

March 19, 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.: 24-1100002
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 object 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, the Application should be denied.

I. Introduction

In order to obtain a variance from Section 155.4302.B.2.g, the Applicant must provide substantial evidence showing that they have met all of the following factors:

- a. There are extraordinary and exceptional conditions (such as topographic conditions, narrowness, shallowness, or the shape of the parcel of land) pertaining to the particular land or structure for which the Variance is sought, that do not generally apply to other lands or structures in the vicinity;
- b. The extraordinary and exceptional conditions referred to in paragraph a., above, are not the result of the actions of the landowner;
- c. Because of the extraordinary and exceptional conditions referred to in paragraph a., above, the application of this Code to the land or structure for which the Variance is sought would effectively prohibit or unreasonably restrict the utilization of the land or structure and result in unnecessary and undue hardship;

- d. The Variance would not confer any special privilege on the landowner that is denied to other lands or structures that are similarly situated.
- e. The extent of the Variance is the minimum necessary to allow a reasonable use of the land or structure;
- f. The Variance is in harmony with the general purpose and intent of this Code and preserves its spirit;
- g. The Variance would not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to property or improvements in the neighborhood, or otherwise be detrimental to the public welfare; and
- g. The Variance is consistent with the comprehensive plan.

See Section 155.4420.D.1.

All of these requirements must be met and the Applicant fails to meet even one of them.

II. THERE ARE NO EXTRAORDINARY AND EXCEPTIONAL CONDITIONS PERTAINING TO THE SUBJECT PROPERTY

The Applicant states that the Subject Property has exceptional and extraordinary conditions because “our street is very unusual . . . with the waterway in the front of the house” and that in order for her to “get the main house and the apartment to fit and still enjoy my water view, we realized we had to push the house all the way to the back of the property and face everything south, again towards my water view, which in turn would mean putting the pool in the front of the house.”

This condition is neither extraordinary nor exceptional.

When analyzing whether the Subject Property possesses extraordinary or exceptional conditions, Florida courts look to the neighboring properties to determine if those properties have similar conditions. *See, e.g., Town of Ponce Inlet v. Rancourt*, 627 So. 2d 586 (Fla. 5th DCA 1993) (upholding the denial of a variance for the construction of a pool enclosure because the neighboring properties had similar characteristics).

The Objecting Owners have similar rectangular shaped lot sizes ranging from 6,093 square feet to 9,049 square feet. The Subject Property falls within the high end of those lot sizes at 8,206 square feet (2,113 square feet larger than the Objection Owner with the smallest lot that has a swimming pool). Despite that all of the Objecting Owners have sizeable pools in their back yards, the Applicant claims that the Subject Property has extraordinary and exceptional conditions that prevent the construction of a swimming pool in the back yard.

The following image shows the Objecting Owners’ lots and the Subject Property, demonstrating how similar in shape and size all of the properties are to each other.



Moreover, there are three structures currently located on the Subject Property: (1) the principal structure; (2) a garage; and (3) an efficiency unit. The demolition of the garage and/or the efficiency unit alone would provide more than enough room for a swimming pool (perhaps even two swimming pools), let alone the demolition of all three structures.¹

This factor is clearly not met and justifies the denial of the variance without the need for any further analysis.

III. THE EXTRAORDINARY AND EXCEPTIONAL CIRCUMSTANCES ARE THE RESULT OF THE ACTIONS OF THE APPLICANT

The Applicant states that she “had 2 preliminary meetings with the City of Pompano and about a year and a half ago were advised that we could put a pool in the front yard as long as it was outside of the 25’ setback.”

None of that is relevant to this prong. The Applicant’s unfamiliarity with the Ordinance Code prior to developing plans with a contractor and/or architect is insufficient evidence to warrant a variance from Section 155.4302.B.2.g. *See Josephson v. Autrey*, 96 So.2d 784 (Fla.1957) (applicant seeking variance cannot self-create reason for variance); *see also Town of Ponce Inlet v. Rancourt*, 627 So. 2d 586 (Fla. 5th DCA 1993) (additional costs imposed on applicant seeking variance is insufficient evidence to grant variance).

The Applicant fails this prong too.

¹ The efficiency unit located in the back yard of the subject property is at least twice the size of the pool located in the back yard of 3229 Canal Drive.

IV. DENIAL OF THE VARIANCE WILL NOT CAUSE AN UNDUE HARDSHIP TO THE APPLICANT

The Applicant states: “This code prohibits me from effectively utilizing my property in full and thus creates an undue hardship. This variance would in no means offer me any special privileges that may have been denied to others in similar situations.”

Again, the Applicant’s unfamiliarity with the Ordinance Code prior to developing her plans is not a justification to grant a variance. *Town of Ponce Inlet v. Rancourt*, 627 So. 2d 586 (Fla. 5th DCA 1993) (additional costs imposed on applicant seeking variance is insufficient evidence to grant variance).

Moreover, the Applicant misses the mark as to what an “undue hardship” means. Pompano Beach is situated within the jurisdiction of the Fourth District Court of Appeals and its decisions should guide the Advisory Board in granting or denying variances. For the Applicant to show an “undue hardship” here, the Fourth District requires the Applicant to “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).²

This standard could never be met with respect to the need to construct a residential swimming pool, particularly constructing a swimming pool in the front yard. *See, e.g., Karas v. City of Clearwater* 1988 WL 617926 (Fla. Div. Admin. Hrgs. Jul. 5, 1998) (denial of variance for the construction of a swimming pool in the front yard despite applicant’s claim that the pool was required for health reasons). For example, there are many homeowners in the 500 foot radius of the Subject Property that make reasonable use of their lots without possessing a swimming pool at all. Here, the Applicant may make reasonable use of the Subject Property - with or without a swimming pool - but if the Applicant desires a swimming pool, it must conform to Section 155.4302.B.2.g and Section 155.4303.GG.3.d.4 and be constructed in the back yard.

The Applicant fails to meet this prong.

V. THE EXTENT OF THE VARIANCE IS NOT THE MINIMUM NECESSARY TO ALLOW A REASONABLE USE OF THE LAND

² This demanding standard is not unique to the Fourth District and is commonly applied across the state of Florida for analyzing the need for a variance. *See Town of Indian Creek v. Nance*, 485 So.2d 1318, 1320 (Fla. 5th DCA), rev. denied, 494 So.2d 1152 (Fla.1986) (“the hardship must be such that it renders it virtually impossible to use the land for the purpose for which it is zoned”).

The Applicant states “[s]ince this lot is an unusual shape and has several utility lines in the back in addition to the trees that are being kept that prevent maximum exposure for the sun, this proposed use is the highest and best use for the property to enjoy the property to its fullest extent.”

To be clear, the lot is not an unusual shape. Like all lots on Canal Drive, it is a rectangle shape. The Objecting Owners all have trees in similar locations. The Objecting Owners all share the same utility lines. However, none of the properties have a pool in the front yard.

For the reasons stated above in Section II, the Applicant has ample room to construct a swimming pool in the back yard of the Subject Property. The Applicant can raze the garage and/or the efficiency unit and place a pool in either of those locations.

Should the Applicant encounter an issue in constructing a swimming pool in the back yard, the Applicant should first seek a variance that is the **minimum necessary** to allow for reasonable use of the land. For example, should the Applicant need additional square footage to construct a pool in the back yard, she should first apply for a variance to any setback requirement in the back yard; not a variance as to the wholesale construction of a swimming pool in the front yard.

There is simply no need for this variance given the fact that a large size swimming pool can easily fit within the boundaries of the Subject Property’s back yard.

VI. THE VARIANCE IS IN CONFLICT WITH THE HARMONY AND SPIRIT OF THE ORDINANCE CODE

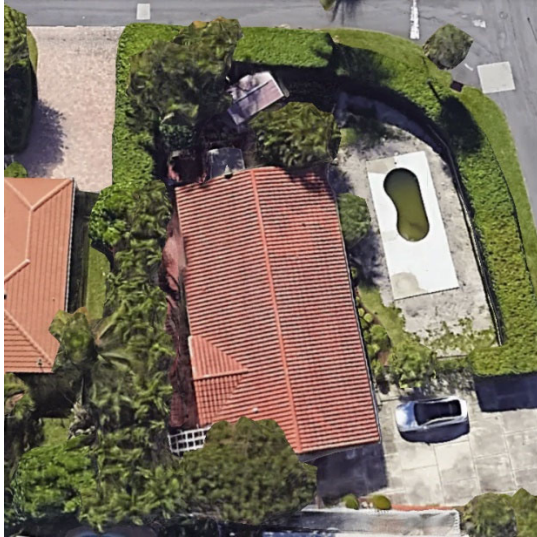
The Applicant states “the design feature is consistent with other properties in Pompano with pools in the front.”

That is not true. The Applicant seeks a variance from Section 155.4302.B.2.g, governing accessory structures placed in front of the principal structure. Yet, as it pertains to swimming pools, the Ordinance Code is very clear and very specific as to where a swimming pool may be located.

Section 155.4303.GG.3.d.4 deals specifically with swimming pools located in the front yard, which such provision was added to the Ordinance Code in August of 2021 after a narrow 3-2 vote. The harmony and spirit of the Ordinance Code, as it pertains specifically to swimming pools in the front yard, is clearly reflected in this section. It states: “[a] swimming pool, spa, or hot tub may be located in any required yard setback and in front of the principal structure, provided that the lot is a corner lot or a through lot.”

Allowing a pool to be constructed in the front yard for a corner lot or a through lot makes sense because the pool will be located as far away as possible to adjoining properties and is often the only place a swimming pool may be constructed. For example, the property located at 1900 North Riverside Drive is within the 500-foot radius of the Subject Property and is a corner lot. We believe a variance was sought (and granted) for this pool as it was constructed prior to 2021. None of the Objecting Owners objected to it. The image below shows that the pool’s location could not be

further from its adjoining properties, is surrounded by landscaping on all sides, and is necessary to be located in the front yard because the property does not have a back yard at all.



Here, however, the Subject Property is neither a corner lot nor a through lot and the placement of a swimming pool in the front yard is wholly unnecessary because the Subject Property has more than enough room in its back yard to construct a swimming pool. The Applicant fails to provide sufficient evidence that the variance would be in harmony with the spirit of the Ordinance Code, as the reason the Ordinance Code allows for the construction of a swimming pool in the front yard for certain lots is because there are properties that exist that simply do not have a back yard.

Applicant clearly does not meet this prong.

VII. THE VARIANCE WILL ADVERSELY AFFECT THE SAFETY OF PERSONS RESIDING IN THE NEIGHBORHOOD, BE INJURIOUS TO PROPERTY OR IMPROVEMENTS IN THE NEIGHBORHOOD, AND DETRIMENTAL TO THE PUBLIC WELFARE

The Applicant states “[t]he pool in the front would not affect the health and safety of others and would be securely located on our property. Our proposed plan will in no way be detrimental to the public and welfare.” The Applicant is wrong.

“According to FEMA Flood Insurance Rate Maps (FIRMSs), over 32% of the buildings in the City of Pompano Beach are in a Special Flood Hazard Area. The entire City can be potentially flood prone . . . **As land is paved and otherwise developed, it loses its ability to absorb rainfall.**”³

³ See <https://www.pompanobeachfl.gov/government/development-services/flood-information> (emphasis added).

Of all streets in Pompano Beach, Canal Drive is the most prone to flooding. The Objecting Owners experience severe flooding up to a dozen times per year. The Objecting Owner of the property located at 3221 Canal, sharing a property line with the Subject Property, has spent over \$30,000 in the last year just to repair its property from damage resulting from these floods. These repairs include fully encapsulating the crawl space located underneath the property as well as installing jacks to support the foundation. Granting this variance will subject 3221 Canal to additional water during any flood and/or severe rain fall because a swimming pool located in the front yard will displace an amount of water equal to the size of the swimming pool onto 3221 Canal Drive, 3205 Canal Drive (the property sharing the opposite property line of the Subject Property), and cause additional water to flood onto Canal Drive itself.

The flooding is already substantial and it comes from both the canal and it rises from the ground. It is immaterial whether flood water flows over a swimming pool located in the front yard or the water rises up from the ground and around a swimming pool located in the front yard: the volume of water contained in the swimming pool will be displaced and pushed onto the neighboring properties and onto Canal Drive. The average residential pool contains 20,000 gallons of water and the construction of pool of that size will add that same amount of water to an already severe flood - up to a dozen times per year.

The photos below show a typical flood on Canal Drive, which can occur up to a dozen times per year:





The image below shows the construction of a new home on Canal Drive, with a hole approximately three to four feet in depth. The photo was taken at a time when no flood or rain was occurring and demonstrates that water is always present three to four feet underneath the surface in all front yards of the properties located on the north side of Canal Drive.



The photo below shows the back yard of the same property under construction and demonstrates that the water level in the back yard is not nearly as high as the water level in the front yards of the properties located on the north side of Canal Drive.



The below image is a still from a video that captures water rising up from the ground on 3221 Canal Drive after a severe rainfall and subsequent high tide:



The below image shows both Canal Drive (bottom of image) and the Subject Property where the Applicant intends to put a swimming pool on the Subject Property:



The below photo shows the crawl space entry of 3221 Canal Drive (located on the side of the structure facing the Subject Property), and demonstrates that any displacement of water by a swimming pool located in the front yard of the Subject Property will often be the difference between the structure of 3221 Canal flooding and it not flooding:



The below image shows the property line dividing the Subject Property and 3221 Canal Drive, demonstrating that if a swimming pool located in the front yard of the Subject Property floods, its contents, including harmful pool chemicals, will saturate and likely destroy the landscaping of 3221 Canal Drive:



The Objecting Owners believe that the damages resulting from any additional water displaced onto the neighboring properties and onto Canal Drive by a swimming pool located in the front yard of the Subject Property substantially outweigh any benefit the Applicant has in constructing a swimming pool in the front yard. The Objecting Owners believe that such pool will be in existence for the life of the property owner as well as subsequent purchasers and, coupled with the effects of climate change, will only exacerbate the level of flooding on Canal Drive for decades to come.⁴

Simply put, Canal Drive needs less water - not more. The Objecting Owners respectfully request that the Advisory Board deny this variance application.⁵

⁴ In addition to causing certain property damage in the neighborhood, locating a pool in the front yard of the Subject Property creates an attractive nuisance for children residing in the neighborhood. The neighborhood is replete with properties listed on Air B&B. For instance, the Subject Property shares a property line with a property listed on Air B&B, where a 2-year-old child-guest died from drowning in its own pool located in the back yard. Locating a pool in the front yard is visible to children from public view, where locating a pool in the back yard is not, creating more unnecessary risk for vacationing children and families unfamiliar with the neighborhood. See <https://www.nbcmiami.com/news/local/girl-pulled-from-pompano-beach-pool-dies-death-investigation/48870/>.

⁵ The Applicant states virtually the same argument for “The Variance is Consistent with the Comprehensive Plan” as she does for “The Variance is in Harmony with the general Purpose and intent of this Code and Preserves its Spirit,” and thus the Objecting Owners refer the Advisory Board to the applicable section of this memorandum for their objection to this prong.

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