4.5.1(E) Development Standards and the LDR 4.5.1(E)(8) Visual Compatibility Standards.**

6.(c) That literal interpretation of the provisions of the existing ordinances would alter the historic character of the historic district, or historic site to such an extent that it would not be feasible to preserve the historic character of the historic district or historic site. **Literal interpretation of the provisions of the existing ordinances would either preclude the possibility of a pool or require the proposed addition to be located in the front or most public side of the property in order for the pool to be located in the rear. Locating the proposed addition in the front or most public side of the property in order to**

accommodate the pool in the rear would be in conflict with the previously cited LDR Development Standards and Visual Compatibility Standards and would cause major damage to the historic character of the property.

6.(d) That the Variance requested will not significantly diminish the historic character of a historic site or of a historic building". **The proposed in ground pool is at 2.5' elevation and is not readily visible behind the 4' high wall along the S Vista del Mar property line. The pool has no effect on the public view or historic character of the historic house which sits at 14'4' elevation (8'4' above the 6' top of first floor).**

6.(e) That the requested Variance is necessary to accommodate an appropriate adaptive reuse of a historic building structure or site". **A swimming pool is a common amenity expected by a modern homeowner and can only be built in the front setback with a Variance.**

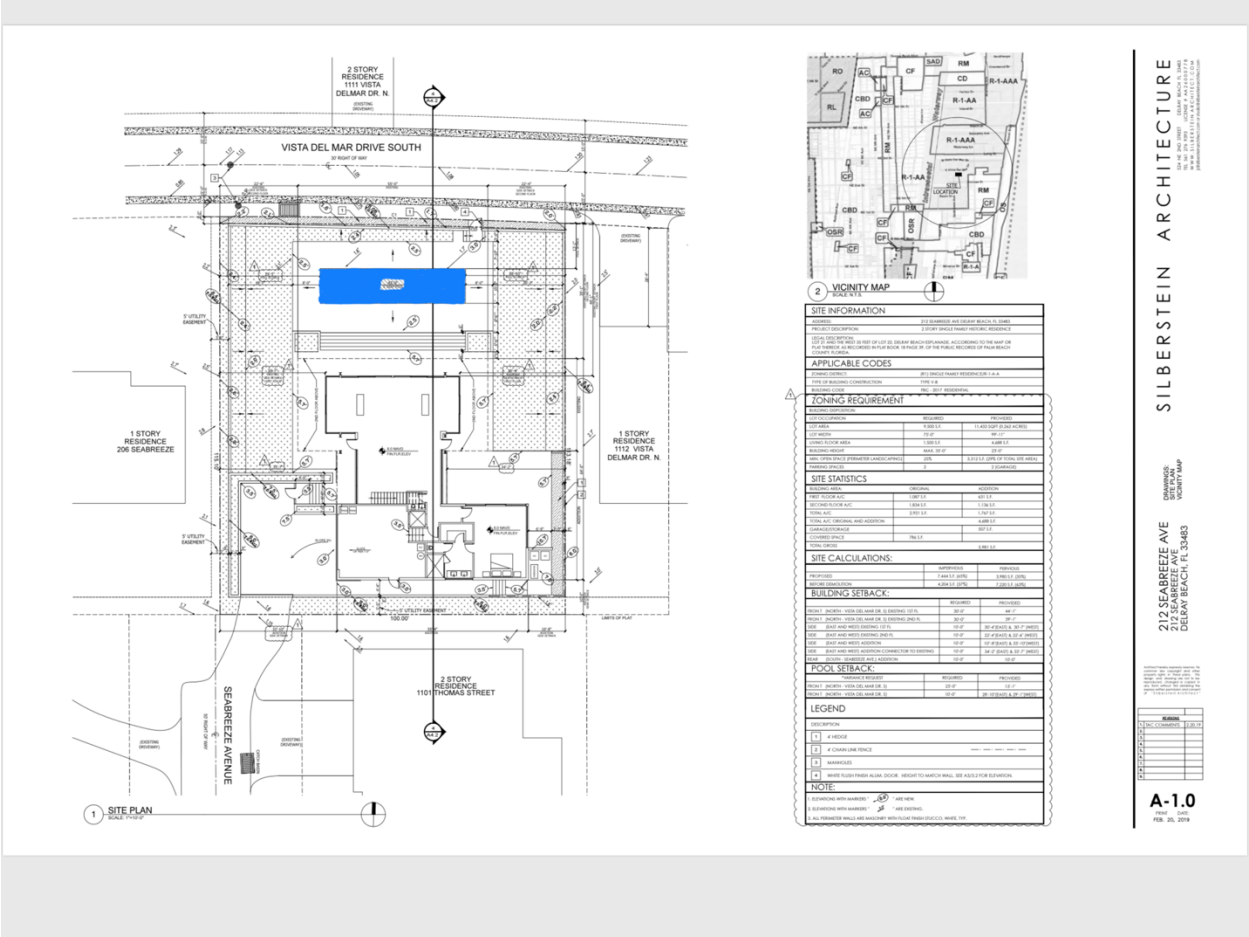


Figure 1 Proposed Location of Pool in Front Setback