

**MEMORANDUM**

**TO:** Howey-in-the-Hills Planning Board  
**CC:** J. Brock, Town Clerk  
**FROM:** Thomas Harowski, AICP, Planning Consultant  
**SUBJECT:** 469 Avila Way Variance Request  
**DATE:** August 18, 2022

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The applicant is requesting relief from the requirement that swimming pools and pool decks be setback ten (10) feet from rear property lines (Section 5.01.08 B). The applicant has submitted a statement explaining why the requested variance is needed and how the variance is justified. The applicant is seeking a variance of four feet to allow the pool and pool deck to extend within six feet of the rear property line.

The subject property is located within the Talichet Subdivision located off South Florida Avenue, and the house is a newly constructed residential unit. Avila Way is a loop street that runs through the length of the subdivision. The subject property is located at the closed end of the loop making the lot what is effectively a corner lot. (Refer to the attached location map.) The applicant has submitted a survey showing the lot and position of the existing house on the property. The survey shows a five-foot drainage and utility easement extending across the full width of the rear property line. The applicant submitted a proposed design for the pool and pool deck with the application form showing a portion of the pool and pool deck extending into the required rear yard setback by up to four feet at the deepest penetration. The applicant submitted a survey showing the positioning of the pool on the lot and a graphic showing the pool design.

The applicant has stated several factors which are offered in support of the request. These include:

- There is insufficient space to accommodate the pool
- Five-foot setbacks are typical in most communities
- A narrower pool does not meet needs
- They want to maximize the use of the property

As stated previously a variance stands on its own merits. Prior variances should have no effect on the current case. Each variance is supposed to address a specific hardship unique to the property that does not allow the property to be developed in full compliance with the code unless some relief is granted.

## Analysis

The land development regulations set out a series of criteria to evaluate requests for variances in Section 4.13.04. These criteria are listed below:

### ***4.13.01 Standards in Granting a Variance***

The Board of Adjustment may authorize a variance from the terms of this LDC as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Code will result in unnecessary and undue hardship. In authorizing a variance from the terms of this LDC, the Board of Adjustment shall find:

- A. That 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,
- B. That the special conditions and circumstances do not result from the actions of the applicant,
- C. That literal interpretation of the provisions of this LDC would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this LDC and would work unnecessary and undue hardship on the applicant,
- D. That the variance created is the minimum variance that will make possible the reasonable use of the land, building or structure, and
- E. That the granting of the variance will be in harmony with the general intent and purpose of this LDC and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- F. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this LDC. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this LDC.

For the current application the staff evaluation is as follows:

- A. There is nothing unique about the subject lot in the Talichet Subdivision. The size and placement of the house on the lot determines the available rear yard area rather than any physical trait of the lot.
- B. The pool design is not overly large with most of the key features arranged along the house rather than projecting away from the house. However, the survey seems to indicate that the pool could be shifted closer to the house by integrating some of the current patio area into the pool deck design. This would further minimize or eliminate the need to extend into the required rear yard.
- C. A literal interpretation of the code does not prohibit the construction of a pool, but would require some shifting or minor redesign of the pool.

- D. The proposed minimum variance of four feet is not essential to allow construction of the pool. The proposed design does avoid the the drainage and utility easement that runs along the rear lot line. However, shoould the Planning Board elect to recommend the variance to Town Council, the Planning Board should include a provision that no grade change be done which impacts the five-foot utility and drainage easement.
- E. The approval of the proposed design is in harmony with the general intent of the code. Approval of the variance and construction of the pool and pool deck is consistent with standard residential use of the property and would have no apparent impact to other properties.
- F. If any required trees trees will need to be removed or relocated to permit construction of the pool, the trees will need to be relocated or replaced. These trees are part of the minimum landscape requirement and the trees either need to be transplanted or replaced with trees meeting the code minimum. If the trees are transplanted and then die, they must be replaced. Should the Planning Board recommend approval of the variance to Town Council, the tree relocation or replacement requirement should be recommended as a condition of approval.

## Summary

Technically the request does not meet all of the criteria for approval of the requested variance. Construction of the pool and deck as proposed is in harmony with the use of the property as a single-family home and with the neighborhood in general, but the application has not demonstrated any hardship linked to the property. Should the Planning Board elect to recommend the variance to Town Council, approval of the variance should be a maximum of four feet into the required rear yard and require relocation or replacement of the trees in the proposed pool area. The Board shoould also prohibit any grade change from fill or other action that impacts the five-foot drainage and utility easement.