



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

BOARD OF ADJUSTMENT STAFF REPORT

442 Commodore Circle

Meeting	File No.	Application Type
December 7, 2023	2023-266-Var-BOA	Variance
Property Owner	Applicant / Authorized Agent	
Glen and Kara Gammill	Same	

Request

Consideration of a variance request from Land Development Regulations (LDR) Section 4.6.15(G)(1), Swimming Pool, Whirlpools, and Spas: Yard Encroachment, to allow the construction of a new swimming pool to encroach into the front setback at 10 feet, whereas a minimum of 20 feet is required.

General Data

Location: 442 Commodore Circle

PCN: 12-43-46-33-15-000-0130

Property Size: 0.126 Acres (3,057 SF)

Land Use Designation: Low Density (LD)

Zoning District: Planned Residential Development (PRD)

Existing Land Use: Single Family Home

Adjacent Zoning and Uses:

- North, East, and West: PRD
- West: C-15 Canal

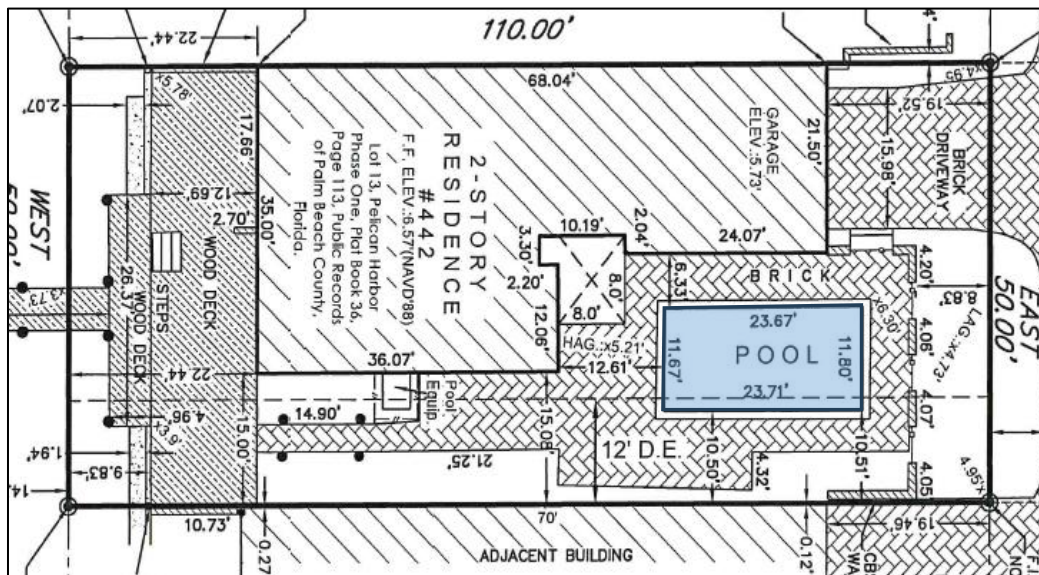
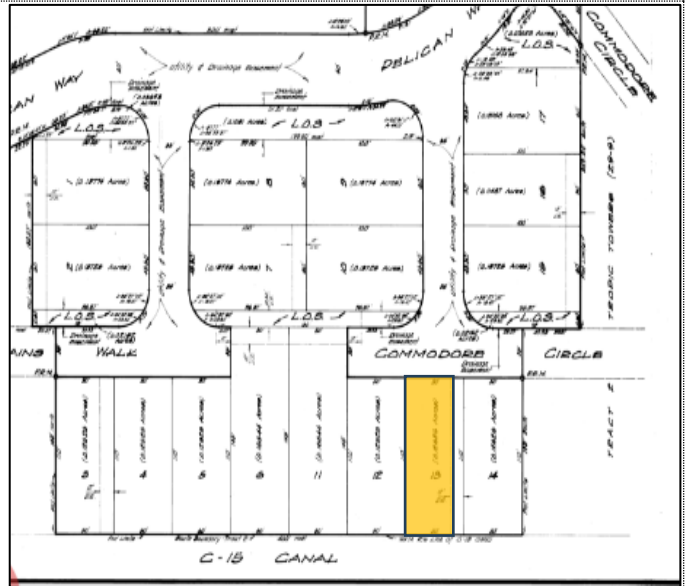


Background

The property consists of Lot 13, Pelican Harbor Phase One, according to the Plat thereof, recorded in Plat Book 36, Page 113 of the Public Records of Palm Beach County, Florida. On July 24, 1978, the City Commission approved a Master Development Plan for the Pelican Harbor PRD. The neighborhood of Pelican Harbor was built in four phases that consists of single-family homes, townhomes, and villas that share common amenities such as a clubhouse, pool, and tennis courts.

Pelican Harbor Phase One Lots 1 - 19 Plat was recorded in 1979 and consists of single-family homes. The Pelican Harbor Master Development Plan established a 20-foot front setback and a 10-foot rear setback. The PRD is a zero-lot line community that allows one side interior setback of 15 feet, with the other side as a zero setback. The Plat indicates that the roads are private within the community and all utility easements, and open space are dedicated to the Homeowners Association.

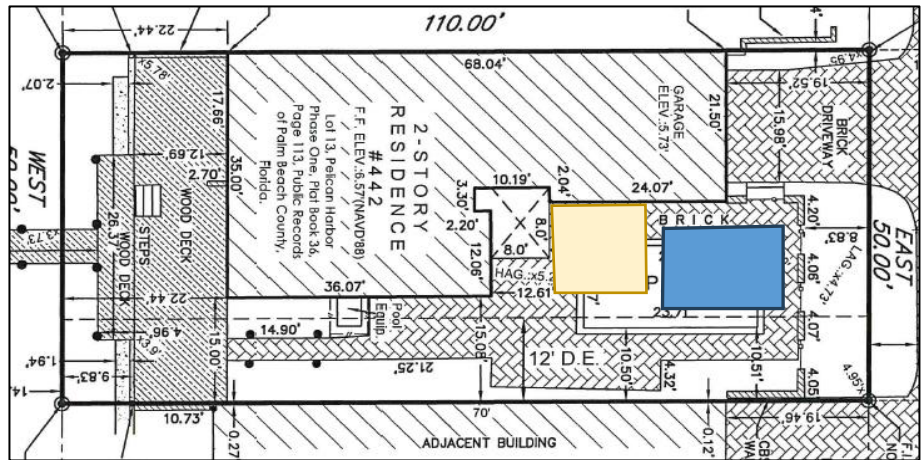
The existing single-family residence and swimming pool were constructed in 1980. The pool is set back approximately 15 feet from the front property line, which met the applicable requirement at the time of construction. The code that was in effect from 1976 through 1989 allowed swimming pools to extend ten feet to any rear or side property line, but no closer than 15 feet to any street right-of-way [Section 173.095(E)]. Therefore, the existing setback is deemed a legally existing non-conformity.



In 1992, the minimum swimming pool setback was reduced to 10 feet when adjacent to a street. The current requirement that prohibits swimming pools from encroaching into the front setback was adopted in 2004 via Ordinance No. 24-04; the backup information does specify why the amendment was restricting swimming pools within the front setback area.

- (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,
- (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.

In consideration of the criteria listed above, the Board must consider whether special conditions or circumstances exist that are relative to the property, and if the granting of the variance for the pool to encroach 10 feet into the front yard will not confer onto the applicant any special privilege that has been denied in similar request. The exhibit below illustrates the approximate new location of the pool (blue) within the front yard – 10 feet from the front property line - compared to the existing pool location – 15 feet from the front property line.



While there have been variances granted for pools in the front yard setback area for other residential requests, LDR Section 4.6.15(G)(1), Yard Encroachment, is applied city-wide. The intent of the requirement is to not have swimming pools located within the front setback area to maintain an open streetscape within residential neighborhoods. However, the photo below illustrates that the neighborhood of Pelican Harbor is well established with a mixture of pools both in the rear and the front yard areas, many of the pools in the front are an existing nonconformity as a result of Ordinance No. 24-04, which established that swimming pools could not be located within the front yard setback. Prior to that time, pools could be within the front yard area at a distance of 10 feet or 15 feet.



The board should also consider if the variance petition justifies that the granting of the variance is the minimum variance that will make possible the reasonable use of the land. A single-family residence with a swimming pool exists and the use of the land can

be retained whether there is a swimming pool on the property. However, it is important to note that the LDR defines a variance, in part, as “a departure from the dimensional or numeric requirements of these land development regulations where such variance will not be contrary to the public interest and where, owing to the existing conditions peculiar to the property.” Therefore, the Board would consider, along with the criteria, if there are conditions peculiar to the property that impact the reasonable use of the land.

The applicant has provided three exhibits (attached) illustrating the existing conditions with a 15-foot setback, the requested conditions with a setback of 10-feet, and the requisite conditions with a setback of 20 feet. The board should consider if the request to construct a pool 10-feet into the front yard is a result of actions by the applicant and if the literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning. The granting of the variance is not anticipated to be in conflict with or detrimental to the existing neighborhood.

Optional Board Actions

- A. Move **approval** of the Variance request for **442 Commodore Circle** (2023-266 VAR-BOA) from LDR Section 4.6.15(G)(1) to allow the swimming pool to encroach into the front setback 10 feet where 20 feet is required, by finding that the request is consistent with the findings set forth in LDR Section 2.4.11(A)(5)(a-f).
- B. Move **denial** of the Variance request for **442 Commodore Circle** (2023-266 VAR-BOA) from LDR Section 4.6.15(G)(1) to allow the swimming pool to encroach into the front setback 10 feet where 20 feet is required, by finding that the request is consistent with the findings set forth in LDR Section 2.4.11(A)(5)(a-f).
- C. Move to **continue with direction**

Public Notice

Pursuant to **LDR Section 2.6.3(G)**, Notice in accordance with Section 2.6.2 (A), (B), (C), and (D) shall be provided prior to a Public Hearing.

LDR section	Date Posted
2.4.2 (B)(1)(j)(i) - Written notice provided to property owners within 500 feet	November 21, 2023
2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior	November 21, 2023
2.4.2 (B)(1)(j)(iv) - Notice posted at City Hall	November 21, 2023