

**JUSTIFICATION STATEMENT
SETBACK VARIANCE APPLICATION
412 SE 4th Avenue/Swimming Pool**

Background:

On April 8, 2016, Patty (Lager) Britton and Miguel Dacosta, purchased the subject lot after conducting due diligence including contacting the city of Delray Beach Planning & Zoning Department to determine the property development regulations, setbacks, and other related requirements for construction of a new single-family home. The subject property is a reconfiguration of a portion of two lots in the Osceola Park subdivision measuring approximately 59.41' wide and 93.70' deep, and a lot area of approximately 5,607 square feet.

The property is zoned R-1-A which requires a minimum lot width of 60', lot depth of 100' and a minimum lot area of 7,500 square feet, and as such the property is nonconforming with the lot area and dimensional requirements. Minimum setbacks in the R-1-A district are 25' front, 7.5' side interior, and 10' rear.

Architectural plans, survey, site engineering, and other documents were finalized based on the information obtained during the due diligence prior to purchase. On September 4, 2018 the owners submitted an application for a building permit for a new home at 412 SE 4th Avenue. Although the owner intended to build a pool at the time, since the lot was undersized, they decided to wait until the home was built to determine the best design. On December 20, 2018, the permit was disapproved by the Engineering Department because of a newly enacted regulation (LDR Section 5.3.1.A) requiring dedication of 2' dedicated right-of-way along the alley located on the north side of the property.

Because this was a new requirement established in December 2018, the dedication of 2' (or 187.4 square feet) was not identified during the initial planning and due diligence conducted in 2018, and the dedication created a side yard setback issue thus requiring redesign of the house. In this case the 7.5 ft side setback on the north side of the site adjacent to the alley had to be shifted 2' south to allow for the 2' dedication. This required revisions to the survey, the architectural plans and the engineering at substantial cost to the owner.

In order to maintain the same living area square footage the architectural plans were revised to narrowed the width and elongate the depth of the house while meeting the required 2' ROW dedication and maintaining the same basic rooms and spaces in the home. In turn these changes further reduced the size of the rear yard.

Subsequent to construction of the home, many other swimming pools in the area have been installed in the front yard area with appropriate fencing and landscaping, including a neighboring house where the pool is approximately 5' from the front door. With so many neighboring front yard pools, the owners concluded that a request for a front yard pool variance would be the best

approach and would be compatible with and blend in perfectly with the neighboring homes allowing them the same benefits others already enjoy.

- 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. Economic hardship shall not constitute a basis for the granting of a variance.

Response:

With the dedication of 2' of right-of-way, the lot was reduced from 59.41' to 57.41' in width and 93.70' deep which is nonconforming to the required minimum lot width of 60', lot depth of 100' and a minimum lot area of 7,500 square feet for the R-1-A district, and the lot is adjacent to an existing improved alley that was 16' wide.

Because of the City's requirement for a 20' wide alley there was an unforeseen dedication of 2' from this property during the permitting of a new home at this location. This dedication required redesign of the home thus reducing the outdoor area available for a swimming pool in the rear yard, although there is sufficient space in the front yard with approval of a variance.

- b) That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning.

Response:

Many homes in the area, including those on smaller lots, have installed swimming pools in the front yard area, some of which were approved through the variance process (311 SE 3rd Street, 203 SW 2nd Street and 509 Rye Lane). Consequently, since the original house design had to be changed to accommodate a dedication of right-of-way, and variances have been granted for other homes in the area to allow swimming pools in the front yards, literal interpretation of the setback regulations would deprive the owners of similar rights granted to other properties in the same area.

- c) That the special conditions and circumstances have not resulted from actions of the applicant.

Response: the applicant did not plat the property, nor did the applicant require the dedication of right-of-way. In addition, the dedication is unnecessary for the function of the alley as it is currently improved and functioning. And although the code prohibits increasing a nonconforming condition by a private property owner, the City's required dedication caused the nonconforming lot size to be reduced even further and thus increasing the nonconformity. These conditions are not the actions 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.

Response: Granting of the variance would enable construction of the pool and would enable this property owner to enjoy the same rights currently enjoyed by neighbors in the community that also have swimming pools in the front yard some of which were approved by a variance, and as such would not grant any special privilege.

- e) That the reasons established 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.

Response: the reasons for granting the variance are that special conditions and circumstances exist which are not the actions of the applicant including the nonconformity of the existing legal lot of record, and the required dedication of alley right-of-way where additional right-of-way is not needed for the alley to properly function. The swimming pool has been designed with minimal dimensions (7' wide and 13' long) to minimize the encroachment into the setback and enable sufficient screening for privacy and reduced impact on the neighborhood. This creates a minimally sized pool to minimize the variance requested.

- f) That the granting of the variance will be in harmony with the general purpose and intent of existing regulations, and will not be injurious to the neighborhood, or be otherwise detrimental to the public welfare.

Response: granting of the variance will not have any impact on adjacent properties, on-site drainage, utilities, or function of public services, and as a minimally sized pool there is still sufficient setback for buffers and screening. As such this will be in harmony with the general purpose and intent of the setback regulations.