

Exhibit "A"

1. Describe which 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 zoning district:

Special conditions and circumstances include that the subject lot is only 50 feet wide by 100 feet deep. Lot sizes within this neighborhood (Pelican Harbor Phase 3 Plat) have frontage ranging from 50 feet to 60 feet wide with depths between 100 feet and 162 feet. Accordingly, there are no lots within the neighborhood which are smaller than the applicant's lot. Although this is a single-family home, the lot size is only 5,000 square feet. Under the ldr's for single family and multi-family zoning districts (other than in PRD which this is) the smallest lot width allowed is 60 feet. As this lot is only 50 feet wide, essentially this is the 10-foot variance we are requesting due to the special conditions and circumstances of the subject property compared to other single family and multi-family homes in residential zoning districts. Also unique to the neighborhood are the very private side yards adjacent to solid walls without windows of any type.

Moreover, this home is one of the few homes in the Pelican Harbor PRD which is located on the Intracoastal Waterway. Due to the location of the home, the sideyard area where the bar area is proposed gets direct sun much of the day. The covered bar area would thus allow the property owners and their young children a covered shaded and safe area for the enjoyment and healthy use of the outdoor space out of the sun. Alternative locations for a covered patio are not available as all options were evaluated. Placing the patio in the area where the pool is being removed (in the front by the garage) would block the front door making this a non-viable option. Nevertheless, even if viable, such patio may be visible from the street which is negative for the whole Pelican Harbor community. As proposed on the side, it cannot be seen by the neighbor or residents of the neighborhood and allows substantial landscaping of the area where the pool was (as shown with the 6 palms on enclosed landscape plan).

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

The literal interpretation of Section 4.3.4 would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning. The Pelican Harbor PRD has a very large side interior setback of 15 feet. Pursuant to Section 4.3.4 of the Development Standards Matrix, there is not one other single family zoning district in the City of Delray Beach which has a side setback requirement as large as 15 feet. Due to this heavy burden which prevents meeting the objectives, purpose and intent of PRD zoning, City Staff rightfully supports the latest PRD development being proposed (Banyan Cove) that is seeking a waiver for the entire development for each home to have a reduced side setback.

A literal interpretation would prevent the applicant from having the opportunity to enjoy their home without such a large side setback restriction, just as most single family home owners in the City of Delray Beach get to do so. Additionally, the Board of Adjustment,

while realizing that homeowners in the Pelican Harbor PRD are deprived of rights commonly enjoyed by those owners in other single-family zoning, unanimously approved a variance next door (directly to the south) at 675 Pelican Way for a setback at 0 feet.

Pursuant to LDR 4.6.15(g)(4), when located in a zero-lot line development, swimming pools may extend into the interior side setback but no closer than 5 feet from the property line. A literal interpretation to not allow the complimentary patio bar to the applicant would prevent the applicant from rights commonly enjoyed by other homeowners with less setback restrictions and much larger lots.

*Moreover, since the bar area is not an enclosed structure, the intent of the setback regulations to achieve a more harmonious built environment, including maintaining air circulation (there will also be fans) and encouraging consistent development patterns are actually furthered. Additionally, clearly there will be no negative impact to the character of the neighborhood nor any negative impact onto the neighboring property, whose solid wall (not even any gloss block on the wall like most zero lot line homes). Any decrease in open space between the units would be de minimus as this is **not** an enclosed structure. However, a screened pool enclosure, which would be permitted by right at this 5-foot setback, clearly would substantially reduce the open space and air flow.*

*Importantly, not only does the neighbor directly to the south not oppose the granting of the variance, **that very neighbor strongly supports the granting of the variance.** (“I am in complete support of the covered bar addition....a very reasonable request that has no negative effect on the neighborhood and my own property...unique to our neighborhood having very private side yards that don’t effect neighbors enjoyment of their property”). Please see the three letters of support submitted and made part of this justification statement.*

3. Explain how special conditions and circumstances have not resulted from actions of the applicant:

*The special conditions and circumstances have not resulted from actions of the applicant. This lot is one of the smaller lots in the City. The current homeowner did not establish this lot or build this home. The neighborhood was built in phases. Staff has indicated that the intent of the side interior setback for zero-lot line single family dwellings **is to create more usable space along one side of the property** for smaller lots ranging from 40 to 60 feet of frontage.” That is exactly what the applicant is trying to do here.*

Moreover, most likely recognizing this desire for more usable space, City Staff has advised that there is a CD that has over 600 pages of the plat and site plan showing that apparently some lots were changed through their site plans specifically to meet different standards. Accordingly, it appears that the current pool legally exists as a non-conformity in the front setback with no variance. However, the property owner is proposing to remove the legally non-conforming pool located in the front setback area and replace it with a pool meeting the current code regulations on the south side. Thus, the covered bar would be along a similar setback as the proposed new pool and instead of building a screen enclosure which

would not need a variance along the same setback, the applicant would rather meet the actual intent of setbacks and build an unenclosed patio, which will maintain air flow.

The stated purpose and intent of the Planned Residential (PRD) District is to provide a residential zoning district in which “single family detached dwellings are designed together so as to: promote improved design, character, and quality of development; to preserve natural, scenic, and open space features of a site; and to accommodate flexibility in design.” Clearly, the variance provides an improved design and only adds to the character and quality of the neighborhood by accommodating flexibility in design to preserve and promote the natural, scenic and open space features of the property on the Intracoastal Waterway, as directed to by the PRD zoning purpose and intent.

4. Explain how 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. Neither the permitted, nor nonconforming use, of neighborhood lands, structures, or buildings under the same zoning shall be considered grounds for the issuance of a variance.

Granting the variance will not confer onto the applicant any special privilege that is denied to other lands, structures, and buildings under the same residential zoning. Most lots in residential zoning districts are larger and have much less of a side setback. As stated above, other homes in the neighborhood have either received a similar variance or apparently had changes approved without a variance. The unenclosed bar area will not be visible at all to either of the neighboring property owners and will be heavily screened from street view by landscaping. Moreover, as apparently some lots in the PRD were changed through the site plan specifically to meet different standards resulting in many structures located within the setback adjacent to the zero-lot line, this request is consistent with the development pattern and will not confer a special privilege onto the applicant.

In fact, structures that are not enclosed are routinely allowed in the setback under the LDR's, including but not limited to fences and walls, trellises and generators.

Moreover, pursuant to LDR Section, 4.3.4(5)(e), in zero lot line developments only, screened enclosures may extend into the interior side setback areas, but shall not be placed less than five feet from the property line. Therefore, since this PRD is a zero-lot line development, this request would be permitted by right if a screen enclosure was included as it would be allowed to extend up to 5 feet into the setback. In other words, if there was a screen enclosure proposed, a variance would not even be necessary. As Staff has indicated, “this exemption (LDR Section, 4.3.4(5)(e)) is available to screen enclosures as this type of enclosure is not a walled and roofed structure”. The proposed patio is not a walled structure either as the mere encroachment into the side setback is the two supporting columns in the setback. Since the spirit and intent of the setback, to create the flow of air and not to have an enclosed area is actually furthered without the screen enclosure, it would not make sense to deny the request because a screen enclosure is not proposed.

5. Describe how 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:

As previously indicated, the applicant is proposing to eliminate the front pool which is located within the front setback. This outside unenclosed bar area will have a setback close to the proposed new pool, which would be allowed to be built at the 5-foot setback, making this a minimum variance. In essence, since the bar is not enclosed, it should be viewed akin to the pool requirement which states “when located in a zero-lot line development, swimming pools at grade level may extend into the interior side setback but no closer than five feet from the property line.” The two supporting columns of this unenclosed bar area would be five feet from the property line and thus meets this pool requirement. For this reason, the applicant made sure not to go further than requesting a variance to five feet.

Moreover, this variance request is in no way a request for a “McMansion”. The variance request covers less than 20 feet of the 100-foot depth of the lot– so this variance request is for less than 20 percent of the length – it does not traverse the entire setback. Therefore, it is clearly a minimum variance making possible the reasonable use of the land.

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.

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 fact, the granting of the variance will benefit the neighborhood and is consistent and furthers the intent of the existing regulations. Moreover, the proposed improvements have been approved by the Pelican Harbor HOA to conform with community architectural and aesthetic standards. This is a zero-lot line home in which this setback is directly adjacent to a neighbor’s wall. Clearly, the neighbor has no access to this area and the outside bar area would not even be visible. Not surprisingly, for these reasons, the variance is also strongly supported by this neighbor to the south.

As other homes in the neighborhood have received a similar variance and/or some lots in Pelican Harbor were changed through the site plan specifically to meet different standards, this request is consistent with the development pattern.

The variance is internal to the project and will have no direct effect on the neighboring area because it does not face or create a visible incompatibility with adjacent development. City Staff has used this same rationale to support a waiver setback for the entire PRD zoned development in the Banyan Court project.

Additionally, the proposed Always Delray Comprehensive Plan which is in the process of being approved by the City Commission also strongly supports the granting of this variance request. In fact, Housing Goals 1,2 and 3 clearly support the granting of this variance as follows:

GOAL HOU 1 NEIGHBORHOOD CHARACTER

PROMOTE, SUPPORT, AND ENHANCE THE UNIQUE CHARACTERISTICS OF DELRAY BEACH'S NEIGHBORHOODS

GOAL HOU 2 NEIGHBORHOOD ENHANCEMENT

PRESERVE THE INTEGRITY OF EXISTING STABLE NEIGHBORHOODS, STABILIZE AND ENHANCE NEIGHBORHOODS THAT ARE IN TRANSITION, AND REVITALIZE AND REHABILITATE NEIGHBORHOODS THAT HAVE DECLINED.

GOAL HOU 3 HIGH-QUALITY HOUSING SUPPLY

PROMOTE THE SUPPLY OF HIGH-QUALITY HOUSING THAT ACCOMMODATES THE NEEDS, PREFERENCES, AND FINANCIAL RESOURCES OF EXISTING AND FUTURE RESIDENTS

The following policies and objectives from the Always Delray Housing element also support the variance:

Policy HOU 1.1.3 Foster neighborhood identity and pride by recognizing that every neighborhood has assets that identify that neighborhood and contribute to the well-being of the residents who live there. Understand what those are and look for opportunities to enhance them and leverage them for neighborhood improvement. Assets include trees, historic resources, schools, community gardens, architectural features and the residents.

Policy HOU 1.1.6 Promote good design in new housing construction and rehabilitation that highlights beauty, flexibility, and innovation, and respects existing neighborhood character.

Policy HOU 1.1.7 Foster growth without substantially and adversely impacting existing residential neighborhood character

Objective HOU 1.3 Unique Neighborhoods: Protect existing residential areas by fostering development and redevelopment that is consistent with the unique character of the neighborhood.

Thus, for all of these reasons, 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 fact, the granting of the variance will further the intent of Always Delray.

7. Please add any other comments which may assist the Board of Adjustment in reviewing this request:

In addition to meeting the requirements above, it is also important to understand that one of the main reasons for this variance is to allow the homeowners three (3) young children, ages 3, 7, and 9, who are all blonds and fair skinned and susceptible to sun burns as well as their mother, who is a red head and also very fair and susceptible to sun burns, an opportunity to enjoy their home by having a covered area next to the pool protected from the sun. In today's world of video games and child obesity, any opportunity to allow children to have leisure activities outside should be promoted. There will be a television and a grill plus a fan to keep the air moving which will allow the family to have meals outside together.