

May 15, 2024

Advisory Board
Planning & Zoning Division
100 W. Atlantic Boulevard
Pompano Beach, Florida 33060

via email: zoning@copbfl.com

Re:

Hasbrook Variance Application
P&Z No.: 24-11000002
Subject Property: 3215 Canal Drive

To the Advisory Board:

The property owners of 3221 Canal Drive, 3225 Canal Drive, and 3229 Canal Drive (“Objecting Owners”) join and renew the objection to the variance application (“Application”) submitted by Ms. Andee Hasbrook (“Applicant”), owner of the subject property located at 3215 Canal Drive (“Subject Property”). The Application seeks to construct a swimming pool in the front yard of the Subject Property. For the reasons stated below, and in the Objector’s previous letter, the Application should be denied.

I. The Application is Not Supported by Substantial Competent Evidence

At the last hearing, held March 21, 2023, the Applicant was asked to submit a tree survey of the Subject Property. The Objectors have not located any such tree survey in the meeting agenda or the administrative record. Without this tree survey, the board could not resolve the Application at the last hearing and the Objectors do not see how the Application can be supported today without such necessary evidence requested by the board. The variance Application must be denied.

II. A Tree Survey of the Property Would Make Clear There is Ample Room for a Pool in the Back Yard

The Subject Property supplies more than enough room to construct a large swimming pool in the rear of the property. This fact is entirely unremarkable since all neighboring swimming pools on the street are situated in the rear of their respective properties, as shown here:



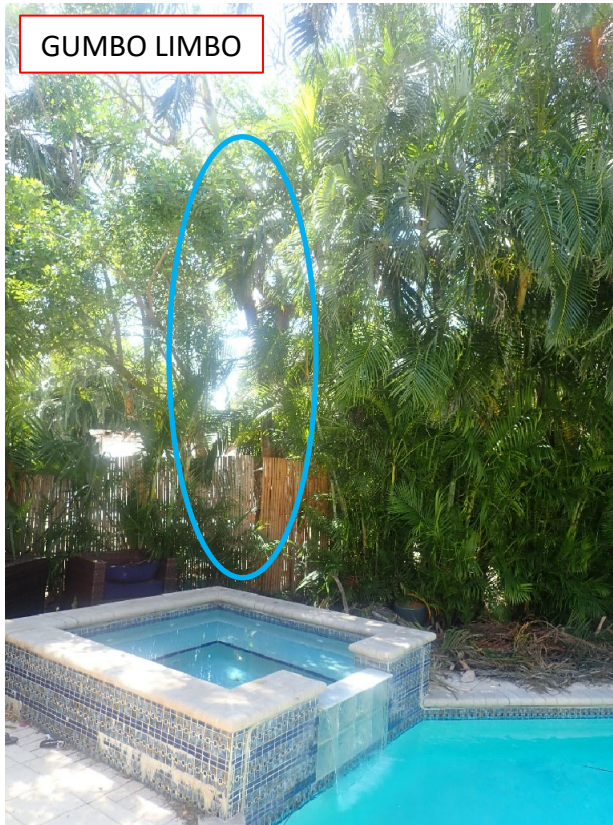
The Applicant does however reference an arborist in support of its hardship claim. The Applicant states: “As per our Arborist, the tree roots would be compromised with the pool in the rear, therefore, the front location, behind our six-foot privacy fence, would be the best solution.” There are several reasons why this statement is at best irrelevant and quite possibly misinformed. It is irrelevant because the “best solution” is far from the demanding standard required to obtain the variance.¹ It also appears to be misinformed because the Applicant’s arborist seems to be considering the location of a swimming pool under the assumption that the dwelling structure will be constructed as planned, which is simply the Applicant’s preferred location of the structure.

The Objectors submit the report of arborist Gerald Behan, member of the International Society of Arboriculture. Mr. Behan addresses the two mature trees referenced in the Applicant’s recent letter dated May 8, 2024.

There are two mature trees located in the rear of the property situated on or near the property line: (1) a Gumbo Limbo, and (2) a Strangler Fig. As to the Gumbo Limbo, Mr. Behan states that it is “possible to install a root barrier at 8 feet from the trunk so that a pool or building foundation could be built at 9 feet or 10 feet from the trunk.” As to the Strangler Fig, Mr. Behan recommends removal of the tree because it is, or will be, a hazard. To the extent that the tree is not removed, it is possible to install a root barrier “15 feet to 20 feet away from the trunk.” It is important to note

¹ The phrase “best solution” is consistent with the Applicant’s preferences. Yet, the Applicant must “demonstrate a unique hardship resulting in **no reasonable use of the property** without the variance.” *Bernard v. Town Council of Town of Palm Beach*, 569 So. 2d 853 (Fla. 4th DCA 1990) (denying variance sought for the construction of a master bedroom and bathroom despite an “unusual configuration” of the land) (emphasis supplied). It should also be noted that it is the **land** - not the nature of the project - which must be unique and create a hardship. *Ft. Lauderdale v. Nash*, 425 F.2d 578 (Fla. 4th DCA 1982). Here, the two trees at issue are located on or near a shared property line where an existing pool has been in place just several feet away for more than two decades.

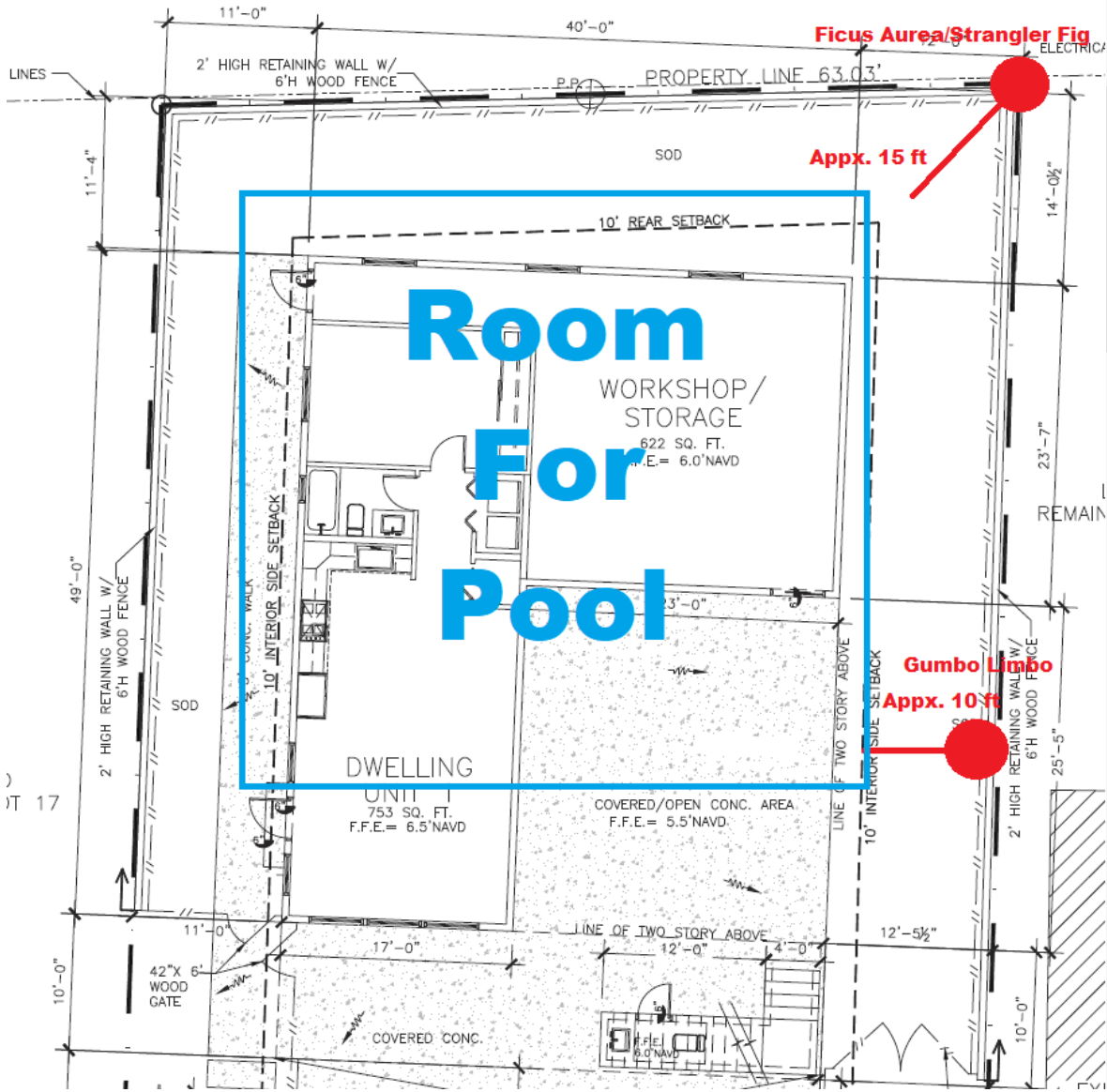
that the pool located on the neighboring property at 3221 Canal Drive has maintained similar proximity to these same two trees for at least 20 years and each tree still remains in-tact.



The report of Mr. Behan has been submitted to board with this Objection.

Visually, the Applicant is left with more than sufficient room to construct a very large swimming pool in the rear of the property:²

² A 12 x 20 foot swimming pool is also a preference. The board should also consider that the Applicant could construct a smaller pool in the rear of the property if other structures are built in the rear of the property.



Room For Pool

WORKSHOP/
STORAGE
622 SQ. FT.
F.F.E. = 6.0' NAVD

DWELLING
UNIT 1
753 SQ. FT.
F.F.E. = 6.5' NAVD

Ficus Aurea/Strangler Fig

Appx. 15 ft

Gumbo Limbo

Appx. 10 ft

IT 17



To the extent the Applicant cannot configure a swimming pool in the blue area shown above, it is because the Applicant desires to construct a dwelling unit, a workspace/storage unit, and a covered open concrete area where a swimming pool could be located. If you can construct these three structures in this area, you can surely construct a swimming pool - just not all four structures altogether. Such self-created hardships are swiftly rejected by Florida courts. *See, e.g., Thompson v. Planning Commission of the City of Jacksonville*, 464 So.2d 1231 (Fla. 1st DCA 1985) (“The alleged hardship falls into the category of self-created hardship. Before purchasing the property, the owners were fully aware of its shape and size, but still designed a building which was too large for the lot, leaving insufficient room for [the additional structure requiring a variance]. The hardship arose solely from their own conduct and expectations.”).

Simply put, the Applicant does not meet the requirements for obtaining a variance from the Pompano Beach ordinance code. What may be the “best solution” for the trees is not be the “best solution” for the neighborhood and, in particular, the property situated at 3221 Canal Drive, because such variance would allow the Applicant to construct a swimming pool as close as ten (10) feet away from the neighboring structure’s crawl space, in a severe flood zone, and substantially closer to an already sinking road than any other pool located on the street.



The Application should be denied.

OBJECTING OWNERS

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