

BOARD OF ADJUSTMENT REQUEST

311 SE 3RD ST, DELRAY BEACH, FL 33483

May 19, 2020

James Sandwick

301-524-1914

Dear Board of Adjustment,

My name is James Sandwick and I am the owner of a vacant lot of land located at 311 SE 3rd St, Delray Beach, FL 33483. I moved to Delray Beach along with my wife and two young children two years ago on April 28, 2018. When we moved here, we rented a home so we could take our time getting to know the area. The more time goes by, the more we love Delray Beach, and now we want to build a home that we can live in for years to come.

I purchased the property on December 20, 2019 with the intent to build a single family home for my family. The property is smaller than other properties located in the same zone (R-1-A) so I requested a zoning verification letter from the City of Delray Beach Planning and Zoning Division to confirm the lot was buildable. The response letter I received confirmed that the lot was indeed buildable as per LDR Section 4.1.4. Nevertheless, the small size of and restrictions applied to the property make it challenging to design a suitable home.

Therefore, the purpose of this letter is to request variances to provide leniency from the following LDRs as follows:

1. **LDR 4.3.4(K)**: Request to **reduce the setback on the West side of the property** from the current requirement of 17' total (2' ROW plus 15' setback) to a reduced requirement of 9.5' total (2' ROW plus 7.5' setback) because the current setback does not provide ample space to build an adequately-sized home.
2. **LDR 4.6.15(G)**: Request to **allow a swimming pool to be installed in the "front" setback** because there is insufficient space in the rear or either of the side setback areas to install one there.

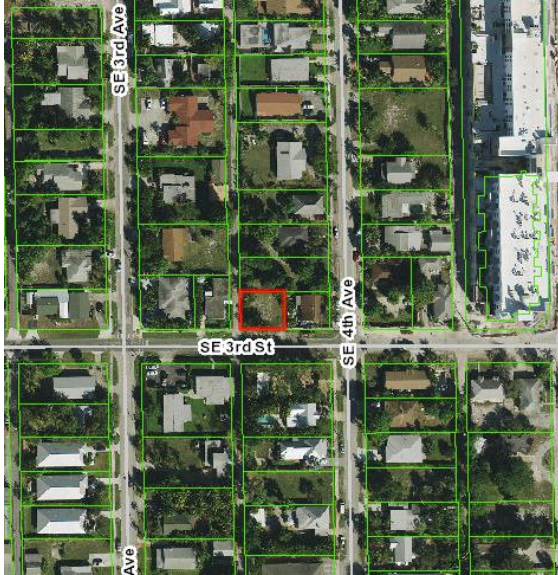
In the following letter I explain why the findings required for approval of the variances have been satisfied, namely:

- That special conditions and circumstances exist which are peculiar to the land involved and which are not generally applicable to other lands, structures or buildings in the same zoning;
- That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning;
- That the special conditions and circumstances have not resulted from actions of the applicant;
- 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;
- 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; and
- 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.

SECTION 1 – SPECIAL CONDITIONS AND CIRCUMSTANCES PECULIAR TO THE LAND

This section addresses Finding (a) from LDR Section 2.4.7(A)5:

That special conditions and circumstances exist which are peculiar to the land involved and which are not generally applicable to other lands, structures or buildings in the same zoning



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.

Figure 1 - 311 SE 3rd St and other homes in the R-1-A zone

Despite the lot's dramatically smaller size, it is held to the same setback requirements as its many twice-as-wide neighbors:

- Front: 25' (South side of lot, along 3rd St SE)
- Rear: 10' (North side of lot)
- Side Interior: 7.5' (East side of lot)
- Side Street: 15' (West side of lot, along alley)

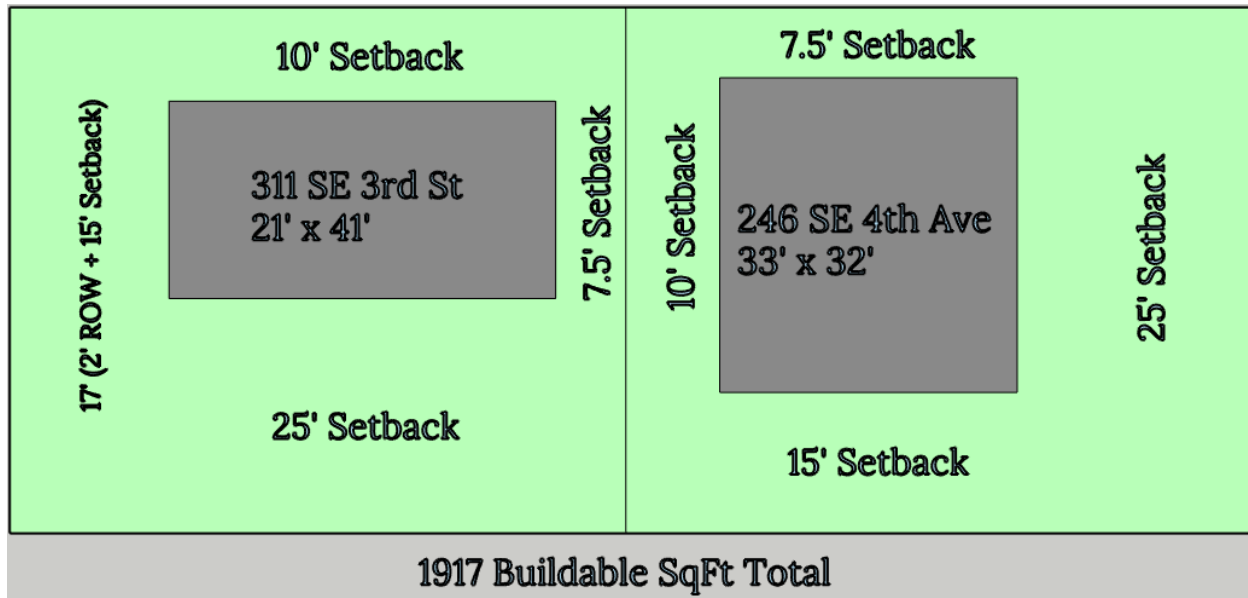
Had the lot not been subdivided, and were it still a single property having the original, longer form, as nearly all other properties in the R-1-A zone do, the same sides of the lot would have setbacks as follows:

Side of 311 SE 3 rd St	Current Setback	Setback if Lot Was Not Subdivided
South side (along 3 rd St)	25' (front)	15' (side street)
North side	10' (rear)	7.5' (side interior)
East side	7.5' (side interior)	N/A (there would be no setback here)
West side (along alley)	15' (side street)	10' (rear)

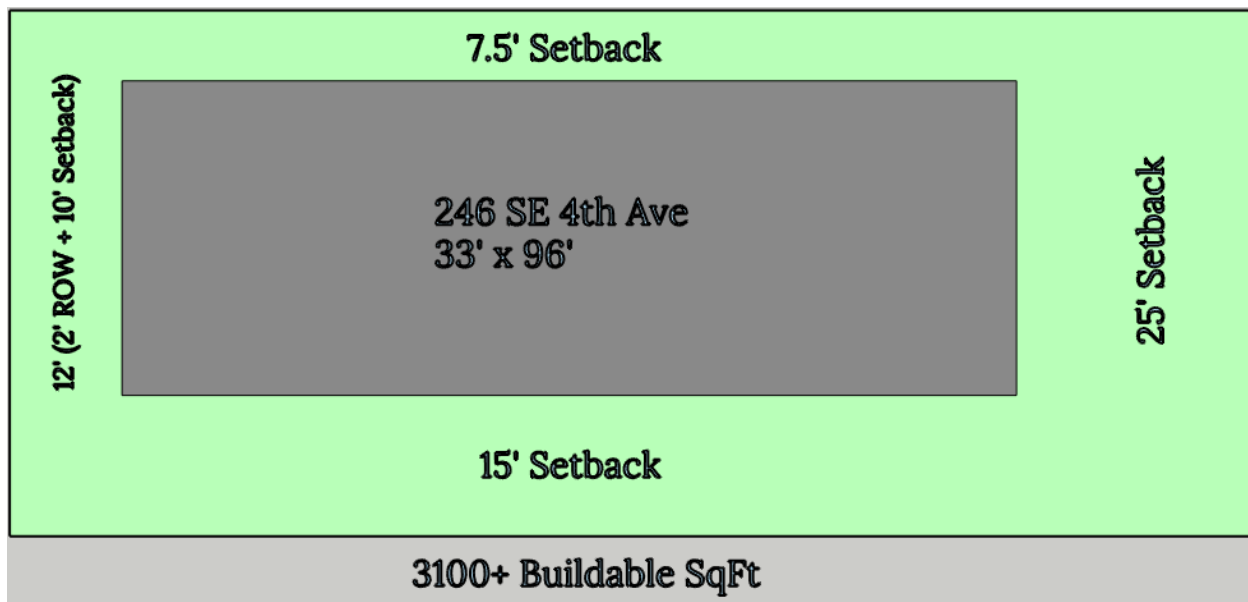
Subdivision of the lot resulted in a significantly lesser amount of buildable area on the property than would have been allowed prior to subdivision, and the setback requirements were never adjusted to compensate for the difference. Nearly all other properties in R-1-A still maintain the original, longer form and therefore are not subject to such disproportionately strict and limiting constraints.

Following is a graphical representation of the current vs hypothetically-not-subdivided setbacks for clarity:

CURRENT:



HYPOTHETICALLY NOT SUBDIVIDED (SIMILAR IN SIZE AND SHAPE TO NEARLY ALL OTHER LOTS IN R-1-A):



The first graphic shows that the subdivided lot allows for only ~1900 square feet of buildable space for TWO homes, roughly **800 square feet of buildable space for 311 SE 3rd St** (the applicant's property) and ~1,000 square feet for the adjacent property, 246 SE 4th Ave.

As the second graphic demonstrates, a similarly situated property of the same size in R-1-A that had not been subdivided would allow approximately **3,000 square feet of buildable space for a single home**.

To reiterate more concisely, this comparative example demonstrates that 311 SE 3rd St is allowed only 800 square feet of buildable space where other comparable lots in the same zone would allow for 3,000 square feet or more.

SECTION 2 – APPLICANT IS DEPRIVED OF RIGHTS COMMONLY ENJOYED BY OTHERS

This section addresses Finding (b) from LDR Section 2.4.7(A)5:

That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning

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.

SECTION 3 – NOT DUE TO ACTIONS OF THE APPLICANT

This section addresses Finding (c) from LDR Section 2.4.7(A)5:

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

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.

SECTION 4 – NO SPECIAL PRIVILEGE

This section addresses Finding (d) from LDR Section 2.4.7(A)5:

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

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.

SECTION 5 – REASONS JUSTIFY THE VARIANCE

This section addresses Finding (e) from LDR Section 2.4.7(A)5:

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

Following are descriptions of the requested variances, reasons for the requested variances, and explanations of how the reasons justify the requested variances and why the requested variances are the minimum required to make possible the reasonable use of the land:

REQUESTED VARIANCES TO LDR 4.3.4(K):

- Request to **reduce the setback on the West side of the property** from the current requirement of 17' total (2' ROW plus 15' setback) to a reduced requirement of 9.5' total (2' ROW plus 7.5' setback)

Reason for Requested Variance:

Current setback does not provide ample space to build an adequately-sized home considering off-street parking requirements.

How the Reason Justifies the Variances and why it is the Minimum Needed:

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

REQUESTED VARIANCE TO LDR 4.6.15(G):

- Request to **allow a swimming pool to be installed in the "front" setback**

Reason for Requested Variance:

There is insufficient space in the back or either of the side setback areas to install a pool there. The only physically possible place to locate a pool would be in the front yard, therefore the reason for the variance is to allow a pool to be built in the only place where it is physically possible to do so.

How the Reason Justifies the Variances and why it is the Minimum Needed:

Without granting the variance, a pool cannot be built on the lot. The reason justifies the variance because the variance will make it possible to build a pool on the lot. The variance is the minimum required because without the variance, a pool cannot be built.

SECTION 6 – VARIANCE IS IN HARMONY

This section addresses Finding (f) from LDR Section 2.4.7(A)5:

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

SETBACK VARIANCE

The setback variance is in harmony with the general purpose and intent of the regulation because granting the variance would yield a buildable area that is still less area than would have been buildable prior to the lot being subdivided. If the setback requirements are designed to preserve undeveloped space for the purpose of maintaining drainage and other reasons, there will still (after granting the variance) be more undeveloped space than there would have been if the lot had not been subdivided.

SWIMMING POOL VARIANCE

Swimming pools are allowed to encroach in rear, interior or street side setback areas as per LDR 3.6.15(G):

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 to any property line

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.

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.”

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.