



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

BOARD OF ADJUSTMENT STAFF REPORT

809 NW 2nd Street

Meeting	File No.	Application Type
September 7, 2023	2022-040-VAR-BOA	Variance
Property Owner	Applicant / Authorized Agent	
7 SW 9 th Street, LLC	Thomas F. Carney., Esq, Carney Stanton P.L.	

Request

Consideration of a variance request from Land Development Regulations (LDR) Section 4.3.4(K) Development Standard Matrix, to allow a 13-foot side street setback, whereas a minimum of 15 feet is required, and to LDR 4.6.15(G)(1) to allow the swimming pool to encroach into the front setback at 15 feet, whereas a minimum of 25 feet is required. .

General Data

Location: 809 NW 2nd Street

PCN: 12-43-46-17-25-002-0172

Property Size: 0.11 Acres (4,738 SF)

Land Use Designation: Low Density (LD)

Zoning District: Single Family Residential (R-1-A)

Existing Land Use: Vacant

Adjacent Zoning and Uses:

- North, South, and West: R-1-A, Single family residences and vacant

South: Community Facilities (CF), formerly the Caring Kitchen

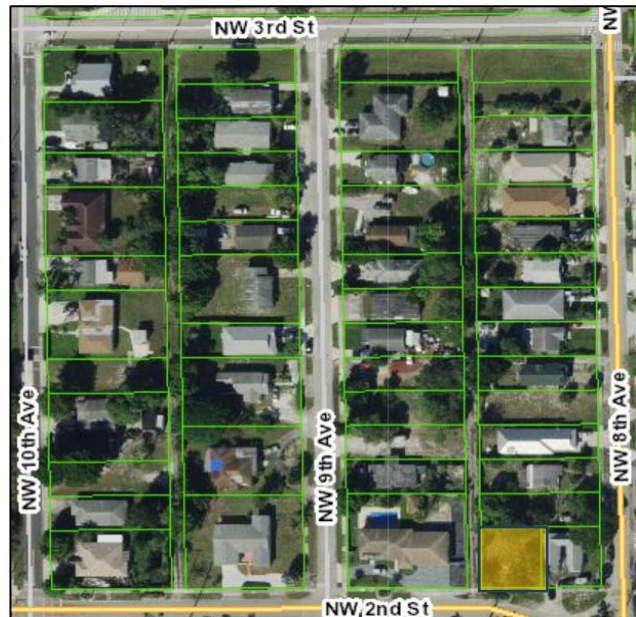
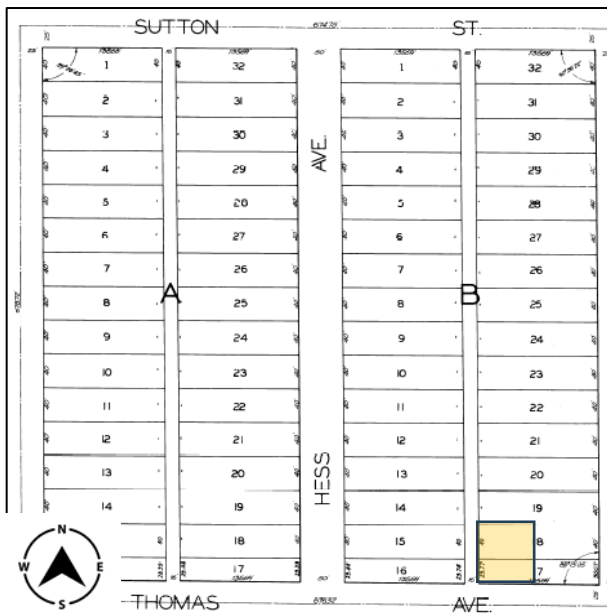


Background and Request

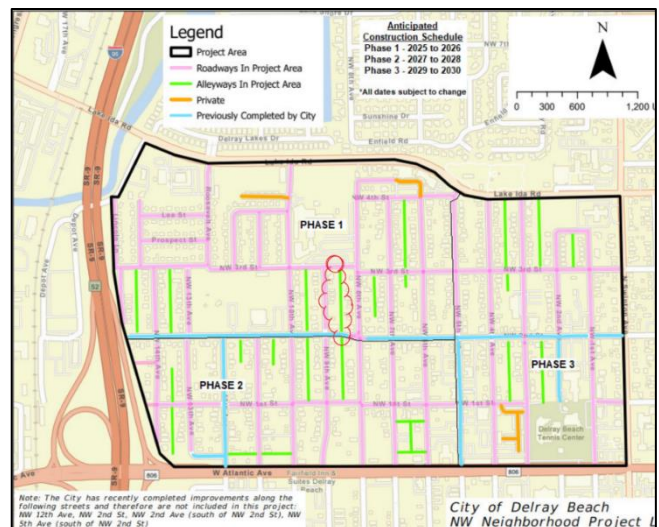
The property consists of W ½ of Lots 17 & 18 Block B, Tourist Nook, according to the Plat thereof, recoded in Plat Book 11, Page 47 of the Public Records of Palm Beach County, Florida. The lot is zoned Single-Family Residential (R-1-A) and located within the Westside Heights Neighborhood. In 2003, a circa 1962 single-family residence and accessory wood structure in the rear was demolished; the lot has since remained vacant.

The lot is non-conforming with respect to the minimum required lot size and depth for R-1-A zoned properties. The original plat of 1927 (depicted below) demonstrates that the original lot dimensions for Lot 17 were 29.77 feet wide by 135.69 feet deep and Lot 18 the lot dimensions were 40 feet wide and 135.69. Currently, the metes and bounds description indicates that the lot was not officially divided by a plat. and, the dimensions of the lot are 67.85 feet wide by 69.77 feet deep which indicates that the lot was subdivided at some point; Pursuant to LDR Section 1.3.3(A), Non-Conforming lots of record, a *nonconforming lot may mean a lot of record that was lawfully created but does not comply with the lot standards of this Code, or a parcel of land that does not meet the lot standard of the applicable code*. While the lot meets the minimum width of 60 feet, it does not meet the size or depth required in the R-1-A zoning district and is considered a nonconforming lot.

Many of the lots in the Tourist Nook Delray Block A and B remain in the original configuration, which makes them non-conforming in the R-1-A zoning district. Few of the lots meet the R-1-A zoning district standards.



Upon redevelopment of the lot, the overall area and width will be reduced by approximately 140 square feet as a two-foot dedication to the adjacent alley is required. Pursuant to **LDR Section 5.3.1(A) Street (rights-of-way)**, *Right-of-way dimensions and dedications, whether public or private, shall be consistent with Table MBL-1 "Street Network and Classification and Improvements" of the Mobility Element*. Per Table MBL – 1, alleys are required a 20 foot right of way. The abutting unimproved alley is 16 feet wide according to the survey provided. The graphic to the right indicates the anticipated improvements as part of the City's Northwest Neighborhood Project. The adjacent alley is included in the planned improvements.



The applicant is requesting two variances associated with the construction of a new two-story, single-family residence.

1. LDR Section 4.3.4(K), Development Standards Matrix: Reduce the side-street (west) setback to 13 feet, whereas a minimum of 15 feet is required.
2. LDR Section 4.6.15(G)(1), Yard Encroachments: Allow a swimming pool to be placed within the front (south) setback, 15 feet from the property line, whereas a minimum of 25 feet is required.

The applicant's justification statements are included as an attachment for the relief requested.

Variance Review and Analysis

Pursuant to **LDR Section 2.2.4(D)(4)(a) and (c), Duties, powers, and responsibility**, *the Board of Adjustment has the authority to grant variances and hear appeals from the provisions of the General Development Standards (Article 4.3) and the provisions of Supplemental District Regulations except where said authority is expressly prohibited, granted to others, or relief is available through another process.*

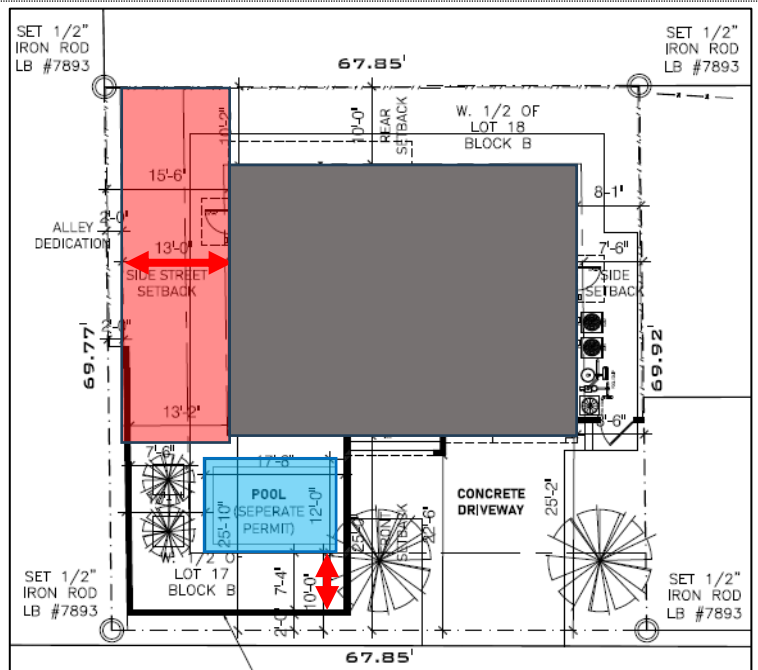
Pursuant to **LDR Section 2.4.7(A)(5)(a-f), Variance Findings**, the following findings must be made prior to the approval of a variance:

- (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);*
- (b) That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning;*
- (c) That the special conditions and circumstances have not resulted from 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;*
- (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,*
- (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.*

In consideration of the criteria listed above, the Board must consider whether special conditions or circumstances exist that are relative to the property, and if the granting of variances for the pool to be constructed in the front yard setback and the reduced side street setback is in harmony with the neighborhood or would be injurious to the neighborhood. The minimum structure size allowed in the R-1-A zoning district is 1,000sf; the minimum size home could be met if the minimum required setbacks are provided. While the lot size is smaller than the minimum requirements applicable to newly created properties today, it is not uncommon to see similar lots from an early 1900's plat that have been subdivided from their original configuration. The included justification statements (attached) for the requests indicates that the property is unique, small in size, and an adequately sized home would be difficult to construct.

While there have been variances granted for pools in the front yard setback area for other residential requests, LDR Section 4.6.15(G)(1), Yard Encroachment, is applied city-wide in Single Family residential zoning districts. The intent of the requirement to not have swimming pools located within the front setback area is to maintain an open streetscape within residential neighborhoods with a residence located at the front setback, while placing private residential amenities in the back or side yard areas of the property.

The applicant states that the variance requests for the side street setback (red) and the pool in the front yard (blue) are the minimal variances given the size of the property and is the best use of the land. The side street is adjacent to an unimproved alley that will not affect the surrounding neighborhood. However, the board should consider if the request for the construction of the pool is the minimal variance and if it will disrupt the pattern of the neighborhood or be detrimental to the public welfare.



Optional Board Actions

LDR Section 4.3.4(K), Side-Street Setback

- A. Move **approval** of the Variance request for **809 NW 2nd St** (2022-040 VAR-BOA) from **LDR Section 4.3.4(K)**, to allow a 13-foot side-street setback, whereas 15 feet is required, by finding that the request is consistent with the findings set forth in LDR Section 2.4.7(A)(5).
- B. Move **denial** of the Variance request for **809 NW 2nd St** (2022-040-VAR-BOA) from **LDR Section 4.3.4(K)**, to allow a 13-foot side-street setback, where 15 feet is required, by finding that the request is consistent with the findings set forth in LDR Section 2.4.7(A)(5).
- C. Move to **continue with direction**

LDR 4.6.15(G)(1), Front Yard Swimming Pool Setback

- A. Move **approval** of the Variance request for **809 NW 2nd Street** (2022-040) from LDR Section 4.6.15(G)(1) to allow the swimming pool to encroach into the front setback 15 feet where 25 feet is required by finding that the request is consistent with the findings set forth in LDR Section 2.4.7(A)(5).
- B. Move denial of the Variance request for 809 NW 2nd Street (2022-040) from LDR Section 4.6.15(G)(1) to allow the swimming pool to encroach into the front setback 15 feet where 25 feet is required by finding that the request is consistent with the findings set forth in LDR Section 2.4.7(A)(5).
- C. Move to continue with direction.

Public 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	August 25, 2023
2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior	August 25, 2023
2.4.2 (B)(1)(j)(iv) - Notice posted at City Hall	August 25, 2023