



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

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

Board of Adjustment

Meeting: March 5, 2020 **File No.:** 2020-073-VAR-BOA **Application Name:** 103 NW 9 Street – Variance

General Data:

Applicant/Agent: Mark Hendricks, Esq.

Location: 103 NW 9th Street

PCN: 12-43-46-08-05-000-0130

Property Size: 0.19 Acres

FLUM: LD (Low Density 0-5 Dwelling Units/ Acre)

Zoning: R-1-AA Single-Family Residential/ Lake Ida Overlay

Adjacent Zoning:

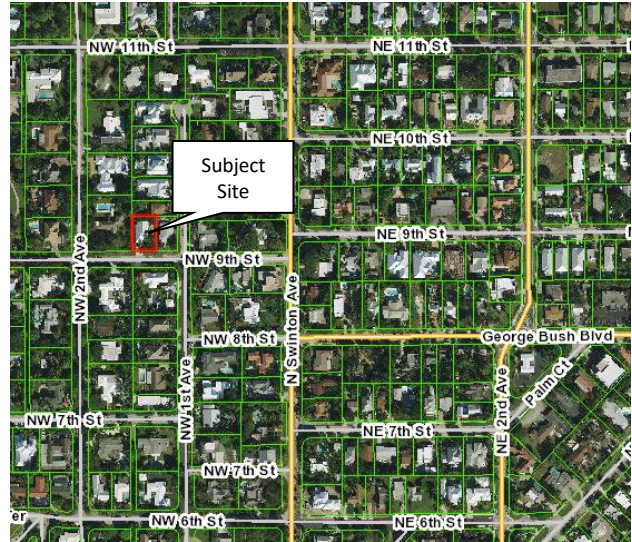
- **North:** <http://www.thebocavoice.com/steve-abramst-gets-tri-rail-job/>
- **East:** R-1-AA Single-Family Residential/ Lake Ida Overlay
- **South:** R-1-AA Single-Family Residential/ Lake Ida Overlay
- **West:** R-1-AA Single-Family Residential/ Lake Ida Overlay

Existing Land Use: Single-Family Residential

Proposed Land Use: No Change

Item before the Board:

Consideration of a variance request from Land Development Regulation (LDR) Section 4.3.4 (K) to allow an addition to a single-family dwelling unit to encroach between 0.2 to 0.175 of an inch into the required 10 foot interior side setback area.



Optional Board Motions for Action Items:

1. Move to continue with direction
2. Move approval of the Variance request (2020-073-VAR-BOA) from LDR Section 4.3.4 (K), to allow an addition to a single-family dwelling unit to encroach between 0.2 to 0.175 of an inch into the required 10 foot interior side setback area for the property located at 103 NW 9th 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 request (2020-073-VAR-BOA) from LDR Section 4.3.4 (K), to allow an addition to a single-family dwelling unit to encroach between 0.2 to 0.175 of an inch into the required 10 foot interior side setback area for the property located at 103 NW 9th 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 request is to allow an addition to a single-family dwelling unit to encroach between 0.2 to 0.175 of an inch into the required 10 foot interior side setback area. The subject property currently has a nonconforming side setback that ranges between 9.7 and 9.8 feet along the west property line. Per LDR Section 4.3.4(K) Single-Family Detached Dwellings within the R-1-AA Zoning District are required to provide a minimum side interior setback of 10 feet. 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 addition encroaches into the required side setback 0.2 inches, but tapers off to an encroachment of 0.175 inches. The addition is proposed at +/- 8 feet tall, designed to match the existing structure measured from the ground to the tie beam. As depicted on the applicant's attached floor

Project Planner:

Elizabeth Eassa, AICP, Senior Planner
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561-243-7325

Review Dates:

Board of Adjustment:
March 5, 2020

Attachments

1. Site Plan
2. Photos
3. Justification Letter
4. Other documents



plan, portion of the addition necessitating the variance request will create two additional bedrooms. The applicant has also proposed a new guest suite and a reconfigured floor plan, all of which comply with the applicable required LDR provisions.

Background:

The property consists of Lot 13, together with the east 8 feet of the abandoned alley adjacent to lot 13, Pine View, as recorded in the Plat Book 12 Page 89, of the Public Records of Palm Beach County, Florida. The lot is 74.90 ft. wide by 108.16 ft. deep and is located in the Single-Family Residential R-1-AA Zoning District within the Lake Ida Overlay. The property contains a one-story 1,559 square foot single-family dwelling unit. The structure was built in 1994.

A search of City permit records produced the original permit plan which indicated the dwelling unit was approved with a 10 foot interior side setback, which complied with the zoning regulations in place at the time of permit issuance as well as today. The dwelling unit was constructed, however, encroaching into the interior side setback between 0.2 and 0.3 inches along the west property line.

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:

- 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 existing structure was originally constructed with a .2 (two inch) of a foot encroachment into the existing east side setback. The proposed home addition and renovation will cause a continuation of that encroachment along the exterior wall of .2 to .175 of a foot.*

Staff Analysis: The side interior setback requirement of 10 feet is a minimum development standard required to be provided by all single-family dwellings located within the R-1-AA zoning district. Additionally, pursuant to Section 1.3.5(B) – Enlargement or alteration (of a non-conforming structure), a nonconforming structure shall not be altered or enlarged in any way which increases its nonconformity, vertically or horizontally. Only in the event that the enlargement or alteration of the structure occurs in a way that complies with applicable dimensional standards and does not create any new nonconformity, or alteration of the structure in a way that decreases the degree of nonconformity, is permitted. As the applicant is proposing to increase the nonconforming setback line for the horizontal length of the addition adjacent to the west property line, the addition does not comply with the applicable dimensional standards of the aforementioned LDR section.

Alternatively, the applicant could locate the proposed addition to the house to comply with the 10-foot side setback requirement which would result in a loss of approximately 2.7 square feet to what is currently proposed.

- 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: *Meeting the side set back would require off-setting the proposed addition .2 of a foot where if the house was built meeting the set back requirements, no offset would be necessary.*

Staff Analysis: While the applicant is correct that complying with the setback requirements would require the addition to be offset by up to 0.2 inches, this would not deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning regulations. The addition is still permitted to be built, so long as the portion proposed adjacent to the western property line is proposed 10 feet away from the property line.



c) That the special conditions and circumstances have not resulted from actions of the applicant;

Applicants response: *The home was purchased in May 2003 with the existing 2-inch encroachment. It appears this may have been a scrivener's error when the plans were initially submitted, approved and the structure constructed.*

Staff Analysis: The dwelling unit was constructed in 1994 prior to the applicant purchasing it. Additionally, a search of City permit records produced the permit house plan which indicated the dwelling unit was approved with a 10 foot interior side setback, which complied with the zoning regulations in place at the time of permit issuance as well as today. The dwelling unit was constructed, however, encroaching into the interior side setback between 0.2 and 0.3 inches along the west property line.

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: *If the house was originally built meeting the side setback, the variance would not be necessary. It is common practice to build an addition in line with an existing wall.*

Staff Analysis: Should the Board grant the variance, the applicant would be conferred special privilege that is denied to other lands, structures, and buildings that are subject to not only the same zoning regulations, but all other zoning district regulations as well because the applicant would be permitted to enlarge a structure in a way that increases a nonconformity, a direct violation of Section 1.3.5(B). While the special conditions and circumstances of the dwelling unit being built within the required setback area is not a result of the actions of applicant, that does not ensure that additions to the dwelling unit can be built in a manner that would increase a nonconforming structure. The applicant is permitted to increase the size of the dwelling unit pursuant to the lot coverage requirements of the R-1-AA zoning district, however the minimum dimensional standards, including setback requirements, still apply.

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: *Aligning the new wall with the existing wall is a standard construction practice and the variance is only for 2 inches at the front of the addition and decreases to 1.73 inches at the rear back corner.*

Staff Analysis: The property is currently developed in accordance with the development standards pertaining to a single-family dwelling unit in the R-1-AA zoning district, with the exception of the west side of the dwelling unit which encroaches the interior side setback. The proposal includes multiple additions and an interior modification to the floor plan. The applicant is permitted to have the additions pursuant to the lot coverage requirements of the R-1-AA zoning district, however the dimensional standards, including setback requirements, still apply. While the variance request would create a flush wall for the western elevation of the house if granted, not granting it would not preclude the applicant from proposing the same addition while still meeting the LDR requirements. The lot is developed with an existing single-family dwelling unit that still allows for additional square footage to be proposed which confirms that the applicant is able to make reasonable use of the land and existing 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: *With the variance, there will be a seamless addition that will make the addition look like it was part of the original structure. This variance request is consistent with good design and construction practices, will be aesthetically pleasing, is a reasonable use of the property and will not be detrimental or injurious to the surrounding area given its location to the rear and interior side of the property. If I have to*



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offset the addition, I will have an awkward looking exterior and interior wall in the middle of one of the bedrooms and the house will not appear seamless or aesthetically pleasing both inside and out.

Staff Analysis: If granted, the variance will be not in harmony with the general purpose and intent of the existing regulations. The variance will be a direct violation of Section 1.3.5(B) which states that a nonconforming structure shall not be altered or enlarged in any way which increases its nonconformity, vertically or horizontally.

While the variance request is not in 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 purpose and intent of the Single-Family Residential Districts states that "(t)he Single Family Residential Districts have been created in order to provide areas where the traditional single family detached residence can be established and maintained and be protected from the unwarranted intrusion of other inappropriate uses." The addition to the existing single-family dwelling unit will compliment the traditional single-family neighborhood, but will encroach into the required interior side setback. Setbacks have historically been required in order to provide daylight and air at the street level and between homes.

With respect to the applicant's response, staff cannot base their analysis on aesthetics as aesthetics do not have an impact on the welfare of the general public and the residents of the City of Delray Beach.

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	February 21, 2020
2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior	February 21, 2020
2.4.2 (B)(1)(j)(iv) - The notice posted at City Hall	February 21, 2020