

	LAND DEVELOPMENT STAFF REPORT AND RECOMMENDATION
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Subject/Agenda Item:

BA-20-01: 333 Jackson Ave

Consideration of Approval: A request from Jason Abrams, for approval of three (3) variances for the 333 Jackson Ave parcel. The variance requests a reduction to the required 7.5' side setback for the South side of the principal structure, a reduction to the required 25' front setback for the primary structure and a reduction of the 20' rear setback for an accessory structure. The subject site is located approximately 350' north of the intersection of Second Street and Jackson Ave.

- Recommendation to APPROVE
 Recommendation to DENY
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- Quasi-Judicial
 Legislative
 Public Hearing

<p>Originating Department: Planning & Engineering</p> <p>Project Manager  Kara Ferris, Director</p>	<p>Reviewed By: Director of Planning & Engineering  Kara L. Irwin-Ferris, AICP</p> <p>_____ City Attorney</p>
	<p>Public Notice: <input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required Dates: 9/23/2021 Paper: The Lake Worth Herald Mailing <input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required Notice Distance: <u>300'</u></p>

<p>Attachments:</p> <ul style="list-style-type: none"> • Survey • Concept Plan • Aerial Map • Petitioner's Justification Statement 	<p>BZAA Action: <input type="checkbox"/> Approval <input type="checkbox"/> Approve with conditions <input type="checkbox"/> Denial <input type="checkbox"/> Continued to: _____</p>
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I. Executive Summary

The Applicant is requesting variances for an existing single-family home (principal structure) and an accessory building (accessory building) on the subject site. The requested variances are from Chapter 16, Zoning Regulations, and Sec.16-309 (c) Minimum yard requirements for the front (East), rear (West) and side (South) setbacks. The lot has multiple structures that the applicant is requesting the variances for as part of this request.

The applicant is requesting design standard variances for an existing single-family residence that is located on the west side of Jackson Ave approximately 350' north of Second Street. The Palm Beach County Property Appraiser has determined that the property was built as 1925, but could not provide the City with the data to support the information. The applicant is requesting the variances to bring the non-conforming structures into compliance.

II. Site Data:

Existing Use:	Single Family Residential
Proposed Use:	Single Family Residential
Parcel Control Number(s):	18-42-44-22-01-010-0270
Parcel Size:	0.1492 acres (6,500 sq. ft.)
Future Land Use Designation:	Residential- Low Density (RS-LD)
Zoning District:	Residential Low-3 (RL-3)

Dir.	Existing Land Use	Future Land Use	Zoning District
<i>North</i>	Single-family Residential	Residential- Low Density (RS-LD)	Residential Low-3 (RL-3)
<i>South</i>	Single-family Residential	Residential- Low Density (RS-LD)	Residential Low-3 (RL-3)
<i>East</i>	Single-family Residential	Residential- Low Density (RS-LD)	Residential Low-3 (RL-3)
<i>West</i>	Single-family Residential	Residential- Low Density (RS-LD)	Residential Low-3 (RL-3)

III. Annexation/Zoning History:

The approximately 0.1492 acre site is located at 333 Jackson Ave. The property is located within the Original Section of Greenacres and was initially incorporated as the City of Greenacres, along with all of the other properties located within Greenacres Plat #2, in 1926. The Comprehensive Plan Amendment in 1981 designated this parcel and other parcels located in what is considered the Original Section as Residential-Low Density. The lot was zoned to its current Residential Low-3 district on February 29, 1988 with petition ZC-87-02 through Ordinance 1988-05.

IV. Applicable City Code Provisions:

Sec. 16-101 through 16-107 pertaining to the Zoning Board of Adjustments and Appeals

Sec. 16-309(1)(C)(3) pertaining to front, rear and side setbacks in the RL-3 district

Sec. 16-1358 pertaining to nonconforming buildings and structures

V. Staff Analysis:

Background:

The subject property is a 0.1495-acre parcel with an existing single-family residence. According to Palm Beach County Property Appraiser's website, the lot contains one residential unit, a single-family home that was built on the lot in 1925. However, the property has no City permits for the original development of the existing single-family home, but does have a permit for the carport enclosure from 1980 and a 6' x 6' storage room in 1961. The carport enclosure includes a rough sketch of the house along with the proposed dimensions of the enclosed carport. Final inspection of the work was completed on March 5, 1980.

The City does not have any surveys on file for the property; however, permits and sales records for the property indicate the parcel was originally developed by combining two (2) lots. Block 10, Lots 27 and 28 were sold together with one single-family home.

On June 10, 2005, the parcel was purchased by Raymond Loukinen, who subsequently took action to subdivide the parcel back into the two original platted lots approved via the Greenacres Plat No. 2. The property owner received two separate Parcel Control Numbers (PCNs) from the Palm Beach County Property Appraiser (PAPA) and sold the southern lot to a homebuilder on April 21, 2006. Based on the property file, the homebuilder built a single-family home on the adjacent property. The subdivision of the parcels created a non-conformity on Lot 27, when the existing lot was left with only 3.0' on the south side of the principal structure for a side setback that was required to be 7.5'. The existing principle structure was already non-conforming due to the side (North) setback being 2.2' where 7.5' is required and the front (East) setback being 19.7' and 24.8' along the front setback where 25' is required.

On January 30, 2008, Mr. Loukinen sold the property to Errol A. Harvey. On March 25, 2009, the property was cited for multiple code violations (Case 03-09-1676) including a garage that was converted into a living space, two sheds in the backyard all cited for being constructed or installed without permits. The Code Enforcement Board found the property in violation and set a fine of \$100 per day if the property was not brought into compliance by October 2, 2009. The property was not brought into compliance and the fines started accruing. On January 15, 2010, the City filed a lien on the property. This fine is still accruing and has not been brought into compliance to date.

On August 25, 2015, the City cited the property again for multiple violations (Case 08-15-5344) including general maintenance of the exterior structure, overgrown property, vehicle(s) without tag, electrical service falling off the wall, no weather head, and tampering with an electrical meter. On March 16, 2016, the Code Enforcement Board found the property in violation and set a fine of \$50.00 per day if the property was not brought into compliance by April 15, 2016. The property was not brought into compliance and the fines started accruing. On December 20, 2017, the City filed a lien on the property. The property owner at the time contacted the City in April of 2018 to discuss the liens on the property. The property owner claimed

that the purchase was done with identity fraud and that he was unaware of the property being in his name, let alone the two cases with multiple violations and accruing fines. The City attorney could find no evidence of a case of fraud for Mr. Harvey, as he indicated and the City decided to move forward to bring the site into compliance. Mr. Harvey indicated he was going to sell the property

The current owner, who purchased the property on February 27, 2020 from Mr. Harvey, brought Case 08-15-5344 into compliance on October 8, 2020, and the fines stopped accruing as of that date, but the lien is still in place. Case 03-09-1676 is still accruing fines and has not been brought into compliance.

Non-conforming Buildings, Structures, and Use:

The existing home has many non-conformities that do not meet the current code requirements, so the Code section that regulates Non-conformities, Chapter 16, Article IX, Section 16-1358 is applied to the review and approval of any site plan amendments requested or building permits for the subject site. Code Section 16-1356 (a) states:

“Within the zoning districts established by this chapter, there exists nonconformities to uses, components of use, buildings, structures or lots. It is the intent of this article to provide for the continuation of those nonconformities which were lawful prior to the adoption of this chapter, but which would be prohibited, regulated or restricted under the terms of this chapter. It is the intent of this article to regulate and limit the continued existence of those nonconformities until they are removed under the terms of this chapter. It is further the intent of this article that, except under the limited circumstances established herein, certain nonconformities may not be enlarged upon, expanded, replaced, restored, reconstructed, extended, nor be used as grounds for adding other buildings, structures or uses prohibited elsewhere in the same zoning district.”

The code means to regulate the non-conforming buildings, uses, structures, lots, etc. until they comply with the current zoning regulations and therefore conform to the neighborhood or zoning district. Based on the non-conforming codes, the non-conforming buildings are permitted to continue and may “*increase, extension, expansion or enlargement of building or structure*”, “*Replacement, restoration, or reconstruction of nonconforming buildings and structures*”, and “*Repairs and maintenance*” provided specific regulations are met. These regulations apply to buildings and structures that were lawful prior to the adoption of new codes and regulations. These non-conformities are called legal non-conformities. The principal structure located at 333 Jackson Ave is non-conforming, but it can be repaired and maintained, provided permits are applied for and issued for any work.

The applicant’s justification submitted states that the City is requiring him to demolish the front porch structure, the south side addition to the structure with the flat roof, and the rear structure that is separate from the principal structure, because they are not legal non-conformities, so he needs a variance to maintain them. In fact, the code clearly allows the repair and maintenance of existing legal non-conforming structures and in some instances permits further improvements. Overall, the City can only approve permits that are permitted by the Code. The existing parcel does not legally have the rights to three or even two separate dwelling units, only one single-family unit, as it indicates on the Property Appraiser’s website. This has been a major conflict between the applicant and the City, as he chooses to ignore the City’s determination that his proposed use of the accessory structure as additional dwelling units is not permitted, nor is there any indication in the history of the property that allowed that use to occur. In the variance request, he is applying the principal structure rear setback to the shed for the variance, as opposed to the accessory structure setback of 5’.

Variance Requests:

The petitioner is requesting variances from the Zoning Code to decrease the side yard setback along the south perimeter of the principal structure (a.k.a. single-family home) as well as the front setback for a portion of the single-family home front porch. The petitioner is also requesting a principal variance to the rear yard setback on the West side of the property for the accessory structure located on the west end of the lot. The variances requested are from the following Code provision:

- V1) Chapter 16, Article III. District Regulations, Division 4. Residential Low Density, Sec.16-309 (1) c 1, which requires a front setback to be a minimum of 25’ from the property line. The applicant is proposing to reduce this front setback to 24.8’ for the primary structure and 19.7’ for the front porch structure. The variance is for 0.2’ and 5.3’.
- V2) Chapter 16, Article III. District Regulations, Division 4. Residential Low Density, Sec.16-309 (1) c 3, which requires a side setback to be a minimum of 7.5’ from the property line. The applicant is proposing to reduce this side setback to 3.0’ for the south side. The variance is for 4.5’.
- V3) Chapter 16, Article III. District Regulations, Division 4. Residential Low Density, Sec.16-309 (1) c 2, which requires a rear setback to be a minimum of 20’ from the property line. The applicant is proposing to apply the setback to a separate building located on the rear of the property that requires a variance to allow a rear setback of 3.2’. The variance is for 16.8’.

On August 12, 2021 and August 20, 2021, the Land Development Staff reviewed this petition and found it sufficient to move forward in the development review process.

Land Development Staff Comments:

Planning and Engineering Dept.:	Incorporated into the staff report.
Building Department:	No objections.
Public Safety Department:	No objections.
Public Works Department:	No objections.

VI. Variance Findings of Fact:

The Zoning Board of Adjustment and Appeals shall have the power to authorize a variance from the terms of the Zoning Code. In order to be granted a variance from the Zoning Code, the petitioner must meet the six specific criteria findings and the general criteria listed in the Code. The following is a list of those criteria and an analysis of whether or not the subject variance request meets the criteria.

Specific Criteria Findings:

- (1) **That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.**

Finding:

Front Setback: The existing home is approximately less than one foot into the required 25-foot front setback (East) and the porch structure is 5.3 feet into the required front setback. While the existing front porch encroaches on the front setback and there may be other structures within the

area that also encroach based on the differing regulations throughout the years, this does not qualify as a special condition or circumstance peculiar to the land or structure. This issue is addressed in the non-conforming regulations of the code that regulate non-conformities and how they are brought into conformance over time. Granting the variance for the existing structure would circumvent the intent of the non-conforming regulations that applies uniformly to all of the addresses listed in the applicant's justifications. The fact that the structure existed prior to the adoption of the current code is not an adequate justification showing that special circumstance exist that are peculiar to the land, structure, or building involved. In fact, it is not an isolated condition, as the same code regarding non-conformities applies across the board for all structures that do not meet current regulations.

South Side Setback: There is not any special conditions or circumstances that existed which were peculiar to this structure or piece of land that create or justify the variance. As indicated by the applicant, there are other parcels in the Original Section with similar setbacks that do not meet code on the side or front setbacks, but these issues are addressed by the non-conforming regulations. The non-conformity was created through the subdivision of the lots 27 and 28. The non-conforming code section applies in this situation and granting a variance will circumvent the non-conforming regulations with justification.

West Rear Setback: The rear structure is not a principal structure that requires the application of the rear setback of 20 feet. It is an accessory structure that has no legal support documentation showing that it was built as a primary or principal structure, therefore a variance to the rear setback is not appropriate. The applicant is requesting the variance in order to utilize the structure as an accessory dwelling unit, which is not permitted. No special conditions or circumstances exist that justify the granting of a variance for this structure to the rear yard setback for principal structures.

(2) **That special conditions and circumstances do not result from the actions of the applicant.**

Finding:

Front Setback: The applicant has not provided justification that a special condition and/or circumstance exists to justify the variance requested. The structure was built prior to the existing zoning regulations and therefore some deviation from current regulations are regulated under the non-conforming regulations in the Code. These regulations provide for the eventual transition over time of old structures into compliance with current regulations. The principal structure was built by previous owners and were not the actions of the applicant.

South Side Setbacks: The applicant has not provided justification that a special condition and/or circumstance exists to justify the variance requested. The applicant has not provided any documentation that shows the structure was approved by the City. Staff cannot find any documentation on file showing that work was approved and constructed in compliance with the applicable code at the time of construction. The work done was completed by previous owners and were not the actions of the applicant, but requesting to allow this setback in perpetuity through the approval of the variance would be based on actions of the applicant. Allowing the non-conformity to become a conformity is in direct conflict with the Code provisions for non-conforming uses, buildings, and structure..

West Rear Setback: The rear structure is not a principal structure that requires the application of the rear setback of 20 feet, an accessory unit setback of 5' would be appropriate. The applicant's request to treat the building as a principal structure and to apply the 20' rear setback is a situation

resulting from the actions of the applicant. The applicant was informed prior to the purchase that the structure was not permitted to be used as a dwelling unit. Any improvements that the applicant completed to utilize the structure as a dwelling unit were done with the full knowledge that the City did not permit accessory dwelling units on single-family lots. This request is based on circumstances created by the applicant.

- (3) **That granting the variance request will not confer on the applicant any special privilege that is denied by this chapter to the other lands, buildings, or structures in the same zoning district.**

Finding:

Front Setback: The granting of the variance as requested by the applicant will confer on the applicant special privileges that are denied to other non-conforming structures in the same zoning district. The applicant is not being denied the use of the structure based on the non-conformity, but the City must apply the same regulations for addressing the non-conformities that apply to all other properties in the zoning district. A granting of the variance runs with the land in perpetuity, so the non-conforming regulations would no longer apply to applicant, but would apply to every other non-conforming building, structure or lands in the same zoning district that has similar circumstances.

South Side Setbacks: The applicant would be granted a special privilege by allowing the south side setback to be reduced by variance. The applicant is proposing a 3.0 ft. setback, which is significantly less than the 7.5' that is required in the current zoning district. The applicant is not being denied the use of the structure based on the non-conformity, but the City must apply the same regulations for addressing the non-conformities that apply to everyone else. A granting of the variance runs with the land in perpetuity, so the non-conforming regulations would no longer apply to applicant, but would apply to every other non-conforming building, structure or lands in the same zoning district.

West Rear Setback: The granting of the variance for the rear structure would confer on the applicant a special privilege that is denied to all single-family lots in all residential zoning districts. Single-family lots are permitted to have accessory structures limited in square footage, but they are not permitted to be used as dwelling units. The consideration that the rear structure is a viable dwelling unit is not allowed and granting the variance would give the applicant a privilege currently denied to all other properties in this zoning district.

- (4) **That the literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.**

Finding:

Front Setback: The literal interpretation of the provision of this chapter would not deprive the property owner of rights commonly enjoyed by other properties in the same district under the terms of this chapter. The applicant can make improvements to the home based on the non-conforming regulations and is not being deprived of an use of the property commonly enjoyed by other properties in the district.

South Side Setbacks: The literal interpretation of the provisions of this chapter would not deprive the property owner of rights commonly enjoyed by other properties in the same district under the terms of this chapter. The property owner can still enjoy the single family home that meets the side

setback requirements. The applicant hasn't provided any documentation that would show that they would be deprived of rights commonly enjoyed by other properties in the same district. There is nothing stopping the applicant from expanding the house in a way that would meet current code requirements.

West Rear Setback: The literal interpretation of the provision of this chapter would not deprive the property owner of rights commonly enjoyed by other properties in the same district under the terms of this chapter. There are no regulations that would permit an accessory dwelling unit in the RL-3 zoning district.

- (5) **That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.**

Finding:

Front Setback: The applicant does not need the variance to enjoy the use of the existing single-family home. There is not a Code regulation that requires the applicant to remove the porch structure in order to maintain the structure. There are no special circumstance that exist for the site that requires the approval of the variance in order for the applicant to have reasonable use of the building.

South Side Setback: The variance for this structure is not required to make use of the single family home. The applicant is not being denied use of the portion of the building that encroaches into the side yard. The variance does not have adequate justification to support any side yard variance for the south side.

West Rear Setback: There are no special circumstance that exist for the site that requires the approval of the variance in order for the applicant to have reasonable use of the building.

- (6) **No nonconforming use of neighboring lands, structures or buildings in other districts and no permitted use of land, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.**

Finding: All three variance requests are currently regulated as non-conforming uses. The applicant has tried to justify the request by pointing out other non-conformities within the same zoning district, which are regulated the same as the subject site. Staff cannot use that justification for the variance.

General Criteria Findings:

- (1) **A Variance:**

a: shall not be contrary to the public interest

Granting the variance, as requested will be contrary to the public interest, as it would circumvent the regulations that apply for non-conforming buildings and uses in all zoning districts.

b: may be authorized if, where owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship

For the reasons previously stated, the literal interpretation of the provisions of the zoning code do not hinder proper re-development or maintenance of the site.

(2) Financial hardship is not to be considered alone as sufficient evidence of a hardship.

The petitioner has expressed financial hardship as a justification for being granted the variance, as well as money invested in the rear structure, which the applicant invested at his own risk, as he was well informed that the rear structure was not an accessory dwelling unit.

Summary of Variance Criteria:

Based on the preceding analysis, the subject front (East), side (South) and rear (West) setback variance requests for the existing single family home and accessory structure do not comply with the six variance criteria.

VII. Staff Recommendation:

Denial of BA-21-02 for the front, side (south) and rear setback variances for the existing single family home and accessory structure.

In the event that the Board finds that the requested variances meet all six (6) of the variance criteria, staff proposes the following conditions:

1. Permits project shall be obtained within six (6) months of the date of approval of this variance in order for the Development Order to be recorded. (Planning)
2. The variance being granted for the single family home will only apply to the existing footprint of the single family home. Any expansion of the garage or single family home will have to meet current setback requirements for the current Zoning District. (Planning and Building)
3. The granting of the rear setback variance does not confer on the applicant the rights to utilize the structure as a dwelling unit, principal or accessory. (Planning & Building)

ZONING BOARD OF ADJUSTMENTS AND APPEALS ACTION – October 5, 2021

Walter Buist, Chairperson

Attest:

Quintella L. Moorer, CMC, City Clerk