



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

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 5, 2020 | **File No.:** 2020-280-VAR-BOA | **Application Name:** 220 South Ocean Boulevard – Variance

### General Data:

**Applicant/Agent:** Michael S. Weiner, Esq.

**Location:** 220 South Ocean Boulevard

**PCN:** 12-43-46-16-22-026-0060

**Property Size:** 0.2 Acres

**FLUM:** MD (Medium Density 5-12 Dwelling Units/ Acre)

**Zoning:** RM (Multiple-Family Residential)

### Adjacent Zoning:

- **North:** RM (Multiple-Family Residential)
- **East:** OS (Open Space)
- **South:** RM (Multiple-Family Residential)/ Nassau Park Historic District
- **West:** RM (Multiple-Family Residential)

**Existing Land Use:** Single-Family Residential

**Proposed Land Use:** No Change

### Item before the Board:

Consideration of a variance request from Land Development Regulations (LDR) Sections 4.3.4(K) and 4.6.15(G)(1) to allow a swimming pool to encroach 11.5 feet into the front setback area.



### Optional Board Motions for Action Items:

1. Move to continue with direction
2. Move approval of the Variance request (2020-280-VAR-BOA) from LDR Sections 4.3.4(K) and 4.6.15(G)(1) to allow a swimming pool to encroach 11.5 feet into the front setback area for the property located at 220 South Ocean Boulevard, 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 (2020-280-VAR-BOA) from LDR Sections 4.3.4(K) and 4.6.15(G)(1) to allow a swimming pool to encroach 11.5 feet into the front setback area for the property located at 220 South Ocean Boulevard, 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 a swimming pool to encroach 11.5 feet into the front setback area. Pursuant to LDR Section 4.6.15(G)(1), swimming pools are allowed within the sides and rear setback areas only, they are not permitted in the front setback area. Per LDR Section 4.3.4(K) Single-Family Detached Dwellings within the RM Zoning District are required to provide a minimum front setback of 25 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.

#### Project Planner:

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

#### Review Dates:

Board of Adjustment:  
November 5, 2020

#### Attachments

1. Site Plan
2. Photos
3. Survey
4. Justification Letter

**Background:**

The property consists of a portion of Beach Lot 26, City of Delray Beach (formerly Linton), as recorded in the Plat Book 1 Page 25, of the Public Records of Palm Beach County, Florida; together with a portion of lot 1, Nassau Park, as recorded in the Plat Book 16 Page 67, of the Public Records of Palm Beach County, Florida. The lot is 58.13 ft. wide by 145.16 ft. deep and is located in the RM Multiple-Family Residential (Medium Density) Zoning District. The property contains a two-story 4,908 square foot single-family dwelling unit. The structure was built in 1994.

The lot has an irregular front lot line and the existing single-family residence and is set back between 45 feet on the north end and 38 feet on the south end. The swimming pool, which is proposed to be 17 by 32 feet wide, encroaches into the required front setback 11.5 feet.

**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 land is unique due to its positioning on Ocean Boulevard. Across from the public beach, there is no individual property owner to the east. The use of S. Ocean Blvd and the public space involved with the beach create significant traffic and noise generation, so the house was built, approximately 26 years ago towards the western portion of the lot. Occasional outdoor space such as a pool is an appropriate use of this area, as can be seen from the other properties who have placed pools in front of the main structure along S. Ocean Blvd. This is a situation not generally applicable to properties not located along such a street. The positioning of the existing structure prevents the placement of the pool in the area that would be considered the rear for setback purposes. This too is unique to this Property. Accordingly, special conditions and circumstances exist which are peculiar to the land, structure, or building involves and which are not generally applicable to other lands, structures, or buildings subject to the same zoning.*

**Staff Analysis:** As previously discussed, the existing structure is setback 45 feet on the north end and 38 feet on the south end where 25 feet is required. The rear of the house is 18 feet from the rear property line. Additionally, the driveway is located west of the house in the rear setback. The side setbacks are 8 feet on the south side of the property and 9.1 feet on the north side of the property. As such, a pool is not able to be constructed in the rear or side setback areas.

- 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:** *A swimming pool is an accessory use normally associated with a residence. In Medium Density Residential, as well as all other residential zoning districts, it is normal for a single-family home to contain a swimming pool as an amenity. Literal interpretation of the regulations would deprive owner of the right to a swimming pool, a right commonly enjoyed by other properties subject to the same zoning.*

**Staff Analysis:** LDR Section 4.4.6(C)(1) states that swimming pools are permitted as an accessory structure in the RM Zoning District. As the site has previously been developed and there is not adequate space in the rear or side setback areas, literal interpretation of the regulations would deprive the applicant of the ability to have a swimming pool on their property.



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

**Applicants response:** *The Owner is not responsible for special conditions and circumstances that require placement of the pool in a location that would require a variance. Owner did not place the house in the current location. Owner obtained the lot in its current condition, which does not contain any other location for a swimming pool. Accordingly, the special conditions and circumstances that justify the variance are not due to actions of Owner.*

**Staff Analysis:** The dwelling unit was constructed in 1994, prior to the applicant purchasing it. The footprint of the house and the location of the driveway preempts the application from being able to propose a swimming pool in the rear or side setback areas.

**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:** *Grant of the variance will not confer a special privilege. Owner will merely have the right to build a pool, which is a right that others often have without need for a variance. Given the quality of the neighborhoods in this area and the overwhelming number of private pools which are accessory to a residence, this would not be a special privilege. This type of variance, as well as other types of locational variances are ordinarily granted to pools in zoning districts of this type.*

**Staff Analysis:** The applicant will not be granted a special privilege if the variance is granted. As the existing footprint of the house and placement of the driveway preempts the applicant from being able to propose a swimming pool in the rear or side setback areas, the applicant will only be confer the ability to propose a swimming pool which is a permitted accessory structure in RM zoning district.

**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:** *As described above, the variance is justified by the special conditions and circumstances not caused by Owner, the need for a variance to allow Owner rights commonly enjoyed by others in the same zoning district, and the lack of any special privilege to be conferred by the variance.*

*In addition, the variance is the minimum variance that would make possible reasonable use of the land for a home with a swimming pool. The pool is 32 feet by 17 feet, which is a pool of common size for a house of this type. It allows for the therapeutic exercise to be conducted within it.*

**Staff Analysis:** Pursuant to LDR Section 4.6.15(G)(1), swimming pools are allowed within the sides and rear setback areas only, they are not permitted in the front setback area. As such, any request for a pool in the front setback area is the minimum variance that will make possible the reasonable use of the land, building or structure. It should be noted that the pool is proposed to encroach 11.5 feet into the front setback, and not directly up to the front property line.

**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:** *As mentioned above, it is common for a residence in medium density residential zoning to contain a pool. The general purpose and intent of existing regulations is to allow pools in the most common areas where a pool would be located. In most houses, this is not the front yard of a property. However, due to this Property's location on S. Ocean Boulevard, placement in the front yard was necessitated. Given that the residential use basically ends with the eastern boundary of this home and that the uses further to the east are the busy S. Ocean Blvd., the public walkway, and the beach, the use of a*



*private pool in this area remains in harmony with the general purpose and intent of the existing regulations.*

*It will not be injurious to the neighborhood or otherwise detrimental to the public welfare to allow a newly constructed swimming pool that meets all guidelines in terms of aesthetics and safety. It will add to the character of the neighborhood, not injure it. It should be noted that neighbors to both the north and south have pools in the front yard setbacks. Such pools have been in existence for a period of time and have not been detrimental to the neighborhood.*

**Staff Analysis:** If granted, the variance will be in harmony with the general purpose and intent of the existing regulations. A swimming pool is a permitted accessory structure in the RM Zoning District, pursuant to LDR Section 4.4.6(C)(1). As such, should the variance be granted the applicant will only be conferred the right to propose a permitted structure that would otherwise be allowed if there was adequate space elsewhere on the property. It should also be noted that the adjacent home at 226 South Ocean Boulevard has a pool in the front setback, and numerous other variances for pools in the front setback have been granted for homes on Ocean Boulevard and elsewhere in the City.

**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	October 26, 2020
2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior	October 26, 2020
2.4.2 (B)(1)(j)(iv) - The notice posted at City Hall	October 26, 2020