

HISTORIC PRESERVATION BOARD

CITY OF DELRAY BEACH

STAFF REPORT

MEETING DATE: May 1, 2019

ITEM: 212 Seabreeze Avenue, Individually Listed to the Local Register of Historic Places – Certificate of Appropriateness (2018-191), Variances (2019-130) to reduce the front yard setback for a pool and to reduce the finished floor elevation for the new first floor addition, and Waiver (2019-131) to the Visual Compatibility Standards to allow the new addition to be constructed in a manner that is not secondary nor subordinate to the existing structure.

RECOMMENDATION: Approve the Certificate of Appropriateness, Variance, and Waiver.

GENERAL DATA:

Owner/Applicant..... Michael and Antonina Marco

Agent:..... Jeffrey Silberstein, AIA - Silberstein Architecture

Location:..... South side of South Vista Del Mar Drive, between Seabreeze Avenue and Andrews Avenue

Property Size:..... 0.26 Acres

Historic District: Individually Listed to the Local Register of Historic Places

Zoning:..... R-1-AA (Single Family Residential)

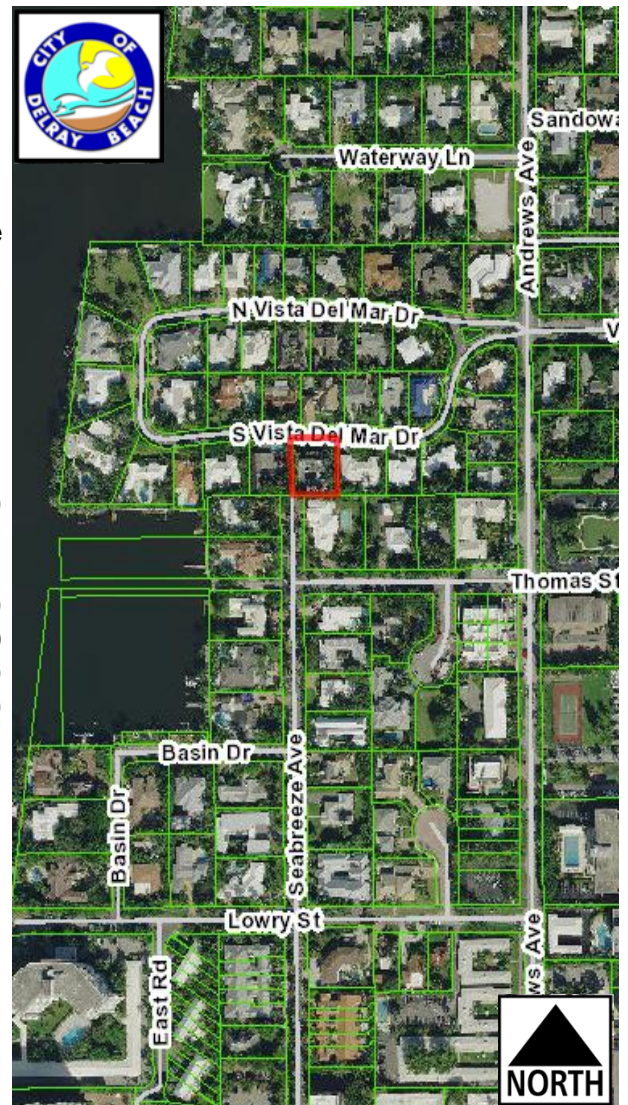
Adjacent Zoning:.....

North:	R-1-AA (Single Family Residential)
East:	R-1-AA (Single Family Residential)
South:	R-1-AA (Single Family Residential)
West:	R-1-AA (Single Family Residential)

Existing Future Land Use Designation:..... LD (Low Density Residential)

Water Service:..... Public water service is provided on site.

Sewer Service:..... Public sewer service is provided on site.



ITEM BEFORE THE BOARD

The item before the Board is approval of a Certificate of Appropriateness (2018-191), Variance (2019-130), and Waiver (2019-131) associated with the existing single-family residence located at **212 Seabreeze Avenue, Individually Listed to the Local Register of Historic Places**, pursuant to Land Development Regulation (LDR) Section 2.4.6(H), 2.4.7(A), and 2.4.7(B).

BACKGROUND & PROJECT DESCRIPTION

The property is located within the single-family R-1-AA zoning district and individually listed to the local register of historic places.

The subject property consists of Lot 21 and the West 35 Feet of Lot 22, Delray Beach Esplanade and is zoned Single Family Residential (R-1-AA). The original structure was built in 1955 and contained 1,594 square feet, including a glass entry vestibule on the ground floor. Named for the original owner, Sewell C. Biggs, and designed by architect Paul Rudolph, the structure is representative of 20th century regional modernism tailored for the Florida environment.

Paul Rudolph studied architecture as an undergraduate at Alabama Polytechnic and he completed graduate studies at Harvard under Bauhaus founder Walter Gropius. In 1941, Rudolph began his career as an apprentice and later a partner in Ralph Twitchell's architectural practice in Sarasota, Florida. Together, Rudolph and Twitchell's work became known as part of the "Sarasota School" of architecture. Common characteristics of the Sarasota School of Architecture are a strict adherence to function, modular composition, articulation of individual building components and attention to local climate and terrain. (Paul Rudolph Foundation website)

In 1952 Paul Rudolph left Twitchell's office to open his own firm. He began traveling between Florida and New York to lecture at various schools in the Northeast. Then, in 1954 Rudolph was awarded the "Outstanding Young Architect Award" in an international competition, this recognition led to large projects around and outside Florida. He was invited to serve as the Dean of the Yale School of Architecture, he served in this capacity from 1958-1965. He is known as one of America's most important Late Modernist architects. (Paul Rudolph Foundation website)

It is important to the history of the Sewell C. Biggs house, to note that the current project architect, Jeffrey Silberstein was a student of Ralph Twitchell. Mr. Silberstein stated that his *"knowledge and experience in the modernist movement has allowed him to design a compatible and coherent modern addition"* to the Sewell C. Biggs house.

In the early 1980's a 1,156 1st floor addition was constructed on the north side of the property. It was at this time that the kitchen was relocated from the original structure to the addition.

At its meeting of June 15, 2005, the Historic Preservation Board recommended approval for individual historic designation of 212 Seabreeze Avenue to be known as The Sewell C. Biggs House. At its meeting of July 5, 2005, the City Commission passed Ordinance 50-05 that listed the subject property on the Local Register of Historic Places.

At its meeting of October 18, 2006, the HPB approved Certificate of Appropriateness (2006-454) for a two-story, 1,936 square foot, handicap accessible addition to the existing structure on the South elevation, which was constructed in 2007-2008.

At its meeting of October 6, 2009, the HPB recommended approval of the Ad Valorem Tax Exemption Application for the improvements stated above as approved with COA 2006-454. In addition to the components associated with the approved addition, all interior improvements were eligible for the exemption. At its meeting of October 20, 2009, the City Commission passed Resolution 52-09 granting an Ad Valorem Tax Exemption to Virginia Courtenay (property owner) for the historic rehabilitation of the property located at 212 Seabreeze Avenue.

At its meeting of July 18, 2018, the HPB approved a COA request for the demolition of an existing 1,936 square foot, handicap accessible addition to the existing structure on the South elevation; and, demolition of the first floor addition constructed in 1981 on the North elevation. The request also included revocation of the existing Ad Valorem Tax Exemption Covenant (ORB 24208, Pages 718-721). HPB recommended approval of the revocation at the July 18, 2018 meeting and the City Commission approved the request via Resolution 99-18 at their August 21, 2018 meeting. Following city review and approval, the Palm Beach County Board of Commissioners approved the request to revoke the Ad Valorem Tax Exemption at their September 24, 2018 meeting subject to a repayment of the taxes owed for the difference in the exemption plus interest, which was approximately \$5,017.41.

The subject Certificate of Appropriateness request is for the construction of a new 2-story addition, variances to reduce the front yard setback for a pool and to reduce the finished floor elevation for the first floor of the new addition and a waiver to the Visual Compatibility Standards to allow the new addition to be constructed in a manner that is not secondary nor subordinate to the existing structure.

ANALYSIS OF PROPOSAL

Pursuant to Land Development Regulation (LDR) Section 2.4.6(H)(5), prior to approval, a finding must be made that any Certificate of Appropriateness which is to be approved is consistent with Historic Preservation purposes pursuant to Objective A-4 of the Land Use Element of the Comprehensive Plan and specifically with provisions of Section 4.5.1, the Delray Beach Historic Preservation Design Guidelines, and the Secretary of the Interior's Standards for Rehabilitation.

ZONING AND USE REVIEW

Pursuant to LDR Section 4.3.4(K) - Development Standards: properties located within the R-1-AA zoning district shall be developed according to the requirements noted in the chart below. Provided the setback variance for the swimming pool is approved, the proposal is in compliance with the applicable requirements; therefore, positive findings are made.

Development Standards	Required	Existing	Proposed Structure	Proposed Pool
Open Space (Minimum, Non-Vehicular)	25%	63.4%	29%	N/A
Setbacks (Minimum):				
Front (North)	30'	39'1" - 44'1"	39'1" - 44'1"	13'1"*
Side Interior (East)	10'	22'4" - 30'4"	10'8" - 34'2"	28'10"
Side Interior (West)	10'	22'6" - 30'7"	33'7" - 33'10"	29'1"
Rear (South)	10'	47'3"	10'	N/A
Height (Maximum)	35'	21'	23'	N/A

*Variance to the required front setback requested for the proposed pool

SUPPLEMENTAL DISTRICT REGULATIONS

Pursuant to LDR Section 4.6.9(C)(2) - Parking Requirements for Residential Uses: two spaces per dwelling unit. Tandem parking may be used provided that in the Single Family (R-1 District) or RL District, no required parking space may be located in a required front or street side setback.

The proposal includes a new 2-car garage and parking court with access taken off of Seabreeze Avenue which is in the rear (south side) of the property; therefore, required parking is provided for outside of the front or side street setback areas.

Pursuant to LDR Section 4.6.15 LDR Section 4.6.15(G)(1), Swimming Pool, Whirlpools, & Spas: Yard Encroachment, swimming pools, the tops of which are no higher than grade level, may extend into the rear, interior or street side setback areas but no closer than ten feet (10') to any property line. Swimming pools shall not extend into the front setback area.

A variance has been submitted to reduce the required front yard setback from 30' to 13'1" on the north side of the property for a 50' x 10' pool. The variance request is analyzed in further detail below.

<p style="text-align: center;">LDR SECTION 4.5.1 HISTORIC PRESERVATION: DESIGNATED DISTRICTS, SITES, AND BUILDINGS</p>
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Pursuant to LDR Section 4.5.1(E), Development Standards, all new development or exterior improvements on individually designated historic properties and/or properties located within historic districts shall, comply with the goals, objectives, and policies of the Comprehensive Plan, the Delray Beach Historic Preservation Design Guidelines, the Secretary of the Interior's Standards for Rehabilitation, and the Development Standards of this Section.

Pursuant to LDR Section 4.5.1(E)(2)(1) – Minor Development.

The subject application is considered "Minor Development" as all development on individually designated properties in all zoning districts is Minor."

Pursuant to LDR Section 4.5.1(E)(4) – Alterations: in considering proposals for alterations to the exterior of historic buildings and structures and in applying development and preservation standards, the documented, original design of the building may be considered, among other factors.

The existing structure, and its remaining original form, have been considered with respect to the proposed addition and site improvements.

Pursuant to LDR Section 4.5.1(E)(5) - Standards and Guidelines: a historic site, building, structure, improvement, or appurtenance within a historic district shall only be altered, restored, preserved, repaired, relocated, demolished, or otherwise changed in accordance with the Secretary of the Interior's Standards for Rehabilitation, and the Delray Beach Historic Preservation Design Guidelines, as amended from time to time.

The applicable Standards are noted below:

Standard 2

The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

Standard 5

Distinctive materials, features, finishes and construction techniques or examples of craftsmanship that characterize a property will be preserved.

Standard 9

New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

Standard 10

New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

The proposed addition and improvements to the property are generally visually compatible and in direct relationship with the scale of the existing structure. The existing structure sits 14'4" elevated above the crown of road and 8'4" above the existing 6' finished floor elevation. A small wood sided and glass vestibule provides access to the 2nd floor of the structure. The "first floor" was originally designed as an exterior living area or covered porch styled area. The habitable living areas are all situated on the 2nd floor of the structure. The proposal involves enclosing the "first floor" area with glass walls to allow for an open view through the bottom of the structure in an effort to preserve the appearance of the open porch and the elevated massing of the home.

A new 2-story addition is proposed on the south side of the structure, situated to the rear of the building. The addition utilizes a large hyphen to set the new addition back from the existing structure placing the massing of the addition away from the existing structure; thus, allowing for removal of the addition in the future. The new work is differentiated from the old through the use of stucco, glass and wood in a different manner than existing. The proposal will not destroy historic materials that characterize the property.

The proposal involves restoration of a portion of the original window opening and louvers on the north/front elevation facing South Vista Del Mar Drive. This opening was originally covered with louvers to allow for airflow as the structure did not originally have central air conditioning. Two new large windows are proposed on the north elevation and these windows were not original to the design of the structure; thus, they should be eliminated from the north elevation in an effort for true restoration preserving the historic integrity and character of the property (**Standards 2, 5 & 9**). This item has been attached as a condition of approval.

Provided the condition of approval is addressed and based upon the above, positive findings are made with respect to compliance with the Standards.

Pursuant to LDR Section 4.5.1(E)(7) - Visual Compatibility Standards: new construction and all improvements to both contributing and noncontributing buildings, structures and appurtenances thereto within a designated historic district or on an individually designated property shall be visually compatible. In addition to the Zoning District Regulations, the Historic Preservation Board shall apply the visual compatibility standards provided for in this Section with regard to height, width, mass, scale, façade, openings, rhythm, material, color, texture, roof shape, direction, and other criteria set forth elsewhere in Section 4.5.1. Visual compatibility for minor and major development as referenced in Section 4.5.1(E)(2) shall be determined by utilizing criteria contained in (a)-(m) below. Visual compatibility for all development on individually designated properties outside the district shall be determined by comparison to other structures within the site.

The following criteria apply:

- (a) **Height:** The height of proposed buildings or modifications shall be visually compatible in comparison or relation to the height of existing structures and buildings in a historic district for all major and minor development. For major development, visual compatibility with respect to the height of residential structures, as defined by 4.5.1(E)(2)(a), shall also be determined through application of the Building Height Plane.
- (b) **Front Facade Proportion:** The front facade of each building or structure shall be visually compatible with and be in direct relationship to the width of the building and to the height of the front elevation of other existing structures and buildings within the subject historic district.
- (c) **Proportion of Openings (Windows and Doors):** The openings of any building within a historic district shall be visually compatible with the openings exemplified by prevailing historic architectural styles of similar buildings within the district. The relationship of the width of windows and doors to the height of windows and doors among buildings shall be visually compatible within the subject historic district.
- (d) **Rhythm of Solids to Voids:** The relationship of solids to voids of a building or structure shall be visually compatible with existing historic buildings or structures within the subject historic district for all development, with particular attention paid to the front facades.
- (e) **Rhythm of Buildings on Streets:** The relationship of buildings to open space between them and adjoining buildings shall be visually compatible with the relationship between existing historic buildings or structures within the subject historic district.

- (f) **Rhythm of Entrance and/or Porch Projections:** The relationship of entrances and porch projections to the sidewalks of a building shall be visually compatible with existing architectural styles of entrances and porch projections on existing historic buildings and structures within the subject historic district for all development.
- (g) **Relationship of Materials, Texture, and Color:** The relationship of materials, texture, and color of the facade of a building and/or hardscaping shall be visually compatible with the predominant materials used in the historic buildings and structures within the subject historic district.
- (h) **Roof Shapes:** The roof shape, including type and slope, of a building or structure shall be visually compatible with the roof shape of existing historic buildings or structures within the subject historic district. The roof shape shall be consistent with the architectural style of the building.
- (i) **Walls of Continuity:** Walls, fences, evergreen landscape masses, or building facades, shall form cohesive walls of enclosure along a street to ensure visual compatibility with historic buildings or structures within the subject historic district and the structure to which it is visually related.
- (j) **Scale of a Building:** The size of a building and the building mass in relation to open spaces, windows, door openings, balconies, porches, and lot size shall be visually compatible with the building size and mass of historic buildings and structures within a historic district for all development. To determine whether the scale of a building is appropriate, the following shall apply for major development only:
 - 1. For buildings wider than sixty percent (60%) of the lot width, a portion of the front façade must be setback a minimum of seven (7) additional feet from the front setback line:
 - 2. For buildings deeper than fifty percent (50%) of the lot depth, a portion of each side façade, which is greater than one story high, must be setback a minimum of five (5) additional feet from the side setback line:
- (k) **Directional Expression of Front Elevation:** A building shall be visually compatible with the buildings, structures, and sites within a historic district for all development with regard to its directional character, whether vertical or horizontal.
- (l) **Architectural Style:** All major and minor development shall consist of only one (1) architectural style per structure or property and not introduce elements definitive of another style.
- (m) **Additions to individually designated properties and contributing structures in all historic districts:** Visual compatibility shall be accomplished as follows:
 - 1. Additions shall be located to the rear or least public side of a building and be as inconspicuous as possible.
 - 2. Additions or accessory structures shall not be located in front of the established front wall plane of a historic building.
 - 3. Characteristic features of the original building shall not be destroyed or obscured.
 - 4. Additions shall be designed and constructed so that the basic form and character of the historic building will remain intact if the addition is ever removed.
 - 5. Additions shall not introduce a new architectural style, mimic too closely the style of the existing building nor replicate the original design but shall be coherent in design with the existing building.
 - 6. Additions shall be secondary and subordinate to the main mass of the historic building and shall not overwhelm the original building.

The property has underwent a transformation as the current owner has removed the non-historic building additions in order to reveal the original structure in its built environment. This approach allowed the owner and architect to envision the proposed additions in true relation to the size and massing of the original structure. A new glass enclosure is proposed around the existing ground floor exterior living space and this improvement helps to preserve the directional expression of the front elevation. Literal interpretation of the Visual Compatibility Standards require that additions be located

to the rear or least public side of a building and be as inconspicuous as possible. Further, additions shall be secondary and subordinate to the main mass of the historic building and shall not overwhelm the original building. The bulk of the massing of the new addition is situated to the rear of the existing structure by way of a large hyphen. It is noted that the proposed addition is slightly taller than the existing structure (by approximately 2'2"). The applicant has requested a waiver to this requirement governing the height of the structure, which is analyzed below. The proposed design of the addition utilizes materials and textures that are compatible with the existing structure such as stucco, glass and wood.

The proposal involves restoration of a portion of the original window opening and louvers on the north/front elevation facing South Vista Del Mar Drive. This opening was originally covered with louvers to allow for airflow as the structure did not originally have central air conditioning. Two new large windows are proposed on the north elevation and these windows were not original to the design of the structure; thus, they should be eliminated from the north elevation in an effort for true restoration preserving the historic integrity and character of the property (**Standards 2, 5 & 9**). This item has been attached as a condition of approval.

The proposal includes a 10' x 50' pool within the front yard setback for which a variance has been requested. Installing the pool at ground level allows for preservation of the front façade as well as the relationship of buildings to open space between them and adjoining buildings. The proposed modern architectural style of the addition is cohesive with the Regional Modern architectural style of the existing structure. Provided the Waiver to the Visual Compatibility Standards is approved, the request will meet the requirements of this code section.

WAIVER ANALYSIS

A waiver is requested to allow the new addition to be constructed in a manner that is not secondary nor subordinate to the existing structure so that the height of the proposed addition will be higher than the original structure. The requirements for Visual Compatibility are noted in LDR Section 4.5.1(E)(7)(a)&(m) and are specifically noted as follows:

Height. The height of proposed buildings or modifications shall be visually compatible in comparison or relation to the height of existing structures and buildings in a historic district for all major and minor development.

Additions to individually designated properties and contributing structures in all historic districts: Visual compatibility shall be accomplished as follows:

1. Additions shall be located to the rear or least public side of a building and be as inconspicuous as possible.
2. Additions or accessory structures shall not be located in front of the established front wall plane of a historic building.
3. Characteristic features of the original building shall not be destroyed or obscured.
4. Additions shall be designed and constructed so that the basic form and character of the historic building will remain intact if the addition is ever removed.
5. Additions shall not introduce a new architectural style, mimic too closely the style of the existing building nor replicate the original design but shall be coherent in design with the existing building.
6. Additions shall be secondary and subordinate to the main mass of the historic building and shall not overwhelm the original building.

Pursuant to LDR Section 2.4.7(B)(5) – **Findings**: The following findings must be made prior to approval of a waiver:

- (a) Shall not adversely affect the neighboring area;
- (b) Shall not significantly diminish the provision of public facilities;

- (c) Shall not create an unsafe situation; and,
- (d) Does not result in the grant of a special privilege in that the same waiver would be granted under similar circumstances on other property for another applicant or owner.

The Regional Modern style of this flat roofed, historic structure is unusual as it is elevated off the ground by 8'4" and due to its low profile at 11'8" tall (20' height from finished floor – 26' height from average crown of road). Additionally, the first floor has a 7' ceiling height (minus 1'4" of beam) which can be seen as limiting on the design of the new addition. The new addition is only slightly larger than the existing at 28'2" overall height (from average crown of road). The design of the flat roofed addition allows for existing mechanical equipment to be removed from the roof of the existing historic structure and placing it on the ground level, preserving the authentic historic character of the structure. The waiver will not adversely affect the neighboring area nor will it diminish the provision of public facilities. The waiver will not create an unsafe situation and does not grant of a special privilege.

Consequently, a positive finding with respect to LDR Section 2.4.7(B)(5), Waiver Findings is made.

The applicant's justification statement is attached.

VARIANCE ANALYSIS

VARIANCE REQUEST 1

Pursuant to LDR Section 4.6.15 LDR Section 4.6.15(G)(1), Swimming Pool, Whirlpools, & Spas: Yard Encroachment, swimming pools, the tops of which are no higher than grade level, may extend into the rear, interior or street side setback areas but no closer than ten feet (10') to any property line. Swimming pools shall not extend into the front setback area.

A variance has been submitted to reduce the required front yard setback from 30' to 13'1" on the north side of the property for a 50' x 10' pool.

VARIANCE REQUEST 2

Pursuant to LDR Section 10.1.1(C)(2), Intent, the purposes of the Floodplain Management Regulations and the flood load and flood resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to require the use of appropriate construction practices in order to prevent or minimize future flood damage.

The finished floor elevation of the existing structure is 6 feet, whereas a minimum finished floor of 7 feet is required. As permitted by LDR Section 10.1.7, a variance to reduce the finished floor elevation has been requested for the 1st floor the new addition as the structure is listed on the Local Register of Historic Places.

Pursuant to LDR Section 2.2.6(D), the Historic Preservation Board (HPB) shall act on all variance requests within an historic district, or on a historic site, which otherwise would be acted upon by the Board of Adjustment.

Pursuant to LDR Section 2.4.7(A)(5) - Findings: The following findings must be made prior to 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.

Pursuant to LDR Section 2.4.7(A)(6) - Alternative findings of the Historic Preservation Board:
The Board may be guided by the following to make findings as an alternative to the variance standard criteria:

- (a) That a variance is necessary to maintain the historic character of property and demonstrating that the granting of the variance would not be contrary to the public interest, safety, or welfare.
- (b) That special conditions and circumstances exist, because of the historic setting, location, nature, or character of the land, structure, appurtenance, sign, or building involved, which are not applicable to other lands, structures, appurtenances, signs, or buildings in the same zoning district, which have not been designated as historic sites or a historic district nor listed on the Local Register of Historic Places.
- (c) That literal interpretation of the provisions of existing ordinances would alter the historic character of the historic district, or historic site to such an extent that it would not be feasible to preserve the historic character of the historic district or historic site.
- (d) That the variance requested will not significantly diminish the historic character of a historic site or of a historic district.
- (a) That the requested variance is necessary to accommodate an appropriate adaptive reuse of a historic building, structure, or site.

The property owner has submitted justification statements for each of the requests (attached).

VARIANCE REQUEST 1

The variance request is to reduce the front setback from the required 30' to 13'1" on the north side of the property for the construction of a 10' x 50' in-ground swimming pool.

Special conditions and circumstances exist due to the historic siting of the structure on the property as the structure was designed to have its front face South Vista Del Mar Drive on the north and its rear side face Seabreeze Avenue on the south. The LDRs require additions to be to the side or rear of the existing structure and not in front of the established wall plane of a historic building; thus, leaving little to no space for construction of a pool in the rear yard given the proposed configuration of the new addition and driveway. Literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning as a pool is a common amenity for residential structures. Granting of the variance will not confer onto the applicant any special privilege that is denied to other lands, structures, and buildings under the same zoning. It is noted that there are other similarly sited at-grade pools, which exist within residential zoning districts and on historic properties. Such siting of the pool will allow for the preservation of historic building façades, preserving the historic character of the house, which sits at 14'4" elevation (8'4" above the 6' top of first floor). Granting of the variance allows for adaptive reuse of the structure and site; will be in harmony with the general purpose and intent of existing regulations; will not be injurious to the neighborhood, nor otherwise detrimental to the public welfare. Further, granting of the variance will allow the historic character of the property to be maintained and is not contrary to the public interest, safety nor welfare. .

Consequently, a positive finding with respect to LDR Section 2.4.7(A)(5)&(6), Variance Findings is made.

VARIANCE REQUEST 2

The variance request seeks to reduce the finished floor elevation from the required 7 feet to 6 feet for a 1,863 (approximate) square foot addition to the existing structure. This area encompasses a bedroom and associated bathroom as well as a common/living room and garage. The proposed garage is permitted to be constructed below the required 6 feet finished floor elevation.

Pursuant to LDR Section 10.1.1(C)(2), Intent, the purposes of the Floodplain Management Regulations and the flood load and flood resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to require the use of appropriate construction practices in order to prevent or minimize future flood damage.

Pursuant to LDR Section 10.1.7(A), General, The Board of Adjustment shall hear and decide on requests for appeals and requests for variances from the strict application of the Floodplain Management Regulations. Pursuant to section 553.73(5), F.S., the Board of Adjustment shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code.

Pursuant to LDR Section 2.2.6(D), the Historic Preservation Board (HPB) shall act on all variance requests within an historic district, or on a historic site, which otherwise would be acted upon by the Board of Adjustment.

Pursuant to LDR Section 10.1.7(E), Historic buildings, A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter 11 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.

Pursuant to the Florida Building code, an exception to the flood resistant construction requirements is defined as:

If the program that designated the building as historic determines that it will continue to be an historic building after the proposed work is completed, then the proposed work is not considered to be substantial improvement. For the purposes of this exception, an historic building is:

1. Individually listed in the National Register of Historic Places; or
2. A contributing resource within a National Register of Historic Places listed district; or
3. Designated as historic property under an official municipal, county, special district or state designation, law, ordinance or resolution either individually or as a contributing property in a district, provided the local program making the designation is approved by the Department of the Interior (the Florida state historic preservation officer maintains a list of approved local programs); or

- 4. Determined eligible by the Florida State Historic Preservation Officer for listing in the National Register of Historic Places, either individually or as a contributing property in a district.**

The subject property qualifies for the exception to the flood resistant construction requirements of the Florida Building Code as it meets number three listed above. The property is listed on the Local Register of Historic Places, and the City of Delray Beach is approved by the State of Florida as a Certified Local Government.

Pursuant to LDR Section 10.1.7(G), Considerations for issuance of variances, In reviewing requests for variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, the Floodplain Management Regulations, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;**
- (2) The danger to life and property due to flooding or erosion damage;**
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;**
- (4) The importance of the services provided by the proposed development to the community;**
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;**
- (6) The compatibility of the proposed development with existing and anticipated development;**
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;**
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;**
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and**
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.**

Pursuant to LDR Section 10.1.7(H), Conditions for issuance of variances, Variances shall be issued only upon:

- (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of the Floodplain Management Regulations or the required elevation standards;**
- (2) Determination by the Board of Adjustment that:**
 - (a) Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;**
 - (b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and**
 - (c) The variance is the minimum necessary, considering the flood hazard, to afford relief;**

- (3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and**
- (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.**

Pursuant to LDR Section 2.4.7(A)(5) - Findings: The following findings must be made prior to approval of a variance:

- (g) 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);**
- (h) That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning;**
- (i) That the special conditions and circumstances have not resulted from actions of the applicant;**
- (j) 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;**
- (k) 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,**
- (l) 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.**

Pursuant to LDR Section 2.4.7(A)(6) - Alternative findings of the Historic Preservation Board: The Board may be guided by the following to make findings as an alternative to the variance standard criteria:

- (e) That a variance is necessary to maintain the historic character of property and demonstrating that the granting of the variance would not be contrary to the public interest, safety, or welfare.**
- (f) That special conditions and circumstances exist, because of the historic setting, location, nature, or character of the land, structure, appurtenance, sign, or building involved, which are not applicable to other lands, structures, appurtenances, signs, or buildings in the same zoning district, which have not been designated as historic sites or a historic district nor listed on the Local Register of Historic Places.**
- (g) That literal interpretation of the provisions of existing ordinances would alter the historic character of the historic district, or historic site to such an extent that it would not be feasible to preserve the historic character of the historic district or historic site.**
- (h) That the variance requested will not significantly diminish the historic character of a historic site or of a historic district.**
- (b) That the requested variance is necessary to accommodate an appropriate adaptive reuse of a historic building, structure, or site.**

The applicant has submitted a justification statement and graphics/exhibits, which show good and sufficient cause that the unique characteristics of the size and configuration of the subject historic

property limits compliance with the provisions of applicable code requirements. A determination is made that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land and the existing historic structure. Granting the variance is the minimum necessary to maintain the historic character of the property and structure, and there are special conditions, which exist due to the historic setting of the structure that are unique to the property. For example, the structure is elevated off the ground with its first habitable floor being a 2nd floor. Granting of the variance will retain the spatial relationship of the front façade and the historic character of the structure.

A bedroom, bathroom and common/living space is proposed to be constructed at the 6 foot finished floor elevation. Ceiling height is proposed at 7' for the common/living space (situated in the area below the existing structure) and 9'4" for the new bedroom and bathroom addition. Should the owner be required to raise the finished floor elevation of the common/living space improvements within the area below the existing structure, this area would have an interior ceiling height of 6' not meeting the minimum 7' ceiling height requirements of the Florida Building Code.

It is determined that a special condition, which is unique to the subject structure given its historic setting, exists making the variance necessary to maintain the historic character of the property. Literal interpretation of the requirements of the City of Delray Beach Floodplain Management Regulations and the Florida Building Code would alter the historic character and scale of the property causing the improvements to be out of scale with the existing structure; thus, making it impossible to preserve the historic character of the site. The variance will not significantly diminish the historic character of the site nor the district and the variance is necessary to accommodate improvements to allow adaptive reuse of the historic structure. Further, the variance is not be contrary to the public interest, safety or welfare.

The applicant's variance request is also in compliance with the Considerations for Issuance of a Variance as required by the Floodplain Management Regulations. Granting of the variance will not result in materials and debris being swept onto other lands resulting in injury or damage. Granting of the variance will not result in danger to life and property due to flooding or erosion damage nor will it result in increased flood heights, additional threats to public safety, extraordinary public expense. It will not create nuisances, cause fraud on or victimization of the public nor conflict with existing local laws and ordinances. Alternate locations for the proposed development, which are subject to lower risk of flooding or erosion do not exist. The proposed development is compatible with the existing historic structure and its relationship to the comprehensive plan and floodplain management program for the area. The variance will not affect the safety of access for ordinary and emergency vehicles. The variance will not result in a negative effect upon costs of government services to repair utilities and facilities in the event of a flood. The variance is the minimum necessary, considering the flood hazard, to afford relief.

A condition of approval of the variance is that the applicant shall record the variance in the Office of the Clerk of the Court in such a manner that it appears in the chain-of-title of the affected parcel of land and provide a certified copy of the recorded document prior to issuance of a building permit. As the request is for a variance to allow construction of a portion of the building below the required elevation, a written notice from the Floodplain Administrator will be provided to the applicant following approval of the variance request, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

Consequently, a positive finding with respect to LDR Section 2.4.7(A)(5)&(6), Variance Findings is made.

Note: As required by the LDRs, a notice regarding the subject variance request was sent to those property owners located within a 500' radius of the subject property.

The submitted justification statements are attached.

ALTERNATIVE ACTIONS

- A. Continue with direction.
- B. Approve Certificate of Appropriateness (2018-191), Variances, and Waiver for the property located at **212 Seabreeze Avenue, Individually Listed to the Local Register of Historic Places**, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Sections 2.4.6(H)(5), 2.4.7(A)(5)&(6) and 2.4.7(B)(5).
- C. Deny Certificate of Appropriateness (2018-191), Variances, and Waiver for the property located at **212 Seabreeze Avenue, Individually Listed to the Local Register of Historic Places**, by finding that the request and approval thereof is inconsistent with the Comprehensive Plan and does not meet the criteria set forth in LDR Sections 2.4.6(H)(5), 2.4.7(A)(5)&(6) and 2.4.7(B)(5).

RECOMMENDATIONS

CERTIFICATE OF APPROPRIATENESS

Approve Certificate of Appropriateness (2018-191) for property located at **212 Seabreeze Avenue, Individually Listed to the Local Register of Historic Places**, by adopting the findings of fact and law contained in the staff report, and finding that the request and approval thereof meets the criteria set forth in LDR Section 2.4.6(H)(5), subject to the following conditions:

1. That the 2 new windows on the north elevation be removed;
2. That the site data table be corrected to reflect the existing and proposed 1st and 2nd floor square footage calculations for overall building area and air conditioned building area; and,

VARIANCE-SETBACK

Approve the Variance to reduce the front yard setback from 30' to 13'1" for a new swimming pool, based upon positive findings with respect to LDR Section 2.4.7(A)(5)&(6).

VARIANCE-FINISHED FLOOR ELEVATION

Approve the Variance to reduce the finished floor elevation from the required 7' to 6' for the new addition, based upon positive findings with respect to LDR Section 2.4.7(A)(5)&(6), subject to the following condition of approval:

1. That the applicant shall record the variance in the Office of the Clerk of the Court in such a manner that it appears in the chain-of-title of the affected parcel of land and provide a certified copy of the recorded document prior to issuance of a building permit.

WAIVER

Approve the Waiver to LDR Section 4.5.1(E)(7)(a)&(m) to allow the new addition to be constructed in a manner that is not secondary nor subordinate to the existing structure, based upon positive findings with respect to LDR Section 2.4.7(B)(5).

Attachments:

- Site plan, elevations, pictures, and survey
- Applicant Justification Statements

Report Prepared by: Michelle Hoyland, Principal Planner