



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: February 2, 2021 | **File No.:** 2021-042-VAR-BOA | **Application Name:** 1114 North Vista Del Mar Drive – Variance

General Data:

Applicant/Agent: Gary P. Eliopoulos/ GE Architecture, Inc.

Location: 1114 North Vista Del Mar Drive

PCN: 12-43-46-16-18-000-0311

Property Size: 0.2 Acres

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

Zoning: R-1-AA Single-Family Residential/ North Beach/Seagate District

Adjacent Zoning:

- **North:** R-1-AA Single-Family Residential/ North Beach/Seagate District
- **East:** R-1-AA Single-Family Residential/ North Beach/Seagate District
- **South:** R-1-AA Single-Family Residential/ North Beach/Seagate District
- **West:** R-1-AA Single-Family Residential/ North Beach/Seagate District

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 additions to a single-family dwelling unit to encroach 5'4" on the east side and 5' on the west side into the required 10 foot side setback areas.



Optional Board Motions for Action Items:

1. Move to continue with direction
2. Move approval of the Variance request (2020-199-VAR-BOA) from LDR Section 4.3.4 (K), to allow additions to a single-family dwelling unit to encroach 5'4" on the east side and 5' on the west side into the required 10 foot side setback areas for the property located at 1114 North Vista Del Mar Drive, 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 (2020-199-VAR-BOA) from LDR Section 4.3.4 (K), to allow an additions to a single-family dwelling unit to encroach 5'4" on the east side and 5' on the west side into the required 10 foot side setback areas for the property located at 1114 North Vista Del Mar Drive, by finding that the request is inconsistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).

Request:

Per LDR Section 4.3.4(K) Single-Family Detached Dwellings within the R-1-AA Zoning District are required to provide a minimum interior side 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.

Project Planner:

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

Review Dates:

Board of Adjustment:
February 2, 2021

Attachments

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



The Variance request is to allow additions to a single-family dwelling unit to encroach 5'4" on the east side and 5' on the west side into the required 10 foot side setback areas. The subject property currently has a nonconforming interior side setback of 5 feet along the west property line where the existing garage is constructed. The existing garage is proposed to be renovated to include a laundry room with an addition to allow for it to remain a functional one-car garage. The addition is proposed inline with the existing garage that encroaches 5 feet into the 10 foot side setback area. Along the west side of the single-family dwelling unit a golf cart garage is proposed that will encroach 5 feet into the conforming interior side setback area.

Background:

The property consists of a portion of Lots 31 and 32 of the Delray Beach Esplanade plat, as recorded in the Plat Book 18 Page 39, of the Public Records of Palm Beach County, Florida. The lot is located in the Single-Family Residential R-1-AA Zoning District. It is nonconforming in regard to lot area as it is 8,899 square feet where 9,500 square feet is required. The lot is developed with an existing one-story residence.

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:

(EAST) "THE EXISTING HISTORIC HOUSE IS CENTERED ON A NON-CONFORMING LOT WHICH DOESN'T ALLOW FOR THE OPPORTUNITY FOR A CONFORMING SINGLE CAR GARAGE."

(WEST) "THE EXISTING HISTORIC HOUSE/SINGLE CAR GARAGE ARE SITUATED ON A NON-CONFORMING LOT AND ALREADY ENCROACH INTO THE FRONT AND WEST SIDE SETBACK. THE HOUSE WAS CONSTRUCTED IN 1947."

Staff Analysis: The interior side 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. In regard to the addition on the east side of the structure, while it is true that the lot is nonconforming in regard to lot area, the existing structure is already encroaching into the front and interior side setback area on the west. The golf cart garage is being proposed in a conforming setback area. There is substantial existing area in the backyard that could be used for a golf cart garage. The proposed plan indicates significant additions being proposed where a golf cart garage would not be possible, however if the rear additions were modified and reduced the golf cart garage could be located within the backyard area instead of within the existing conforming setback area.

In regard to the addition on the west, 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 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 and is a direct violation of Section 1.3.5(B).

- 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:

(EAST) *"PER LOR SECTION 4.3.4(K), BASE DEVELOPMENT DISTRICT STANDARDS ARE MINIMUM 9,500 SQ.FT. FOR A LOT IN R-1-AA ZONING. THE CURRENT LOT SIZE OF 8,900 SQ. FT. CREATES A HARDSHIP FOR THE OWNER TO DEVELOP THE LOT AND DEPRIVES THEM OF THE RIGHTS COMMONLY ENJOYED BY OTHER PROPERTIES SUBJECT TO THE SAME ZONING."*

(WEST) *"PER LOR SECTION 4.3.4(K), THE BASE DEVELOPMENT DISTRICT STANDARDS ARE MINIMUM 9,500 SQ. FT.FOR A LOT IN R-1-AA ZONING. THE EXISTING PROPERTY IS 8,900 SQ. FT -THIS CONDITION CREATES A HARDSHIP FOR THE OWNER TO DEVELOP THE LOT AND DEPRIVES THEM OF RIGHTS COMMONLY ENJOYED BY OTHER PROPERTIES SUBJECT TO THE SAME ZONING. IT'S ALSO IMPORTANT TO UNDERSTAND THAT THIS HISTORIC STRUCTURE IS ALREADY LOCATED OVER SETBACKS."*

Staff Analysis: The applicant is correct, the lot is nonconforming in regard to area which does create a lack of land area that would commonly be enjoyed by a conforming property in the R-1-AA zoning District. The applicant could, however, modify and reduce the proposed additions in the backyard to allow for the golf cart garage to be proposed in compliance with the LDR regulations. While the backyard additions would have to be smaller to allow for the golf cart garage to be designed in compliance with LDR requirements, this would not deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning regulations.

In regard to the addition along the west, the existing garage is functionally serving what the applicant is requesting which is a one-car garage. The laundry room addition is what is necessitating the variance request. Similar to the above, the laundry room could be proposed elsewhere in the backyard as there is significant area for additions. While the backyard additions would have to be smaller to allow for the laundry room to be designed in compliance with LDR requirements, this would not deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning regulations.

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

Applicants response:

(EAST) *THE PROPERTY WAS RECENTLY PURCHASED BY THE OWNER AND THE NON-CONFORMING LOT SIZE WAS EXISTING.*

(WEST) *THE NON-CONFORMING CONDITIONS (LOT SIZE, LOCATED WITHIN SETBACKS AND BELOW THE FEMA FLOOD PLAIN) WERE EXISTING WHEN THIS HOUSE WAS PURCHASED BY THE CURRENT OWNER.*

Staff Analysis: The current owner purchased the property in 2020. Aerial images dating back to 2007 depict the single-family dwelling unit in its current configuration with the nonconforming garage on the west side of the structure, confirming that applicant's statement that the non-conforming condition was existing when the home was purchased by the current owner. The FEMA flood maps were updated in 2017, prior to the current owner purchasing the property and the lot area has also remained unchanged.

While the lot area, flood plan and location of the existing garage are not results of actions of the applicant, the proposal of a brand new and completely nonconforming addition along the east side of the property and an addition to an existing nonconforming garage along the west side are a result of the applicant's chosen design. The design could be modified to include all additions in the backyard which has significant area available for additions that conform to the LDRs.

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:

(EAST) "GRANTING THIS REQUEST WILL ALLOW THE OWNER THE ABILITY TO HAVE A SINGLE CAR GARAGE, THE SAME AS MANY OF THE SURROUNDING HOMES IN R-1-AA ZONING. THE CURRENT TREND IN THIS AREA WOULD BE TO KNOCK DOWN THE MODEST HISTORIC HOUSE AND CONSTRUCT NEW."

(WEST) "GRANTING THIS REQUEST WILL ALLOW THE OWNER TO ENJOY THE ABILITY TO MAKE MINIMAL UPDATES TO THE PROPERTY - RENOVATE AND EXPAND THE EXISTING SINGLE CAR GARAGE, THE SAME AS MANY OF THE SURROUNDING HOMES IN R-1-AA ZONING."

Staff Analysis: In regard to the addition on the east, 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 propose a brand new addition wholly within a conforming setback area. Per LDR Section 4.3.4(K) Single-Family Detached Dwellings within the R-1-AA Zoning District are required to provide a minimum interior side 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 applicant could modify and reduce the proposed additions in the backyard to allow for the golf cart garage to be proposed in compliance with the LDR regulations.

In regard to the addition on the west, 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 garage being built within the required setback area is not a result of the actions of applicant, that does not ensure that additions can be built in a manner that would increase a nonconforming structure. The applicant is permitted to make additions to the existing structures and make minimal updates to the property pursuant to the lot coverage requirements of the R-1-AA zoning district, however the minimum dimensional standards, including setback requirements, still apply. The existing garage is functionally serving what the applicant is requesting which is a one-car garage. The laundry room addition is what is necessitating the variance request. Similar to the above, the laundry room could be proposed elsewhere in the backyard as there is significant area for additions.

- 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:

(EAST) "WE ARE PROPOSING A 9'-4" WIDE X 20'-0" DEEP SINGLE CAR GARAGE, WHICH IS CONSIDERED MINIMAL FOR PARKING A CAR AND IS AN APPROPRIATE LOCATION FOR THIS ADDITION."

(WEST) "THE EXISTING HOUSE IS WELL BELOW THE FEMA FLOOD PLAIN AND BY RAISING THE HOUSE UP TO THE NEW ELEVATION, INTERNAL STAIRS WILL BE REQUIRED. THE PROPOSED SINGLE CAR GARAGE WILL BE 10'-0" X 22'-0" ON INTERIOR DIMENSIONS WHICH WOULD BE CONSIDERED A MINIMAL SIZE."

Staff Analysis: Staff is in agreement with the applicant that the proposed size of the two garage additions are the minimum size in regard to functionality for what the applicant is trying to achieve (a one car garage and a golf cart garage). However, if the applicant was denied the ability to construct a golf cart garage or a laundry room addition in their desired locations the applicant would still be able to make reasonable use of the land and structure. A laundry room addition and golf cart garage are proposed as amenities associated with an existing single-family home in a single-family residential zoning district.

- 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:

(EAST) "THIS IS AN APPROPRIATE LOCATION FOR A SINGLE CAR GARAGE. IT HAS BEEN SPECIFICALLY DESIGNED TO BE COMPATIBLE WITH THE HISTORIC HOUSE. THEREFORE IT WILL BE COMPLEMENTARY AND IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE EXISTING REGULATIONS AND WILL BE ESPECIALLY COMPATIBLE WITH THE NEIGHBORING PROPERTIES."

(WEST) "THE PROPOSED MINIMAL UPDATES HAVE BEEN SPECIFICALLY DESIGNED TO BE COMPATIBLE WITH THE EXISTING HISTORIC HOUSE. THE EXISTING REGULATIONS STATE THAT THE PROPOSED STRUCTURE SHOULD ALSO BE COMPATIBLE WITH THE SURROUNDING PROPERTIES. IT IS OUR PROFESSIONAL OPINION THAT THE PROPOSED ADDITION WILL ACHIEVE A FAR MORE DESIRABLE DEGREE OF COMPATABILITY THAN A NEW TWO OR THREE-STORY STRUCTURE."

Staff Analysis: If granted, the variances will be not in harmony with the general purpose and intent of the existing regulations. The variance for the addition on the east would be in direct violation of LDR Section 4.3.4(K) which requires Single-Family Detached Dwellings within the R-1-AA Zoning District to provide a minimum interior side setback of 10 feet. Additionally the variance for the addition on the west 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 requests are not in harmony with the general purpose and intent of the existing regulations, granting them 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 "the 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 additions to the existing single-family dwelling unit will compliment the traditional single-family neighborhood, but will encroach into the required side setbacks. Setbacks have historically been required in order to provide daylight and air at the street level and between homes, and there are homes on both the adjacent east and west properties.

With respect to the applicant's response, staff cannot base their analysis on architectural aesthetics as architectural aesthetics do not have an impact on the welfare of the general public and the residents of the City of Delray Beach. Additionally they cannot base their analysis on the inference that demolishing the existing residence and building a code compliant replacement would be a less desirable alternative. The demolition of the existing single-family home would not alleviate any of the issues the applicant is conveying for purposes of justification for the variance approvals.

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	January 22, 2021
2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior	January 22, 2021
2.4.2 (B)(1)(j)(iv) - The notice posted at City Hall	January 22, 2021