



# Board of Adjustment

## STAFF REPORT

### DEVELOPMENT SERVICES DEPARTMENT

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: November 7, 2019

File No.: 2019-193  
VAR-BOA

Application Type: Board of Adjustment

#### General Data:

Applicant: Darren L. Moser

Location: 1501 Dale Ln

PCN: 12-43-46-08-20-001-0040

Property Size: 0.18 Acres

FLUM: LD (Low Density)

Zoning: R-1-AA (Single Family)

#### Adjacent Zoning:

- R-1-AA (North)
- R-1-AA (West)
- R-1-AA (South)
- R-1-AA (East)

Existing Land Use: Single Family Home

Proposed Land Use: Single Family Home



#### Item before the Board:

The action before the Board is the consideration of a variance to allow the swimming pool in the required 10-foot side interior setback (5 feet proposed) for the property located at 1501 Dale Lane, pursuant to Land Development Regulations (LDR) Section 4.6.15(G)(1).

#### Optional Board Motions:

- A. Move to continue with direction.
- B. Approve the Variance request (BOA 2019-193) to LDR Section 4.6.15(G)(1) to allow the swimming pool to encroach in the required 10 foot side interior setback (5 feet is proposed) located at **1501 Dale Lane**, based upon positive findings with respect to LDR 2.4.7(A)(5).
- C. Deny the Variance request (BOA 2019-193) to LDR Section 4.6.15(G)(1) to allow the swimming pool to encroach in the required 10 foot side interior setback (5 feet is proposed) located at **1501 Dale Lane**, based upon a failure to make positive findings with respect to LDR Section 2.4.7(A)(5).

#### Background:

The property consists of TOTTERDALE ADD LOT 4 BLK 1 and was platted in 1955. The request before the board is relief to allow a swimming pool to encroach in the side interior setback by 5'. Pursuant to Land Development Regulation (LDR) 4.6.15(G)(1), Swimming pools shall not extend into the side setback as noted in Section 4.3.4(K). Per LDR Section 4.3.4(K), the required side interior setback for the R-1-AA zoning district for a single-family home is 10 feet.

#### Variance Analysis:

Pursuant to **LDR Section 2.2.4(D)(4)**, the Board of Adjustment has the authority to grant variances and hear appeals from the provisions of the supplemental district regulations (Article 4.6) except where said authority is expressly prohibited or granted to others.

#### Project Planner:

Jennifer Buce, Assistant Planner  
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561-243-7138

#### Review Dates:

BOA Board:  
November 7, 2019

#### Attachments:

- 1. Site Plans
- 2. pictures



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

FINDINGS
(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 findings noted above, the applicant has cited the following:

- (a) The applicant states "When I purchased the property; I intended to build a pool on the north side of the dwelling, the selling agent/contractor Orange Hones Corporation explained this property was approved for a pool in this location. To the south of the proposed pool location is an addition installed by the original owner. The addition was installed in the center of the property limiting the area for the proposed pool. With the current interior side setback on the North side of the property the pool size can be no larger the 9' x 24'. The average size "backyard" pool is 15' x 30'. Increasing the interior side setback from 10' x 5' will allow for a 14' x 24' pool which can be considered average size."

#### Staff Variance Analysis

The property is 75' deep x 110' wide located in the R-1-AA zoning district in the Totterdale Add. The R-1-AA zoning district requirements are 75' deep x 100' wide with a minimum lot size of 9,500 SF, which makes this an existing non-conforming lot. The legal description describes this property as Lot 4, Block 1, Totterdale Addition, according to the map or plat thereof as recorded in Plat Book 23, Page 151 of the Public Records of Palm Beach County. The original plat from 1955 shows most of the lots were all platted at 75' x 110'. There is a single-family residence that was built in 1954, with an addition to the existing garage in 1997 and to the rear of the property in 2016. In R-1-AA, the rear setback and side interior setbacks are 10 feet. The plot plan provided demonstrates that the applicant is applying for a 5' variance to accommodate the pool. If the pool was to be in the rear or the south side interior of the property, the applicant would also be requesting a 5-foot variance with the size pool requested. T

- (b) The applicant states "In this neighborhood; more specifically, within the surrounding 3 block area of this address many structures including pools detached buildings and attached structures are located within the 10' interior side setback. I am aware of two pool variances granted for interior side setbacks; one of which is 1410 Dale Lane, located directly across the street from this address. The interior side setback variance was granted for 3-5 feet, I am requesting a minimum of 5'. The other is 402 Lake Drive, this address is only 4 houses away from this address."

#### Staff Variance Analysis

The requirements for LDR Section 4.6.15(G)(1); Swimming Pools is applied city wide. Pools come in all shapes in sizes from square, rectangular and kidney shape. There are various types of different shapes and size pools in this neighborhood. The applicant does have existing conditions that could make it difficult to construct a pool at the size requested (14' x 24') without impeding on the side interior setback, thus requesting a 5' variance. There are two pools in the neighborhood that received similar variances in 2003 and 2004 for side interior variances. Upon research both of these pool sizes were 17' x 21' and 14' x 28'.

- (c) The applicant states "Since I have purchased this property, I have made no exterior improvements impacting my neighbors."



#### Staff Variance Analysis

The actions are a not a direct result of the applicant. The additions to the single-family home were prior to the purchase of the home. As stated above, there are many different shapes and sizes of pools in this neighborhood. The size of the proposed pool requires a 5' variance. The variance granted at 1410 Dale Lane and 402 Lake Drive had a similar request in the size of pool that was proposed and approved. 1410 Dale Lane was approved with a 3' variance to accommodate the pool.

- (d) The applicant states *"Granting an interior side setback of 5' vs 10' will not impede or limit the enjoyment/use of my neighbor's property. If granted the interior side setback will allow for ample growth of vegetation creating privacy enjoyed on both sides of the property line. The properties are also divided by a 6' high privacy fence, the fence is shared and maintained by both property owners."*

#### Staff Variance Analysis

The granting of a variance would not confer a special privilege that is denied to other lands, structures, and buildings. The pool will be shielded by a 6-foot-high privacy fence as well as lush landscaping. As the applicant stated above, similar variances were granted at 1410 Dale Lane and 410 Lake Drive.

- (e) The applicant states *"Granting this variance of 5' will allow for a reasonably sized pool to be installed at this address, the average size "back yard" pool is 15' x 30', the proposed pool will be 14' x 24'. Granting a 5' interior side setback variance will allow for the pool to be set of the North side of the previously installed family room addition with enough area to walk between the pool and the dwelling to access the balance of the back yard."*

#### Staff Variance Analysis

As stated above the property is non-conforming in that it does not meet the minimum lot size of 9,500 SF for the R-1-AA zoning district, which makes it difficult to build any accessory structure on the property as it exists with the current footprint.

- (f) The applicant states *"The variance request is for 5'; if the request is granted the 5' setback will allow for ample access and vegetation growth on the North side of this property creating privacy for the neighboring property. This will not impact my neighbor's use or enjoyment of his property. Also; as at least two variances for interior side setbacks of 3'-5' have been granted within 500 ft of this address, satellite imagery shows several buildings/structures attached or detached located within the interior side setback of 10' in the surrounding three blocks of this address."*

#### Staff Variance Analysis

The granting of the variance will not disrupt the streetscape of the neighborhood and is in harmony with the rest of the neighborhood. Most of the lots in Totterdale Add have remained as they were originally platted in 1955, therefore having a uniformed streetscape throughout. The pool is proposed on the side interior with landscape therefore not to disrupt or interfere with its neighbors to the north; nor will it infringe upon pedestrian or public view.

Please see attached additional justification.