



ZONING MEMORANDUM

February 05, 2025

Prepared for
Town of Howey-in-the-Hills
Attn: Sean O'Keefe, Town Manager



229 Messina Place: Swimming Pool, Deck, and Screen Enclosure Setback Variance Request

Applicant: Marcus Flamingo and Veronica Lucien

Project Description and Background:

The applicant submitted a permit application in December 2024 for a swimming pool permit. The application has not been approved by the Town because none of the proposed structures meet the required rear setbacks. The Town's Land Development Code (LDC) in Sec. 5.01.08 requires that swimming pools, decks, and screen enclosures meet a 10-foot setback from both the rear and side property lines.

The applicant is seeking a variance from the required rear 10-foot setback so that the swimming pool can be located one-foot with the rear setback and so that the deck and screen enclosure can be located 3-feet within the rear setback. This means that the swimming pool would be nine feet from the rear property line and the deck/screen enclosure would be seven feet from the rear property line.

The LDC does not provide for an administrative variance to be approved by Town staff. Therefore, this application must come before the Planning and Zoning Board for recommendation to and then subsequent action by Town Council, as the Board of Adjustment, consistent with LDC Section 4.13.00.

Planning and Zoning Board Recommendation: At their January 23, 2025, public hearing, the Planning and Zoning Board voted with three votes to recommend approval of the requested variance and three votes to recommend denial of the requested variance. Because there are currently six members serving on the Board, and the seventh seat is vacant, this vote results in a tie, which means there is no recommendation for action by the Board. Town Council is still able to consider the request even though there is no Planning and Zoning Board recommended action.



Staff Recommendation: Deny the requested 3-foot variance for the deck and screen enclosure and the one-foot variance for the swimming pool as the request does not meet the standards for a variance required by LDC Section 4.13.04:

- 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. **The applicant has not presented special conditions or circumstances in this case that demonstrate there is a need for a variance. Neither the swimming pool nor the deck/screen enclosure have been constructed yet because the permit application has not been approved. The applicant was notified by the Town that the proposed did not meet the required setbacks.**
- B. That the special conditions and circumstances do not result from the actions of the applicant. **No special conditions nor circumstances have been identified by 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. **Literal interpretation of the LDC would not work an unnecessary and undue hardship on the applicant as the swimming pool, deck, and screen enclosure have not been built and can be redesigned to meet the setback requirements.**
- D. That the variance created is the minimum variance that will make possible the reasonable use of the land, building or structure. **The proposed swimming pool, deck, and screen enclosure can be redesigned to meet the setback requirements.**
- E. And, 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. **It would not be in harmony with the general intent and purpose of the LDC to allow this variance without the applicant demonstrating how the variance standards identified herein are met.**

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.

Motion Examples:

1. Approve the requested 3-foot variance for the deck and screen enclosure and the one-foot variance for the swimming pool as the request meets the standards for variance approval required by LDC Section 4.13.04, or
2. Deny the requested 3-foot variance for the deck and screen enclosure and the one-foot variance for the swimming pool as the request does not meet the standards [specify which standards are not met] for a variance approval required by LDC Section 4.13.04, or
3. Continue the requested 3-foot variance for the deck and screen enclosure and the one-foot variance for the swimming pool pending additional information [specify information needed] from the applicant that shows the request meets the standards for a variance approval required by LDC Section 4.13.04.

Please note: Pursuant to LDC Section 4.13.05 (a), when a variance is granted for residentially zoned property, construction, installation, and initiation of the approved structure or use must occur on or before the first anniversary of the date the variance is granted. The owner must file written notice with the Town Manager that the owner has begun the approved construction, installation, or use at the subject property. If no such notice is filed on or before the first anniversary, and if the Town Council determines that construction, installation, or initiation of the approved structure has not been initiated the Town Council may terminate the approved variance.