

**VILLAGE OF GRAND BEACH
ZONING BOARD OF APPEALS HEARING
NOVEMBER 20, 2019**

President Deborah Lindley called the Zoning Board of Appeals Hearing to order at 6:30 P.M. EST. Present in addition to Lindley were James Bracewell, Paul Leonard Jr., Blake O'Halloran and Steve Slater.

Lindley moved, seconded by O'Halloran to adopt the agenda as presented. Motion carried unanimously 5-0.

Applicants: Lewis and Anne Kostiner requested a variance to install a swimming pool on their property.

Property: 50236 Marjeanette Avenue. The property is described as lot 215, amended plat of lot 193 and a vacated portion of Calla Avenue of New Park Addition to Grand Beach Springs.

The property is located in the medium density residential district.

Property Tax Code: 11-39-5252-0215-00-0

Variance Requested:

Article V, Section 5.06, Item E.2 of the Zoning Ordinance requires a minimum side yard setback of ten (10) feet, except where a side yard abuts a street right-of-way, the minimum shall be the same as for the front yard.

The petitioner is requesting a variance of three (3) feet from the minimum side yard setback requirement of fifteen (15) feet along Perkins Boulevard for a swimming pool. If granted, the variance will allow for the swimming pool to be built twelve (12) feet from the property line along Perkins Boulevard.

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 requesting a variance of thirteen (13) feet from the minimum front yard setback requirement of thirty (30) feet along Calla Avenue for a swimming pool. If granted, the variance will allow for the swimming pool to be built seventeen (17) feet from the property line along Calla Avenue.

The applicants were granted a variance in 2011 of fifteen (15) feet on Perkins Boulevard reducing the setback requirement from thirty (30) feet to fifteen (15) feet.

Lindley explained that the applicants submitted an application for a variance to build a swimming pool on their property.

Lewis Kostiner told the Council that they would like to put in a swimming pool with no whirlpool and said that a triangular pool won't work because it will cost twice as much as the other pool because it has to be poured. He said they have already designed the proposed pool to be half the size of what they originally thought they could build because they didn't know the setbacks. The pool they would like to put in is 12' by 22' 6". He said the proposed pool is the smallest pool that Pristine Pools makes and they can't go any smaller than this to fit it in and have it be functional.

Lindley explained that you have to show a hardship in order to get a variance from the Zoning Ordinance. She said the Zoning Board of Appeals (ZBA) did give a variance in 2011 from thirty (30) feet down to fifteen (15) feet

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on the Perkins side of the property when they built their house. She said there were some things that were said at that time and one of them was that they would probably not give another variance on this property. She said three of the current Council members were at the ZBA hearing in 2011. She said the ZBA rarely gives variances and when they do, it is because of a hardship. She said when they gave Kostiners a variance in 2011, it was because of hardship to allow you to build your house.

Kostiner said the only reason they got the variance originally was to build the house on the property because they couldn't meet the Village's codes. He said there is no other place to put a pool because of the dune and this is the smallest functional pool they can put in that would make sense physically and economically. He said the hardship is that it is twice as expensive and a lot more work. He said that the location of the pool with all of the landscaping will not be visible to anyone. He said putting in a triangular pool is a very expensive proposition and doesn't make sense.

Lindley said that it is the decision of the ZBA to determine whether having or not having a pool is a hardship. Lindley said she is in the same position as he is because she lives on a corner lot and because of setbacks she is not able to have a pool.

Village homeowner Georjean Nickell of 50232 Marjeanette who also owns property at 50230 Marjeanette addressed the ZBA and said that her home is the second property south of the subject property. She said her concerns are specific to the property. She said the east elevation of the property line falls dramatically to the street and she wonders what might happen to the integrity of the dune with further development to the dune. She said that they wanted a pool and purchased the lot next door in order to install the pool. She said when they bought the adjacent property to build their pool, they overcompensated and added compacted backfill under the slab to draw more water to their property so that there would be no run off to the street or other properties. She said a few years ago when modifications were made to the golf course, it disrupted the natural flow of the underground water going towards the lake and one of the neighbors properties encountered severe flooding. Her concern is that with them being to the north of her, there is nothing to capture the water and there is a significant grade difference. She passed out photos to the ZBA showing the grade difference. She said they've never had a drop of water in their basement while they've owned the home for over 20 years even when all of the neighbors have had water problems. She wants to make sure her property is not negatively impacted and wants to know what recourse or protection she has because they are at the lowest point. She said they have had their pool area flooded with runoff from the street because there is no drainage there.

Susannah Deneau with Wightman said she helped out on the first project and has also been working with the Kostiners on the possibility of putting in the pool. She said one of the tough things about this property is that it is a critical dune and the critical sloped non buildable area is almost contradicting the setbacks from all of the roads. She said the area where the pool will be put in is on the flat area and a lot of it has been taken up by right-of-way. She said the Village was able to vacate a portion of the road years ago to make it a little better. As far as the pool goes, it is squeezed in as far as the rules go with setbacks and they've pushed it in all directions to try and make it the least variance request. She said by putting it on the upper shelf, it is probably best for the land and will cause the least disturbance to the slopes. It is a very granular soil that accepts the water and takes most of it into the land. She said the amount of impervious area on this lot is very minimal leaving a lot left because they can't build on most of it. She said there should be no reason why the dune will be affected and stated that it will also require an EGLE permit that will require that the dune is protected.

Georgeane Nickell said she serves on a board in a different municipality and her interpretation of a hardship is something that occurs outside the realm of knowledge, and they've already been granted a variance and have

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been advised that they would probably not receive another one. She said there is no place for the water to go and she hopes they consider her concerns.

Lindley said that they live in that area, but they are up high enough that they've never had flooding, but her neighbors have had flooding issues. She said the lot coverage is only 17% and 30% coverage is allowed.

Leonard said the applicants knew in February of 2011 that this would be a very difficult lot to build on. They convened to deal with a redrawing of the proposed home because the first one was a nonstarter. He said at the time, Bracewell commented to the architect that the house might not be exactly as depicted in the drawings. He said at one point during the meeting Lindley made the comment that there wouldn't be any other variances given on that property, so the property owners were put on notice that they had to get it right the first time because there wouldn't be another variance. He said there was a comment made by Council member Pete Carroll that while his concerns had been addressed, there would never be a pool between Perkins and the home. He said now the applicant is asking to put a pool between Perkins and the home. Leonard said they had the opportunity to go back and redraw the project to include a pool and ask for a variance at the time when they asked for the original variance.

Bracewell said the decisions were based on the five legal principles of how the ZBA can issue a variance and the cost or shape of the pool does not fit into any of those five principals. He told the applicant that he thinks to get where they want to go, if that is a possibility, they will have to study the five principals in the ordinance on the basis of what a variance can be. He hasn't seen them touch on any of the five criteria on what makes the ZBA grant a variance. He said that neither the cost of the pool and the fact that it would be more work to put it in seem to be applicable in this situation. He said that hardship being cost and the amount of work are not part of those five criteria.

Lindley said when she thinks of the few variances they have given; there was a family with a handicap child and they needed a ramp to get the child into the house and had to encroach on the setback. She said this type of hardship physically limits someone from enjoying their house.

Slater said he agrees with everything that has been said, and the board needs to honor the history, record and comments made back in 2011. He said one thing that is missing from the proposal is any additional hardscape that would be around the pool. He said along with everything else, this doesn't come down to hardship.

Kostiner said he thinks he knows where this is going and he appreciates it. He said you can't even see the pool area because of the landscaping they've put in and the pool is on the top flat part of the property so there will be no issue with water. He said his understanding is that if he builds a triangular pool and conforms to the setback requirements he can build it and won't need a variance. He asked that instead of having a triangulated corner, that they be allowed to square it off. He said he didn't think about the word hardship. He said the variance would help them build a pool that is half the size of what they originally wanted. He said he didn't realize when they got the other variance that all of this was going on. He thinks that the variance request will be denied, but if he builds the triangular pool and they don't exceed the setbacks he is asking for a little lead way so that he doesn't have to make it completely triangular. He said it's absurd to think of cost as a hardship when building a swimming pool and he understands that. He said he is not trying to affect anyone negatively. He doesn't know how you would define a hardship to build a pool. Lindley said that if a doctor tells someone they need it for therapy that might be a hardship.

He said if he would have known this from the start, he wouldn't have spent all of the time and money on this. Lindley said she believes that Clerk Mary Robertson told him that the Village does not give out many variances.

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She said that in 2011 she and Pete Carroll were concerned about the corner of Calla and Perkins and blocking the view for people going around the corner and she is concerned if there are umbrellas or canopies around the pool

it might be a concern. She said that it is remiss of Kostiner's lawyer because she should have informed him of what was said at the hearing in 2011 and that is part of public record. She thinks the Village has worked very hard to allow them to build a home. She said that they want him to be a neighbor and he has a lovely house.

Lindley went over the following Findings of Fact:

- I. The Applicants have submitted a complete written application and 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?

Lindley said that this has always been a concern of the ZBA that if they give a variance then others will come with the same request.

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.
- Is it reasonable for the applicants to expect another variance for a pool?

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

Before Lindley reviewed all of the Findings of Fact, Mr. Kostiner asked for a continuance of the hearing and said he is dumfounded because the ZBA makes it sound like every single person in the Village will want to put in a pool and that everyone will come and ask for the same exact thing. He said he is asking to put a pool on the upper part of the property that is completely flat and won't disturb a single person. He asked if he doesn't need a variance for the triangular pool, can he put it in and Leonard said as long as the pool is within the parameters set by the Village Zoning Ordinance, they don't need anything other than a permit from EGLE (DEQ) and a building permit from the Village.

Georgian Nickell asked if the DEQ will watch over the integrity of the dune when they review the permit application.

Clerk Mary Robertson explained that they have paid \$2,000 in fees and he has already incurred \$980 in fees. If the fees go over the \$2,000 paid, they will be responsible for anything additional.

Leonard moved, seconded by Slater to table the ZBA Hearing. With no further business, the hearing was adjourned at 7:12 PM EST.

Respectfully submitted,

Mary J. Robertson
Clerk-Treasurer