

FINDINGS OF THE VILLAGE OF GRAND BEACH
ZONING BOARD OF APPEALS
REGARDING THE
KOSTINER VARIANCE
Marjeanette Avenue

The Zoning Board of Appeals finds as follows with respect to the Variance submitted by Lewis & Anne Kostiner:

**BACKGROUND AND PHYSICAL CHARACTERISTICS OF LOT
ON WHICH VARIANCE IS REQUESTED:**

- I. The parcel of property located at the intersection of Calla Avenue, Perkins Blvd., and Marjeanette Ave. The parcel is .31 of an acre. A review of a survey of the lot shows that:
 - a. The subject lot is small and oddly shaped.
 - b. The lot is challenging because of its natural slope and grade, and in fact it has a 33% slope based on a topographical survey.
 - c. The area with a 33% slope is considered a “critical dune area” and it is not buildable.
 - d. The lot borders not one, but three separate Village streets--Calla Avenue, Perkins Boulevard and Marjeanette Avenue.

- II. The Applicants previously received a variance to build a home on the Lot, and they are now requesting a variance to build a pool, which is an accessory use under the Village Zoning Ordinance.

- III. The Applicants are asking for one variance, which is described as follows:
 - a. Article V, Section 5.06, Item E.1 of the Zoning Ordinance requires a minimum front yard setback of thirty (30) feet from the street right-of-way line. The Petitioner is asking for a variance of six (6) feet nine (9) inches from the minimum front yard setback on Calla Avenue.

**STANDARDS TO BE MET BY SECTION 16.07 of the ZONING ORDINANCE PRIOR TO THE
GRANTING OF A VARIANCE**

- I. The Zoning Ordinance requires:
 - a. A written application & fees paid
 - b. That special conditions and circumstances exist which are peculiar to the land in the Zoning District so as to present such a unique situation that a precedent will not be established for other properties in the District to ask for the same or a similar change through the Zoning Appeal process.
 - c. That a literal interpretation of the Ordinance provisions would deprive the

Applicant of the rights commonly enjoyed by other property owners in the District.

- d. That granting of a variance will not confer any special privilege that is denied to by other lands or structures in the Zoning District.
- e. That other non-conforming uses of land or structures in the area should not be considered grounds for the variance.
- f. The Applicant must show “practical difficulty”.

THE ZBA NEEDS TO DISCUSS EACH REQUIREMENT AND MAKE FINDINGS OF FACT ON EACH REQUIREMENT:

I. The Applicants have submitted a complete written application & paid all necessary fees.

II. Do special conditions and circumstances exist which are peculiar to the land in the Zoning District so as to present such a unique situation that a precedent will not be established for other properties in the District to ask for the same or a similar change through the Zoning Appeal process?

-The land’s natural topography is primarily a protected dune as designated by the DEQ, and Applicants were able to construct a home on the land subject to a prior variance, which was not insignificant.

-Most of the lot has a 33% slope and is unbuildable per DEQ regulations.

-The Applicants were aware of the potential of not being able to construct a pool when the original variance was granted for the home .

-The lot is surrounded by three streets which is very unusual.

-Is it reasonable for the Applicants to expect another variance?

At first glance the answer would be no because the applicants were given a variance to build their home and told specifically there would be no variance for a pool, especially with a variance request on Perkins. The applicants have removed the setback variance request for Perkins and reduced the variance request on Calla by almost half. In the past, the ZBA has worked with residents to provide safe variances.

III. Would a literal interpretation of the Ordinance provisions deprive the Applicant of the rights commonly enjoyed by other property owners in the District?

-If the Ordinance is interpreted literally, it would prevent the Applicant from building the pool provided in the attached plans.

-However, would the denial entirely prevent the Applicants from building a pool on the lot, OR would it simply force the Applicants to build a slightly smaller pool? within the setbacks (no variance needed)

-A Literal interpretation of the ordinance provisions would deprive the applicant of the right to have a pool. There is no clear need for a pool, but again the applicant made changes to accommodate our previous request.

IV. Will granting a variance confer any special privilege that is denied to other lands or structures in the Zoning District?

-Granting a variance will allow Applicants to build a pool on their lot, which is a privilege enjoyed by some other land owners in the Zoning District

-Have any other lots in the Village ever required or been given such drastic variances from the setback requirements for an accessory use such as a pool, particularly after being given a variance to build a home?

There were three (3) variances given to one property in July 2005 in the old section of the Village for a swimming pool. The variances were given for:

1. Front yard setback, a pool must be located not less than fifty (50) feet from the front property line. Variance was given to reduce setback to thirty-six (36) feet,
2. Distance from building. There is a requirement that a pool not be located less than ten (10) feet from any building on the property. There were variances given to allow a distance between the pool and the garage of eight (8) feet and the distance between the pool and the home to be seven (7) feet,
3. Distance from an adjoining property. There is a requirement of twenty (20) feet between the pool wall and an adjoining property. A variance was given to allow a distance of nine (9) feet from the pool wall and adjoining property.

Are there other options for Applicants that do not require a variance—or which require LESS of a variance?

-Yes, but it would leave an unsafe pool if they built a triangular pool in the original location presented in November. Applicants feel that the initial triangular pool that did not require a variance would be dangerous because it would be located within 10' of the doors to the home and there is not an option for a hard cover on a rectangular pool. The applicants proposed moving the triangular pool away from the doors which would now require a variance.

-The applicants initially requested variances from setback requirements on Perkins and Calla on November 20, 2019, and have since reduced the size of the pool which will now require less of a variance and only one variance on the Calla side of the home.

VI. The Zoning Board of Appeals may grant non-use variances based on a showing of practical difficulty:

A. Applicant has established that there is a very narrow setback area on the lot due to the lot's topography and designation as a critical dune area.

B. Would a literal interpretation of the ordinance deprive Applicants of rights possessed by other land owners in the area, namely to build a pool as an accessory use for their home in a residential district?

A Literal interpretation of the ordinance provisions would deprive the applicant of the right to have a pool.

Can Applicants build a smaller pool without the need for a variance?

Yes, but it would be an unsafe triangular pool as it would be located 10' from the doors to the home and they would not be able to purchase a hard cover for the pool making it even less safe.

Can the Applicants show that they need the pool to be the size requested, or could they build smaller? Consider/discuss other options.

The Applicants have discussed putting in a triangular pool that would not require a variance, but then discovered that it would be a dangerous pool because of the location 10' from the doors to the house. They have reduced the size of the rectangular pool which reduces the variance needed. The pool will be located to the side of the doors and will include a hard cover.

C. The extent of the variances and the fact that the property was already granted variances to build a home is concerning. The issue of a pool came up at that original hearing, and it was discussed that Applicants would not be able to fit a pool on the property.

D. The same thing can be said for the variance requested. Three sides of this lot border public roads. Setbacks are established for safety reasons as much as aesthetic reasons; allowing the pool to be too close to the lot lines in this case allows the pool to be fairly close to actual public roads. Are there any safety concerns, even with a fence in place?

-The ZBA has worked in the past with a homeowner in the older section of the Village. The main concerns of safety along Perkins and the corner of Calla have been addressed. The concerns from a neighbor about pool water drainage have been addressed and we have not heard anything else from them.

-As a Zoning Board of Appeals, we are very rigid with our zoning variances. We have spent a lot of time writing the zoning ordinance and amending it to make sure there is public safety and no infringements to neighbors. We do want residents to enjoy their Grand Beach homes and enjoy the amenities of Grand Beach living. The applicants have worked very hard to accommodate our concerns and the changes they have made are in keeping with safety.

The pool will be located 34' from Calla Avenue (per drawing) if the variance is granted.

XI. After mailing notice of this hearing to all land owners within 300 feet of the Applicant, the Village **has not received** letters opposing the variance.

There was opposition to the two requested variances at the November 20, 2019 public hearing by a homeowner at 50230 Marjeanette Avenue (Georjean Nickell) regarding the integrity of the dune if there were more development on it, the possible runoff down Calla to her property and the possibility of water in her basement if there is more runoff on the street caused by the pool.

RECOMMENDATION:

It is recommended that the Variance be **GRANTED**.

The Applicants have made changes to the initial request to reduce the number of variance requests from two variances needed to just one variance on Calla Avenue. The original variance request included a variance of three feet (3') on Perkins Boulevard and a variance of 13' on Calla Avenue. The variance request on Calla Avenue has almost been cut in half from the original request of a 13' variance to a six feet nine inches (6'9") variance.

The Applicants have worked very hard to accommodate the concerns of the ZBA by reducing the size of the variance request while putting the pool in a safer area located further away from the doors to the home. Applicants will also install a hard cover on the pool which will provide even more safety.

The Applicants have positioned the pool in the only location allowed for the pool because of the topography of the lot.

The ZBA reviewed the application and drawings thoroughly and found that because of the location of a pool on a lot surrounded by three streets with much of the lot on a 33% slope, the granting of a variance will not set a precedent.

Roll Call Vote

Deborah Lindley	Aye
Blake O'Halloran	Aye
Steve Slater	Aye
James Bracewell	Aye
Paul Leonard	Aye

NAYS: None

ABSTAIN: None

FINDINGS DECLARED ADOPTED.

IN WITNESS WHEREOF, We have hereunto affixed our names as Village Zoning Board Chairperson and Village Clerk of said Village this 17th day of June 2020.

VILLAGE OF GRAND BEACH

By: _____
Deborah Lindley

Its: Zoning Board Chairperson

ATTEST:

Mary Robertson

Its: Village Clerk