



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

100 NW 1ST AVENUE, DELRAY BEACH, FLORIDA 33444
PLANNING & ZONING DIVISION: (561) 243-7040 • BUILDING DIVISION: (561) 243-7200

Board of Adjustment

Meeting: December 5, 2019 | **File No.:** 2019-238-VAR-BOA | **Application Name:** 663 Pelican Way – Variance

General Data:

Applicant: Greg Berling

Agent: Jason Mankoff, Esq.

Location: 663 Pelican Way

PCN: 12-43-46-33-17-000-1140

Property Size: 0.11 Acres

FLUM: Medium Density (MD)

Zoning: Planned Residential Development (PRD)

Adjacent Zoning:

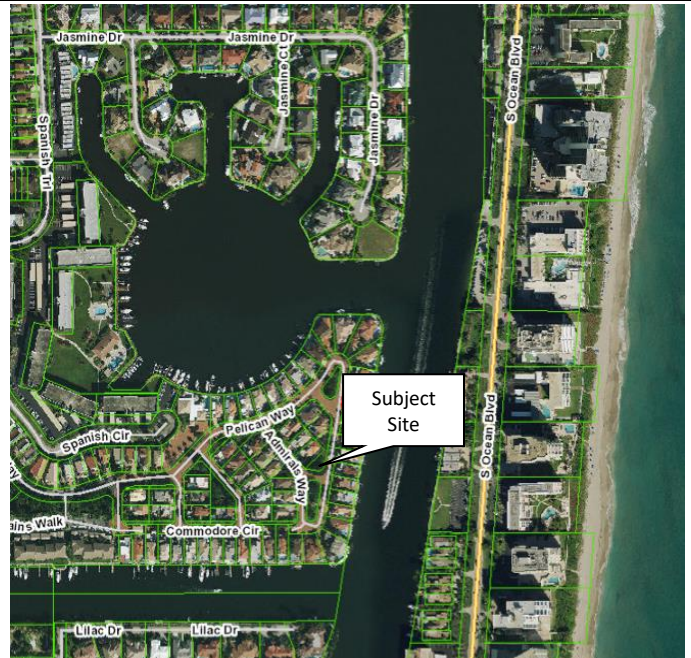
- **North:** PRD
- **East:** Multiple-Family Residential/ Highland Beach Municipality
- **South:** PRD
- **West:** PRD

Existing Land Use: Single-Family Residential

Proposed Land Use: No Change

Item before the Board:

Consideration of a variance request from Land Development Regulation (LDR) Section 4.3.4 (K) to allow a covered patio to encroach 10 ft. into the required 15ft. side interior setback area.



Optional Board Motions for Action Items:

1. Move to continue with direction
2. Move approval of the Variance request (2019-238-VAR-BOA) from LDR Section 4.3.4 (K), to allow a covered patio to encroach 10 ft. into the required 15ft. side interior setback area for the property located at 663 Pelican Way, by finding that the request is consistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).
3. Move denial of the Variance request (2019-238-VAR-BOA) from LDR Section 4.3.4 (K), to allow a covered patio to encroach 10 ft. into the required 15ft. side interior setback area for the property located at 663 Pelican Way, by finding that the request is inconsistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).

Request:

The Variance request is to allow a covered patio to encroach 10 ft. into the required 15ft. side interior setback area. The subject property currently has a 16 ft. side setback along the south side of the property. Per LDR Section 4.3.4(K) Single-Family Detached Dwellings within a Zero Lot Line Design Development in the PRD Zoning District are required to provide a minimum side interior setback of 15 ft. on the opposite side of the zero lot line. Per LDR Appendix A (structure and setback definitions), anything constructed or erected with a fixed location on the ground is considered a structure, and, therefore, is required to meet the minimum setback requirements per the subject zoning district. The proposed covered patio measures 11 ft. wide by 19 ft. 2 in. deep and includes two supporting columns located 5 ft. from the (non-zero) side interior property line. The proposed structure also includes a roof eave that overhangs 2 ft. into the proposed 5 ft. setback; the proposed structure will provide a total of 3 ft. of open air between the roofed area and the property line. Per LDR Section 4.3.4(H)(4)(d), house eaves are allowed within the setback, not to exceed a 3 ft. overhang. The proposed structure is 11 ft. 4 in. high measured from the ground to the roof top. As stated in the applicant's justification letter, the covered patio is intended to be utilized by the family as an outside bar area with countertops.

Project Planner:

Debora Slaski, Planner
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561-243-7348

Review Dates:

Board of Adjustment:
December 5, 2019

Attachments

1. Site Plan
2. Renderings
3. Justification Letter
4. Other documents

**Background:**

The property consists of Lot 114, Pelican Harbor Phase Three, as recorded in the Plat Book 37 Page 34, of the Public Records of Palm Beach County, Florida. The lot is 50 ft. wide by 100 ft. deep and is located in the Planned Residential Development (PRD) Zoning District. The property contains a two-story 2,474 sf (excluding the 472 sf. garage) single-family dwelling unit within a zero lot line design development known as Pelican Harbor. The structure was built in 1979.

At its meeting of November 7, 2019 the applicant requested to postpone the proposal with a date certain to present the request to the Board: December 5, 2019. The Board of Adjustment voted on a 5-0 vote to accept the request to postpone the item to December 5, 2019.

Variance Analysis:

Pursuant to LDR Section 2.2.4 (D)(4) and (c), the Board of Adjustment has the authority to grant variances and hear appeals from the provisions of the General Development Standards (Article 4.3).

Pursuant to LDR Section 2.4.7 (A)(5)(a) through (f) **Variance Findings**, the following findings must be made prior to the approval of a variance:

- a) **That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings subject to the same zoning (The matter of economic hardship shall not constitute a basis for the granting of a variance);**

Applicants response: *"Special conditions and circumstances include that 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."*

Staff Analysis: The subject property is 50 ft. wide by approximately 100 ft. deep. This area of the neighborhood (Pelican Harbor Phase Three Plat) consists of 54 lots with frontage ranging from 50 ft. to 60 ft. wide with depths between 100 ft. and 162 ft. A total of 36 lots within this area of the neighborhood have frontage along the water. The side interior setback requirement of 15 ft. is a minimum development standard required to be provided by all single-family dwellings located within this district.

Alternative locations for a covered patio are available. The existing structure provides a side interior setback of 16 ft. along the south side of the property, which meets the minimum requirement of 15 ft. In the justification letter provided, it is stated that the existing nonconforming pool located along the front area/southwest corner of the property is proposed to be removed and relocated towards the eastern property; given this modification and the minimum front setback requirement of 20 ft. and the minimum side setback requirement of 15 ft., an area of approximately 17 ft. by 13 ft. would be available for the construction of a covered patio at the subject property (where the pool is currently shown on the survey) without the approval of a variance. Additionally, there are other methods to provide shade that don't require a variance (i.e. umbrella, retractable awning, tent).

- b) **That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning;**

Applicants response: *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 side interior setback of 15 feet. Pursuant to Section 4.3.4 of the Development Standards Matrix, there is not one single family zoning district in the City of Delray Beach which has a side setback requirement as large as 15 feet. As a result, most single family home owners in the City of Delray Beach have the opportunity to enjoy their properties without such a large side setback restriction. Additionally, the Board of Adjustment, while realizing that homeowners in the Pelican Harbor PRD were deprived of rights commonly enjoyed by those*



owners in other single-family zoning, unanimously approved a variance next door at 675 Pelican Way to eliminate the rear setback from the required 10 feet to 0 feet to allow a tiki hut.

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.

Staff Analysis: Neighborhoods designed in a zero lot line and conventional manner are typically required to provide the equal setback distance requirements in total. Developments designed in a zero lot line manner are appropriate when associated with smaller lots, ranging between 40ft. to 60 ft. wide, which allows a 15 ft. usable space along one of the property. Conventional single-family dwelling standards are more suitable for lots ranging from 60 ft. to 80ft. wide to allow flexibility in the design of the structure with side buffers that range from 7 ½ ft. to 10 ft. on both sides. Within the City of Delray Land Development Regulations, both designs, conventional and zero lot line, provide a minimum of 15 ft. buffer distance measured from structure to structure (i.e. 7 ½ ft. side setbacks on one property adjacent to the 7 ½ side setback on the other property, totaling 15 ft.) The intent of the side setbacks between both structures is to maintain the character of the single-family neighborhood and to provide adequate distance between buildings to minimize impact onto the neighboring property.

The minimum 15 ft. side setback standard per the Land Development Regulations meets the intent and planning techniques of zero lot line design and is compatible with the standards required for conventional single-family dwellings of similar lot dimensions. The existing structure is in conformity with the development standards per the Land Development Regulations for a Zero Lot Line Residential Dwelling located in a Planned Residential Development zoning district. The same requirement is applied throughout the subject neighborhood. In addition, the encroachment of the proposed structure into the required side setback would decrease the existing open space between both units, which serves as a buffer to the neighboring property, potentially increasing the impact onto the neighboring property.

c) That the special conditions and circumstances have not resulted from actions of the applicant;

Applicants response: *The special conditions and circumstances have not resulted from actions of the applicant. The current homeowner did not build this home. The neighborhood was built in phases. 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 in the front setback with no variance. However, the property owner is proposing to remove the 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.*

Staff Analysis: The existing structure is in conformity with the development standards per the Land Development Regulations for a Zero Lot Line Residential Dwelling located in a Planned Residential Development zoning district. The proposed request creates a nonconformity to the minimum required side setback which currently doesn't exist. There are no special conditions associated with this property; the neighborhood was developed in conformity with the development standard for zero lot line single-family dwellings. The chart below identifies compliance of the subject property with the development standards per LDR Section 4.3.4(K):

Development Standards PRD / Zero Lot Line	Min. Lot Size: 4,500 sf.	Min Lot Width: 80 ft.	Min. Lot Frontage: 40 ft.	Min. Lot Depth: 80 ft.
Existing Property	5,000 sf.	100 ft.	50 ft.	100 ft.
Code Compliance	In Compliance	In Compliance	In Compliance	In Compliance



- d) 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. 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;

Applicants response: *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. As stated above, other homes in the neighborhood have either received a similar variance or 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 mostly 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, 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. [Amd. Ord. 48-93 8/10/93]; [Amd. Ord. 12-91 3/13/91. 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. Since the intent of the setback, to create the flow of air and not have an enclosed area is obviously still met without the screen enclosure, it would not be logical to deny the request because a screen enclosure is not proposed. The spirit and purpose of the code is actually furthered without the screen enclosure.

Staff Analysis: No evidence was provided or found regarding the approval of different standards to the subject neighborhood or other developments within the PRD zoning district that would be relevant to this request. Per this finding, 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. The grant of a variance must stand on its own merits without regard to any other property. Moreover, per LDR Appendix A (structure and setback definitions), anything constructed or erected with a fixed location on the ground is considered a structure, and, therefore, is required to meet the minimum setback requirements per the subject zoning district. LDR Section 4.3.4(H)(4) provides a list of structures allowed in the setbacks. The following pertains to the allowance of screen enclosures within the interior side setback:

LDR Section 4.3.4(H)(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.

This exemption is applicable to screen enclosures as this type of enclosure is not a walled and roofed structure. A covered patio is proposed which meets the definition of a structure and is not listed as structure allowed in the setbacks.

- 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,

Applicants response: *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 similarly 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 unenclosed bar area would be no closer than*



five feet from the property line and thus meets this requirement.

Staff Analysis: The property is currently developed in accordance with the development standards pertaining to the lot dimensions of a zero lot line dwelling unit. The property was built in 1979 and consists of a two-story 2,474 sf single-family dwelling unit. The proposed covered patio encroachment into the side setback which is prompting the variance is not justifiable as the lot and structure configurations are not limiting the reasonable use of the land, building or structure. If the addition was to be located in another area on the site, the property would maintain its current compliance with the code while allowing for the construction of a covered patio.

- 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**

Applicants response: *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, any improvement will also need to be approved by the Pelican Harbor HOA to conform with community architectural and aesthetic standards.*

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.

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.

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.

Staff Analysis: . The intent of the 15 ft. side interior setback for zero lot line single-family dwellings is to create more usable space along one side on the property for smaller lots ranging from 40 ft. to 60 ft. of frontage. The encroachment of the proposed structure into the required side setback would decrease the existing open space between both units, which serves as a buffer. The grant of this variance would allow the subject property to have a total side setback of 5 ft. The total minimum side setback requirement including the two least stringent residential zoning districts in the City of Delray Beach require a minimum of 15ft. (R-1-A requires 7 ½ on both sides which equals 15 ft.; PRD requires 0ft. on one side and 15ft. on the other side.). No detrimental affects to the public welfare are anticipated with the proposal; however, potential negative effect could result for the neighboring property to the south.

Notice: Pursuant to LDR Section 2.4.2 (B)(1)(f), the City shall provide notice of the public hearing in accordance with Section 2.4.2(B)(1)(j) (i), (ii), and (iv) for variances before the Board of Adjustment.

LDR section	Date Posted
2.4.2 (B)(1)(j)(i) - Written notice provided to property owners within 500 feet	October 25, 2019*
2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior	October 25, 2019*
2.4.2 (B)(1)(j)(iv) - The notice posted at City Hall	October 25, 2019*

**At its meeting of November 7, 2019 the applicant requested to postpone the proposal with date certain to present the request to the Board: December 5, 2019. The Board of Adjustment voted on a 5-0 vote to accept the request to postpone the item to December 5, 2019. No further notice is required.*