



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

100 NW 1ST AVENUE, DELRAY BEACH, FLORIDA 33444
PLANNING & ZONING DIVISION: (561) 243-7040 • BUILDING DIVISION: (561) 243-7200

Board of Adjustment

Meeting: July 1, 2021

File No.: 2021-147-VAR-BOA

Application Name: 245 NE 7th Avenue

Applicant/Agent: David W. Schmidt, Esq.

Location: 245 NE 7th Avenue

PCN: 12-43-46-16-01-122-0010

Property Size: 0.18 Acres

FLUM: Medium Density Residential (RM)

Zoning: Medium Density Residential (RM)

Adjacent Zoning:

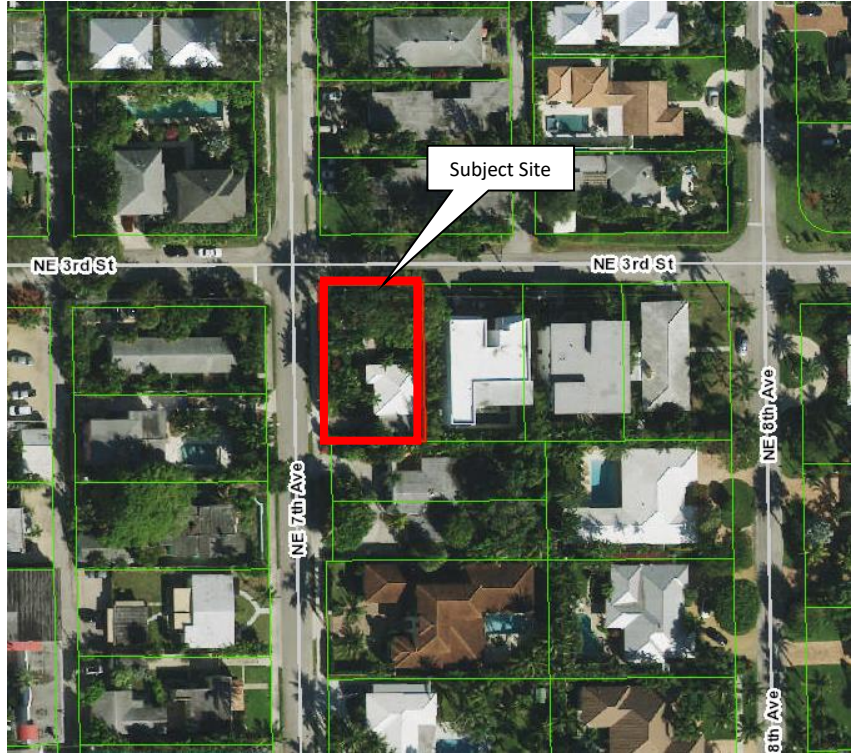
- North: RM
- East: RM
- South: RM
- West: RM

Existing Land Use: Single Family Home

Proposed Land Use: Single Family Home

Item before the Board:

Consideration of a variance request from Land Development Regulation (LDR) Section 4.3.4 (K) to reduce the front setback from 25 feet to 10 feet.



Optional Board Motions for Action Items:

1. Move to continue with direction
2. Move **approval** of the variance requests (2021-147-VAR-BOA) from LDR Section 4.3.4 (K) to reduce the front setback from 25 feet by 15 feet to establish a 10 foot front setback for the property located at 245 NE 7th Avenue, by finding that the request is consistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).
3. Move **denial** of the variance requests (2021-147-VAR-BOA) from LDR Section 4.3.4 (K) to reduce the front setback from 25 feet by 15 feet to establish a 10 foot front setback for the property located at 245 NE 7th Avenue, by finding that the request is inconsistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).

Request:

The variance request is to consider the encroachment of a new Single-Family Home structure 15 feet into the required front setback area to establish a 10 foot front setback. Pursuant to LDR Section 4.3.4(K), Single-Family detached dwellings within the RM Zoning District abide by the setback regulations of the R-1-A Zoning District.

Background:

The property consists of the west 71.0 feet of the north 110.0 feet of Block 122 in the City of Delray Beach, according to the plat thereof, as recorded in Plat Book 1, Page 3, Public Records of Palm Beach County. The lot is 71.0 feet wide by 110 feet deep based on the survey dated April 19, 2021. It is located in the Medium Residential (RM) Zoning District, however, due to the construction of a single family home, the Single Family Residential (R-1-A) district development regulations apply. Currently, the property contains a single-family home structure.

Project Planner:
Rachel Falcone, Planner
FalconeR@mydelraybeach.com

Review Dates:
Board of Adjustment:
July 1, 2021

- Attachments**
1. Justification Statement
 2. Survey
 3. Site Plan



Currently, the property is 0.18 acres and measures 110.00 feet deep by 71.00 feet wide. Pursuant to LDR Sec. 6.1.3 and the Comprehensive Plan, the applicant is required to provide a 5 foot right-of-way dedication along NE 7th Avenue and a 15 foot right-of-way dedication along NE 3rd Street for the construction of a new single family home. With the Right-of-Way Dedications off of the northern and western properties lines the property will measure approximately 95.00 feet deep by 66.00 feet wide.

Variance Analysis:

Pursuant to LDR Section 2.2.4 (D)(4) and (c), the Board of Adjustment has the authority to grant variances and hear appeals from the provisions of the General Development Standards (Article 4.3). The applicant’s justification statement is attached.

Pursuant to LDR Section 2.4.7 (A)(5)(a) through (f) **Variance Findings**, the following findings must be made prior to the approval of a variance(s):

- 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);**

Staff Analysis: The subject property is 71 feet wide by 110 feet deep according to the survey provided by the applicant on April 19, 2021. Pursuant to LDR Sec. 6.1.3 and the Comprehensive Plan, the applicant is required to provide a 5 foot right-of-way (ROW) dedication along NE 7th Avenue and a 15 foot right-of-way (ROW) dedication along NE 3rd Street. With the right-of-way dedications, the new lot width will be in conformance with the LDRs, however, the lot depth will become non-conforming. Due to the reduction of lot width and depth, the applicant is requesting a reduction in the front setback to allow the home to be consistent with the setbacks of homes within the neighborhood.

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

Staff Analysis: The R-1-A zoning requires a 25 foot front setback per LDR 4.3.4 (K). Due to the right-of-way dedication, the lot width and lot depth has been reduced significantly, therefore, reducing the overall footprint of the proposed single family home. By allowing the structure to encroach within the front, it will not deprive the applicant of rights commonly enjoyed by other properties in the same zoning district.

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

Staff Analysis: Special conditions and circumstances have not resulted from actions of the applicant. Due to the construction of a new residential structure, a right-of-way dedication is required. The resulting dedication would place the property line 5 feet back along NE 7th Avenue and 15 feet back along NE 3rd Street with a 25 feet corner radius from its original location. The applicant is willing to dedicate the right-of-way, and argues the new setback line would create a circumstance where the home is setback further than other homes within the neighborhood.

Development Standards R-1-AA	Required Front Setback
Code Compliance	25 Feet
Proposed with Variance	10 Feet

- 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;**

Staff Analysis: The requirements for setbacks, dedications of right-of-way, and construction of sidewalks is applicable citywide. The applicant seeks relief through a variance which would provide them with a setback less than that of other properties in which the R-1-A zoning district regulations apply. Other properties



throughout the City have been required to seek relief for similar setback requirements due to the right-of-way dedications. Therefore, the granting of the variance will not confer the applicant any special privilege.

- 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; and,**

Staff Analysis: The City of Delray Beach has a required right-of-way dedication for all streets of 50 feet for all (other) local streets, per Always Delray Comprehensive Plan Table MBL-1. When certain provisions of development are met such as new structures being built or existing structures being expanded; right-of-way dedication is required. The dedication of 5 feet and 15 feet with 25 feet corner radius would modify the property lines and ultimately impact the front setback lines.

The required setbacks for the property are located in Table 4.3.4 (k), which includes a 25 foot front setback. The applicant requests to reduce the front setback by 15 feet and establish a 10 foot setback from the property line. The justification statement indicates that this is necessary to align the placement of the homes with other existing homes within the neighborhood.

- 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**

Staff Analysis: The variance request intends to maintain the character of the property and placement of buildings in relationship to the street by maintaining a consistent front setback and side street setback. As a result the granting of a variance would generally not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

Notice: Pursuant to LDR Section 2.4.2 (B)(1)(f), the City shall provide notice of the public hearing in accordance with Section 2.4.2(B)(1)(j) (i), (ii), and (iv) for variances before the Board of Adjustment.

LDR section	Date Posted
2.4.2 (B)(1)(j)(i) - Written notice provided to property owners within 500 feet	June 21, 2021
2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior	June 21, 2021
2.4.2 (B)(1)(j)(iv) - The notice posted at City Hall	June 21, 2021