



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

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

## Board of Adjustment

Meeting: October 1, 2020 | File No.: 2020-185-VAR-BOA | Application Name: 311 SE 3<sup>rd</sup> Street – Variances

### General Data:

**Applicant:** James Sandwick

**Agent:** James Sandwick

**Location:** 311 SE 3<sup>rd</sup> Street

**PCN:** 12-43-46-16-04-095-0242

**Property Size:** 0.0845 Acres

**FLUM:** Single Family Residential

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

### Adjacent Zoning:

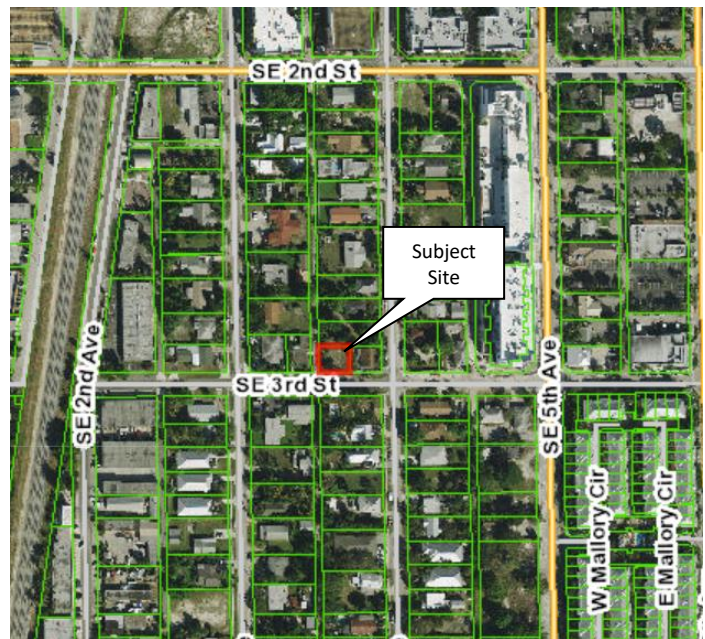
- North: R-1-A
- East: R-1-A
- South: R-1-A
- West: R-1-A

**Existing Land Use:** Vacant

**Proposed Land Use:** Single Family Residential

### Item before the Board:

Consideration of variance requests from Land Development Regulation (LDR) Section 4.3.4 (K) and LDR Section 4.6.15(G) to allow the structure to encroach within the side street setback and to allow a pool in the front setback.



### Optional Board Motions for Action Items:

1. Move to continue with direction
2. Move approval of the variance requests (2020-185-VAR-BOA) from LDR Section 4.3.4 (K) and Section 4.6.15(G) to allow for the structure to encroach 7.5 ft into the required 15 ft side street setback and to allow a swimming pool to encroach 14 ft into the required 25 ft front setback for the property located at 311 SE 3<sup>rd</sup> Street, 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 (2020-185-VAR-BOA) from LDR Section 4.3.4 (K) and Section 4.6.15(G) to allow for the structure to encroach 7.5 ft into the required 15 ft side street setback and to allow a swimming pool to encroach 14 ft into the required 25 ft front setback for the property located at 311 SE 3<sup>rd</sup> Street, 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 requests are to allow a new Single-Family Home structure to encroach 7.5 ft into the required 15 ft side street setback and to allow a swimming pool to encroach within the 25 ft front setback area. Per LDR Section 4.3.4(K) Single-Family Detached Dwellings within the R-1-A Zoning District are required to provide a minimum side street setback of 15 ft Per LDR Appendix A (structure and setback definitions), anything constructed or erected with a fixed location on the ground is considered a structure, and, therefore, is required to meet the minimum setback requirements per the subject zoning district. The proposed single-family home measures 48 ft 9 in wide by 20 ft 3.5 in deep. The additional request is to allow a swimming pool within the front setback area. Per LDR Section 4.6.15(G), swimming pools are allowed within the sides and rear of the properties but are not permitted in the front setback. The proposed swimming pool is encroaching 14 ft into the required 25 ft front setback.

### Project Planner:

Rachel Falcone, Planner  
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### Review Dates:

Board of Adjustment:  
October 1, 2020

### Attachments

1. Justification Statement
2. Site Photos
3. Survey
4. Site Plan

**Background:**

The property consists of The West 65.75 feet of Lot 24, Block 95, Linn's Addition to Osceola Park, as recorded in Plat Book 1, Page 133, of the Public Records of Palm Beach County, Florida. The lot is 65.75 feet wide by 56 feet deep and is located in the Single Family Residential (R-1-A) Zoning District. Based on the property deed dated November 23, 1983, the lot was split into two parts and sold. The property did contain a single-family structure, but it was demolished in 2015 and has been a vacant lot since then.

The request was originally reviewed by the Board of Adjustment at their meeting of August 6, 2020. The Board moved to continue the request to the following meeting

**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).

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);**

**Applicants response:** *"The dimensions of the lot in question (see red highlighted in Figure 1, left) are 56' deep (North/South) by 65.75' wide (East/West). This property originally included the property located immediately to its East (246 SE 4th Ave) but the lot was subdivided to half its original size. As a result, the lot is half the size or less compared with almost all other lots in the R-1-A zone (see green highlighted in Figure 1, left). The very few other lots that are anywhere near as small have had improvements built much closer to their property lines than the current LDR setbacks require."*

**Staff Analysis:** The subject property is 65.75 ft wide by approximately 56 ft deep. This area of the neighborhood (Linn's Addition to Osceola Park) originally consisted of 96 lots with frontages ranging from 43 ft. to 59 ft and depths of 132.5 ft. The subject property was originally platted as Lot 24 which was 56 ft wide by 132.5 ft deep with the frontage facing SE 4<sup>th</sup> Avenue, side street facing SE 3<sup>rd</sup> Street, and the rear on an alley way. Due to the lot split, it created an abnormally small lot that has an orientation of the front setback taken from SE 3<sup>rd</sup> Street and the side street setback taken from the alley way. The side street setback requirement of 15 ft is a minimum development standard required to be provided by all single-family dwellings located within this zoning district. Due to the size of the lot, the applicant is requesting to provide a 7.5 ft side street setback and a 2 ft Right-of-Way (ROW) dedication to the Alley Way to be able to construct a reasonably sized single-family home.

The proposed structure will meet the setback requirements for the front, side interior, and rear. With the 10 ft rear setback and 7.5 ft side interior setback, it does not allow the property sufficient space to construct a swimming pool. Pursuant to LDR Sec. 4.6.15(G), swimming pools are not permitted in the front setback. Due to the size of the lot, the only enough space to provide a swimming pool is in the front setback. The proposed pool location will encroach into the required 25 ft front setback by 14 ft. This will leave a front setback of 11 ft 3.5 in. for the proposed swimming pool from the property line.

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

**Applicants response:** *"Consider that the LDR for R-1-A requires off-street parking for two vehicles, which cannot be located in front or side setbacks. Fortunately for 311 SE 3rd St, the City has confirmed that a one car garage with a car lift installed will meet this requirement. Still, a one car garage with a car lift will consume approximately 250 square feet of space, which will leave **less than 600 square feet** of area on the ground level to build."*



*In order to build a home that will accommodate our small, active children as well as older family members who are unable to climb stairs, our aim is to build a home with a “main level” (kitchen, living room, dining room, powder room, staircase) located on the ground floor. The buildable area of approximately 600 square feet, after setbacks and required parking area, is not enough area to reasonably fit such a space consistent with minimal functional requirements.*

*The following are “rights commonly enjoyed by other properties subject to the same zoning” (R-1-A):*

- 1. To be allowed to build a home with sufficient space to contain typical “main level” features (kitchen, living room, dining room, powder room and staircase) located on the ground floor; and**
- 2. To be allowed to build a swimming pool.**

*Due to the subdivision of 311 SE 3rd St and resultantly disproportionate and harsh setbacks (smaller lots are typically subject to lesser setback requirements), this property unfairly does not enjoy these rights which are commonly enjoyed by other properties in R-1-A.*

*One need only glance at a map showing other properties in the R-1-A zone to see that any other home in the R-1-A zone would easily be allowed to build an adequately-sized “main level” on their ground floor if desired (and most have done so, evidently, as the majority of homes in this zone are, in fact, single-story homes). In the case of 311 SE 3rd St, as the graphic to the left demonstrates, this property is deprived of this right because once the current setbacks and parking requirements are taken into consideration, a mere 600 square feet of usable area remain, and that is not enough area to build such a space.*

*Similarly, other properties in R-1-A would be allowed to build a swimming pool, if desired, due to their proportionately appropriate setbacks and parking requirements. In the case of 311 SE 3rd St, however, the buildable footprint is so small in comparison to other R-1-A homes that only one side of the property has the potential to have enough space to be considered a “yard” (the South side). And because, per LDR 4.6.15(G), a swimming pool cannot be built in a “front setback” (which the South side of 311 SE 3rd St is considered), or within 10 feet of side interior, street or rear property line, a pool currently cannot realistically be built on this lot.*

*The subdivision of the lot in question and failure to appropriately adjust the corresponding setback and yard encroachment requirements has created an inherent inequity. Fortunately, this inequity can be cured by granting a variance to restore these rights to the property through leniency of the LDRs involved.”*

**Staff Analysis:** Most lots throughout neighborhoods in Single Family Residential zoning districts meet the minimum lot requirements based on the LDRs. The lots that meet the minimum lot requirements are typically able to meet all the minimum setback requirements within the zoning district to allow for construction of a structure. The subject property was split in 1983, therefore, creating a lot of unique size with only 65 ft in width and 56 ft in depth in the neighborhood. The literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning that meet the minimum required lot dimensions that the subject lot does not have. Within the City of Delray Beach's Land Development Regulations, a conventional corner lot requires a minimum of 15 ft side street setback, however, due to the size of the subject property by complying to the side street setback requirement, it would not allow for the construction of a reasonably sized single family home. With the shortness of depth of the property it allows the structure to meet the front, side interior, and rear setback requirements but does not provide sufficient area for the construction of a swimming pool in those areas. The only sufficient area for a swimming pool is available in the front setback, however, it will decrease the front setback area to 11 ft. 3.5 in. By allowing the structure to encroach within the side street setback and the swimming pool to encroach within the front setback 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;**



**Applicants response:** *"The special conditions and circumstances described within this letter are specific and directly related to 1) the small size of the property itself, 2) the applicable LDRs called into question, and 3) the fact that the LDRs were written for much larger parcels of land. These conditions and circumstances are not tied to the applicant or to any other individual in any way.*

*No action I have taken could possibly have had any influence on the fact that 311 SE 3rd St was subdivided into a much smaller size than any of the other properties in the same zone (R-1-A), and because the setback requirements and yard encroachment LDRs were designed for much larger properties, they currently prohibit the construction of a home that could possibly enjoy the same rights as other homes in the same zone.*

*My involvement with the property has no bearing on the inequity that inherently exists by virtue of the property being 1) significantly smaller than its R-1-A peers and 2) unfairly still subject to the same disproportionately restrictive LDRs."*

**Staff Analysis:** The subject property currently is in conformity with the minimum lot width and lot frontage with the development standards pursuant to the LDRs for the Single Family Residential (R-1-A) zoning district. Due to lot split being recorded, it has created non-conformities of the minimum lot size and lot depth. The lot was split prior to the owner purchasing the property; therefore, special conditions and circumstance have not resulted from actions of the applicant. Without the variances the proposed requests would create non-conformities, however, the requested setback reliefs are the minimum the applicant is able to provide while still being able to construct a reasonably sized single family home and swimming pool on the property. The chart below identifies the development standards per LDR Section 4.3.4(K) for the subject property:

| Development Standards<br>R-1-A | Min. Lot Size:<br>7,500 sq. ft. | Min Lot Width:<br>60 ft. | Min. Lot Frontage:<br>60 ft. | Min. Lot Depth:<br>100 ft. |
|--------------------------------|---------------------------------|--------------------------|------------------------------|----------------------------|
| Existing Property              | 3,682 sq. ft.                   | 65.75 ft.                | 65.75 ft.                    | 56 ft.                     |
| Code Compliance                | Not In Compliance               | In Compliance            | In Compliance                | Not In Compliance          |

- 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;

**Applicants response:** *"Sharply in contrast to the notion of conferring a special privilege to the applicant, the purpose of the requested variances is to restore rights to the applicant: rights of which the applicant has been unduly deprived, and which are commonly enjoyed by other properties in the R-1-A zone. These rights have been granted to and enjoyed by the other properties in R-1-A for many years. Granting the requested variances will merely have the effect of ending and correcting the inequitable policy of enforcing the same setback and yard encroachment requirements on the applicant's roughly 1/12 acre lot as are enforced on the many more typically sized lots in R-1-A of 1/6-acre (twice the size or larger compared to the applicant's lot).*

*The idea of conferring a "special privilege" implies that the applicant would resultantly enjoy a right, immunity or benefit beyond the advantages of most. Assuming the requested variances are approved, the applicant will still be subject to a more constrained site plan than the other properties in R-1-A and there is no special privilege that the applicant will enjoy that is "beyond the advantages of most" in R-1-A.*

*In the case of 311 SE 3rd St, due to its peculiar size and layout, there is effectively only one "yard", which happens to be defined as the "front yard". The "side street" (West side) will be used as a driveway. The "rear" will be only 10 feet, and the "side interior" will be only 7.5 feet. The "front" will be 25 feet, and it is therefore the only area large enough to locate a swimming pool."*





**Staff Analysis:** The subject property is a buildable lot; therefore, the applicant is permitted to construct a structure on the property. If the proposed structure were to meet the LDR requirements, the construction would not allow for a reasonably sized single-family home and would not allow a swimming pool in the front setback. Due to the uniqueness in size of the subject property, the variances are requesting the minimum encroachments into the side street and front setback to allow for the construction of a single-family home and an amenity such as a swimming pool. With the unusual lot width and lot depth of the subject site, granting the variance will not confer onto the applicant any special privilege that is denied to other lands under the same zoning, it will simply allow the land to be properly developed.

- 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,**

**Applicants response:** *“Currently, considering applicable setback and parking requirements, 311 SE 3rd St would only have a remaining buildable area of approximately 600 square feet. After accounting for exterior wall thickness of 8”, the usable interior square footage is closer to 500 square feet, which is less than is needed to build a typically-designed “main level” for a single family home (a reasonable use of the land). After granting these setback variances, approximately 900 square feet of usable space will be available. Taking out the one car garage with lift area leaves approximately 650 square feet of usable interior space. This is the minimum required square footage required to allow for a reasonable kitchen/living/dining area to be built on the property along with a powder room and staircase, all of which are typical and normal for a “main level” layout. The layout I seek to build would require 500+ sqft for the open concept kitchen/living/dining area and ~150 sqft for the stairs and powder room area.*

*The use of the land to build a “main level” with these features can safely be considered a reasonable use of the land as this is something that has been done by many other homes in the R-1-A zone and is customary and typical. And because the requested variances are the minimum required to free up the amount of space needed, it follows to state that the requested “variance is the minimum variance that will make possible the reasonable [as explained] use of the land,” in the words of Finding (e) from LDR 2.4.7(A)5*

*Considering the significantly larger size (generally more than double) of other properties in R-1-A, and the fact that those properties are explicitly allowed by the LDR to install a swimming pool in a similar juxtaposition relative to the parcel of land as what is being requested by this variance, it follows to assert that this variance would be “in harmony with the general purpose and intent of existing regulations.”*

**Staff Analysis:** The proposed single-family structure encroachment into the side street setback and the construction of the swimming pool into the front setback is the minimum variance requests that make possible for the reasonable use of the land, building, and structure.

- 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**

**Applicants response:** *“So long as appropriate fencing and landscaping are installed (and they will be), using the “front” (South) yard for a swimming pool will not cause any detrimental impact to the neighborhood or public welfare.”*

**Staff Analysis:** While the variance requests are not in harmony with the general purpose and intent of the existing regulations, granting it would not be injurious to the neighborhood, or otherwise detrimental to the public welfare. The variance requests are the minimum requests to allow for the construction of a reasonably sized single-family structure and swimming pool in the front setback. Although swimming pools are prohibited in the front setback area, the applicant is proposing to install a fence and landscaping to provide additional screening in the front setback area. The proposed single-family structure will complement the single-family neighborhood despite the encroachment into the required side street setback and a swimming pool in the front setback.



**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    | July 27, 2020 |
| 2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior | July 27, 2020 |
| 2.4.2 (B)(1)(j)(iv) - The notice posted at City Hall                               | July 27, 2020 |