



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

BOARD OF ADJUSTMENT STAFF REPORT

230 NE 7th Avenue

| Meeting | File No. | Application Type |
|--------------------|--|------------------|
| March 6, 2025 | 2024-061-VAR-BOA | Variance |
| Property Owner | Applicant / Authorized Agent | |
| Step Brothers, LLC | Christina Bilenki, Miskel Backman, LLP | |

Request

Consideration of two variance requests from Land Development Regulations (LDR) Section 4.3.4(K), Development Standards Matrix - Residential Zoning Districts, to reduce both the north and south side-interior setbacks to nine feet, one inch, whereas a minimum of 15 feet is required, associated with the redevelopment of the property to accommodate a two-story duplex.

General Data

Location: 230 NE 7th Avenue

PCN: 12-43-46-16-01-114-0142

Property Size: 0.1886 Acres (8,216 SF)

Land Use Designation: Medium Density (MD), 5-12 du/ac

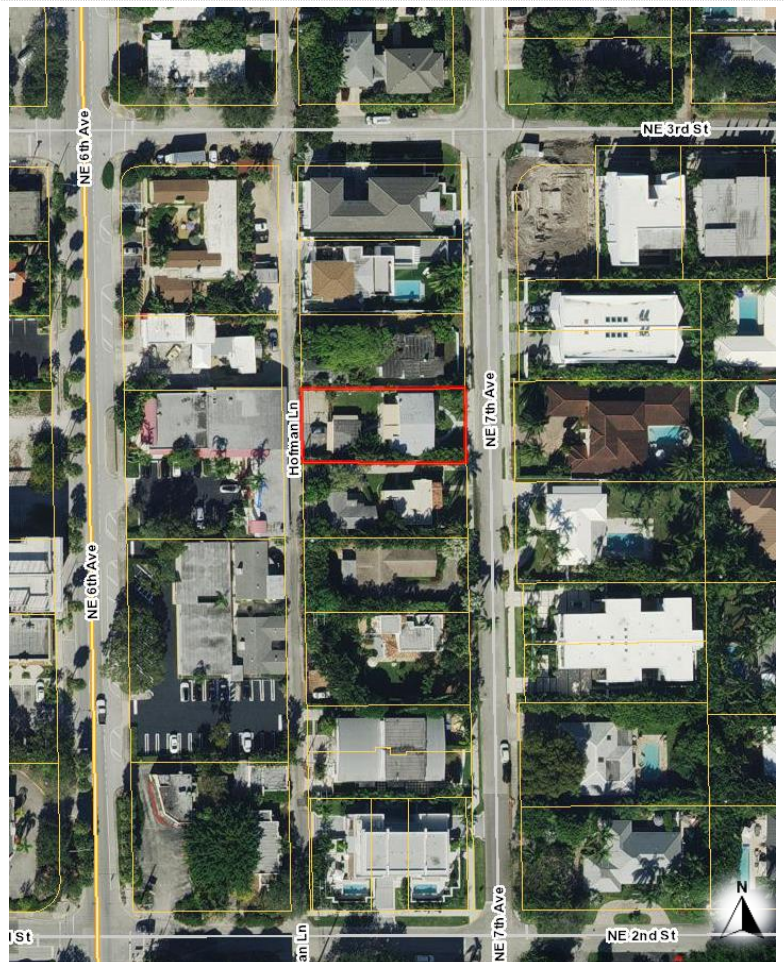
Zoning District: Medium Density Residential (RM)

Existing Land Use: One-Story Duplex with detached garage

Adjacent Zoning:

- North, East, South: RM
- West: Central Business (CBD) District

Legal Description: Lot 14, less the west 46.0 feet of the south 1.0 feet thereof, block 114, Delray Beach, formerly Town of Linton, according to the plat thereof as recorded in plat book 1, page 3 of the public records of Palm Beach County, Florida.



Background

The subject property was developed in 1950 with the new construction of a one-story duplex and a two-car, detached garage at the southwest corner of the property. The overall scale and form of the original structure is indicative of the modest post-war construction trends for housing at that time.



The original lot configuration has been slightly modified since it was platted in 1895; the south one foot of the west 46 feet of the property has been conveyed to the property to the south – see area circled in blue. The conveyance of this area occurred in 1988, likely given the encroachment of the building on the property to the south.



The existing setbacks for the duplex are conforming with the current requirements, with the exception of the side interior setbacks, which measure 6.6 ft on the south and 7.4 ft. on the north. **LDR Section 1.3.5(A), Nonconforming structures: Definition**, states, a nonconforming structure shall mean any structure or building that was lawfully developed but does not comply with the following standards governed by the Land Development Regulations: size, height, coverage, setbacks, or other location or design aspects. Therefore, when property is redeveloped, the provision of **LDR Section 4.3.1(A), Application of District Regulations**, applies, which states, no building, structure, or land shall hereafter be used or occupied, and no building, structure, or part thereof, shall hereafter be constructed, erected, moved, reconstructed, or structurally altered except in conformity with all of the regulations herein specified for the zoning district in which it is located.

Request

The applicant is requesting two variances from **LDR Section 4.3.4(K), Development Standards Matrix – Residential Zoning Districts**, to reduce both the north and south side-interior setbacks to nine feet, one inch, whereas a minimum of 15 feet is required, associated with the redevelopment of the property to accommodate a two-story duplex. The property measures approximately 60.20 feet by 135.08 feet for a total lot area of approximately 8,216 square feet.

The applicable Development Standards for the new construction of a duplex in the RM zoning district require the following:

- Lot Area (min.): 8,000 square feet
- Lot Width & Frontage (min.): 60 feet
- Lot Depth (min.): 100 feet
- Lot Coverage (max.): 40%
- Open Space (min.): 25%
- Front Setback (min. 1st & 2nd / 3rd story): 25 feet / 30 feet
- Side Interior (min. 1st & 2nd / 3rd story): 15 feet / 30 feet
- Rear (min.): 25 feet

Upon redevelopment of the property, right-of-way dedications will be required along both NE 7th Avenue and Hofman Lane (alley). Per the Mobility Element of the Always Delray Comprehensive Plan, a 50-foot ultimate right of way is required along NE 7th Avenue (local collector), while 40 feet remains from the original platted right-of-way (Bay Street). As a result, a right-of-way dedication of five feet is required. Hofman Lane is classified as an alley and has an ultimate right-of way requirement of 20 feet, whereas 16 feet remains from the original plat. Therefore, a right-of-way dedication of two feet is required.

It is important to note that the property will measure less than 8,000 sq. ft. (approximately 7,789.6 sq. ft.) subsequent to the dedications. However, LDR Section 4.3.4(B)(1), Lot Area, specifies that “*said area shall be calculated prior to dedication of additional land for right-of-way purposes...*” Therefore, the property could still be redeveloped with a new duplex.

Note: While the applicant has provided information indicating the construction of a two-story duplex, the resulting building form is not part of the consideration, as it may contain just one-story, or maximize the 35-foot height limit. The use type would be limited to either a duplex or single-family residence given the lot area.

Variance Review and Analysis

Pursuant to **LDR Section 2.1.7(E)(1)(c)1, Board of Adjustment: Duties, powers, and responsibilities**, the Board is authorized to hear and grant variance requests to **Base District Development Standards, LDR Section 4.3.4**, for single-family or duplex uses, unless otherwise stated.

Pursuant to **LDR Section 2.4.11(A), Relief: Variances**, *a variance is a departure from the dimensional or numeric requirements of these land development regulations where such variance will not be contrary to the public interest and where, owing to the existing conditions peculiar to the property and not the result of the actions of the landowner, a literal enforcement of the regulations would result in unnecessary and undue hardship.* There are six findings listed below that must be found in the positive to only the subject property. While variances are applied city-wide, each request should be reviewed separately and only for the request that is presently being made. There must be special circumstances or uniqueness to the subject property. Consideration should be made if the action of the request is a result of the applicant.

Pursuant to **LDR Section 2.4.11(A)(5) (a-f), Variance Findings**, the following findings must be made prior to the approval of a variance:

- 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;*
- 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 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; 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.*

The property is zoned RM where a mix of single-family residences (subject to R-1-A development standards) and duplex (two-unit, single-family attached) and multi-family buildings are allowed. A multi-family development, which contains three or more residential units, requires a minimum lot area of 8,000 sq. ft. and the number of units is determined by density limitations. A duplex, however, is not subject to density limitations, but does require a minimum lot area of 8,000 sq. ft. A single-family residence requires a minimum lot area of 7,500 sq. ft. and is subject to smaller setbacks on the side interior (7.5 ft) and rear (10 ft.) than what is required for a duplex or multi-family development. The larger side-interior setbacks for a duplex or multi-family building are to reduce the bulk of the buildings that tend to be of a larger scale than single-family residences; and, to provide relief in zoning districts where a single-family residence may be abutting the property to allow for more privacy as a single-family residence has a smaller setback.

In consideration of the criteria listed above, the Board must consider whether special conditions or circumstances exist that are relative to the property and the literal application of the zoning code would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning for a duplex. The clearing of the property for redevelopment does not present special circumstances that would prohibit new construction from meeting the minimum required setbacks. While there is a slight deviation at the southwest corner of the property, this one-ft. by 46-ft. area is not likely to be the cause to deprive the applicant of rights enjoyed by other properties containing a duplex. Nevertheless, a duplex that conforms with the minimum requirements could still be constructed on the lot. While there are three other fee-simple duplex buildings within the same block, those duplex buildings are located on wider lots and were also designed to meet the minimum development standards.

Granting of the variance to allow a smaller side interior setback on both the north and south sides of the property would confer a special privilege as there is not a special condition or circumstance that exists. While the minimum Development Standards for a duplex regarding lot size and dimensions are met, the applicant desires a larger duplex that does not meet the minimum setbacks. Given the existing lot area and configuration, the construction of a single-family residence may be more appropriate, or, retaining the existing duplex, which can be modified and expanded in conformance with the development standards.

The applicant's justification statement (see attached) primarily bases the request on the dedication of land for right-of-way purposes and the resulting substandard lot area as the need to reduce the setbacks.



Optional Board Actions

Side-Interior Setback (North)

- A. Move **approval** of the Variance request for **230 NE 7th Avenue** (2024-061-VAR-BOA) from **LDR Section 4.3.4(K), Development Standards Matrix – Residential Zoning Districts**, to reduce the existing side-interior setback (north) to nine feet, one inch, whereas a minimum of 15 feet is required, associated with the removal of an existing one-story duplex and accessory structures, followed by the development of a proposed two-story duplex, by finding that the request is consistent with the findings set forth in **LDR Section 2.4.11(A)(5)(a-f)**.
- B. Move **denial** of the Variance request for **230 NE 7th Avenue** (2024-061-VAR-BOA) from **LDR Section 4.3.4(K), Development Standards Matrix – Residential Zoning Districts**, to reduce the existing side-interior setback (south) to nine feet, one inch, whereas a minimum of 15 feet is required, associated with the removal of an existing one-story duplex and accessory structures, followed by the development of a proposed two-story duplex, by finding that the request is not consistent with the findings set forth in **LDR Section 2.4.11(A)(5)(a-f)**.
- C. Move to **continue with direction**.

Side-Interior Setback (South)

- A. Move **approval** of the Variance request for **230 NE 7th Avenue** (2024-061-VAR-BOA) from **LDR Section 4.3.4(K), Development Standards Matrix – Residential Zoning Districts** to reduce the side-interior setback (south) to 9 feet, 1 inch, whereas a minimum of 15 feet is required, associated with the removal of an existing one-story duplex and accessory structures, followed by the development of a proposed two-story duplex, by finding that the request is consistent with the findings set forth in **LDR Section 2.4.11(A)(5)(a-f)**.
- B. Move **denial** of the Variance request for **230 NE 7th Avenue** (2024-061-VAR-BOA) from **LDR Section 4.3.4(K), Development Standards Matrix – Residential Zoning Districts** to reduce the side-interior setback (south) to 9 feet, 1 inch, whereas a minimum of 15 feet is required, associated with the removal of an existing one-story duplex and accessory structures, followed by the development of a proposed two-story duplex, by finding that the request is not consistent with the findings set forth in **LDR Section 2.4.11(A)(5)(a-f)**.
- C. Move to **continue with direction**.

Public Notice

Pursuant to **LDR Section 2.6.3(G)**, Required Public Notice, Variances, in accordance with Section 2.6.2 (A), (B), (C), and (D) shall be provided prior to a Public Hearing.

| LDR Section | Date Posted |
|--|-------------------|
| 2.6.2(A) - Written mailed notice provided to property owners within 500 feet | February 19, 2025 |
| 2.6.2(B) - Posted property notice (sign) | February 25, 2025 |
| 2.6.2(C) - Agenda notice posted at City Hall | February 25, 2025 |
| 2.6.2(D) - Notice posted on the City's web page at least ten days prior | February 25, 2025 |