

CARNEY STANTON P.L.

Attorneys At Law

135 S.E. 5TH AVENUE, SUITE 202
DELRAY BEACH, FLORIDA 33483
TEL: (561) 278-5565
FAX: (561) 330-8233
EMAIL: tfc@carneystanton.com

October 18, 2021

Anthea Gianniotis
Director, Development Services
City of Delray Beach
100 NW 1st Avenue
Delray Beach, FL 33444

In Re: Justification Letter /
Request for Reduction of Front Setback
in Order to Construct a Swimming Pool

Dear Ms. Gianniotis:

The purpose of this letter is to provide justification for the request to allow a swimming pool to be constructed in the front setback of a residence located at 809 NW 2nd Street, Delray Beach, FL 33444.

The property is located in the R-1-A zoning district. Under current regulations, the required front setback is 25 feet. The applicant wishes to construct a swimming pool in the front yard, and within the front setback such that the setback would be approximately 10 feet.

The particular circumstances of this property justify the granting of the variance to allow the placing of the pool within the front setback due to the fact that this lot is dramatically undersized for the area and, without the variance, no swimming pool could be constructed. Thus, the hardship of the lot itself, denies the applicant the ability to build what most other properties in the city can build, i.e., a swimming pool. As required by the Land Development Regulations, reasons set forth below:

1. That special conditions and circumstances exist which are peculiar to the land involved and which are not generally applicable to other lands, structures or buildings in the same zoning?

The dimensions of the lot in question are 69.85 (average) feet. deep and 67.85 feet. wide. The border is Martin Luther King Boulevard. As per the submitted survey, the total property size is 4,738 sq. ft. A review of the lots in the area (including lots immediately adjacent to the property) demonstrates that the size of this lot is small by comparison to the other lots within the

neighborhood. Applying the setbacks as set forth in the zoning district, you end up with almost no buildable area to the lot. Similarly situated lots (which are typically ranging between 7,500 and 8,000) allow for the construction of nearly 3,000 sq. ft. of buildable space for a single home. The size of this lot, with the existing building setbacks would allow for the construction of a house significantly smaller. By this difference for the same lots within the same residential zoning district, a normal-size lot would permit 3,000 sq. ft. and this undersized lot will only allow for a buildable footprint of approximately 1,500 sq. ft.

Note that there is no request for any variance for the placement of the house itself which will meet all there required setbacks.

Thus, the challenges with the size of the lot should allow the swimming pool to be constructed within the front setback.

2. That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning?

Recognizing the size of the lot (in comparison to other lots within the same zoning district) applying the strict setback rules in a disproportionate setback in comparison to the other properties. As stated, the applicant is negatively impacted by literally interpreting the regulation to provide for the same setbacks on this dramatically undersized lots, and, as such, the applicant would not be enjoying the same rights as other properties subject to the same zoning.

3. That the special conditions and circumstance have not resulted from actions of the applicant?

The size of this lot was not due to any actions by the applicant. The applicant did not subdivide the property or otherwise convey any portions of the property. This was the circumstances (the size) of the lot at the time of purchase. Except for purchasing the property, the conditions and circumstances of this lot are not a result of the applicant's activities.

4. 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?

Other properties within the zoning classification of this property have the ability to construct not only a personal residence on the land, but also amenities (including swimming pools). Allowing the applicant to build a swimming within the setback, which is customary on all the other lots of the normal size, actually provides rights to the applicant which they are being denied due to the fact that the lot is so undersized. Applying the same setback rules, and the placement of swimming pools, on this lot when all other lots are significantly larger, is a hardship to the applicant.

5. Describe 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?

Granting of the variance is the minimum variance that will make possible the reasonable use of the land by including its ability to have a swimming pool and amenity enjoyed by many other properties within the same zoning district, the only difference being they are larger (more standard) lots, that the pool is also undersized and is only able to be placed in the front setback in order for the property to have any type of pool at all.

6. Explain how 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?

Purpose and intent of the existing regulations is to promote single family residential dwelling units, with amenities, within a particular zoning district. Allowing this variance will provide the opportunity for a significant investment into this neighborhood and will only improve the valuations of the surrounding neighborhood. The swimming pool will be situated behind a wall and will not be visible from the street.

7. Please provide any other comments and deformation which can be relevant or assist the Board in reviewing this request?

The position of this lot on the road fronting the lot is dramatically different from other lots also bordering Martin Luther King Boulevard.

As you will note (from the photographs and the survey), in front of the property line of the lot is a sidewalk and in front of the sidewalk is a landscaping feature as part of the curve in the road. This landscaping further makes the visual effect of this lot seem even greater. Indeed, the landscaping feature, in effect, provides as additional 10 to 12 ft. of "frontage". This feature is not usual among the other lots in the street. If you will note from the photographs, you cannot even see the lot through the landscape feature. This variance request will not interfere with any visual of the property and it would allow the property to have a swimming pool and be a "complete" house, albeit everything in reduced dimensions. These two features are not found on the other neighboring lots and creates a unique situation affecting this lot.

I think it is important to see exactly how this lot is situated on this road and why, in and of itself, it is very different from the other lots in the neighborhood making the lot distinct.

The City has, on previous occasions, allowed situations where there is a greater "in fact" setback due to the conditions of a road with landscaping which it supports the granting of this variance for the swimming pool in the front setback.

Respectfully submitted,

CARNEY STANTON P.L.



By: _____

Thomas F. Carney, Jr.