

## MEMORANDUM

**TO:** Howey-in-the-Hills Planning Board  
**CC:** J. Brock, Town Clerk  
**FROM:** Thomas Harowski, AICP, Planning Consultant  
**SUBJECT:** 464 Avila Place Swimming Pool Variance  
**DATE:** April 13, 2023

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The Town has received an application for a variance from the rear yard setback for a swimming pool to allow a pool to be constructed within five feet of the rear property line. This is another case in a series of requests arising from the Talichet subdivision. The primary cause of the recent series of variance requests is that the rear yard setbacks for principal structures are smaller than other neighborhoods and zoning classifications, and the home builder has chosen house designs that extend the house to the rear setback line. As a consequence, homeowners desiring to add swimming pools as a later addition get squeezed when trying to accommodate a pool and pool deck area. This condition has led to the requests for variance from the setback for pools.

Please note that the Town has addressed this issue for future developments. The recently approved plans for the Watermark development include larger rear yard setbacks specifically to allow more room for swimming pools and other rear yard activities. The Town's standard zoning classifications also have larger rear yard setbacks, so the problem is less likely to occur there. Venezia South has the same setbacks as Talichet, but the swimming pool issue has been less significant there, likely because the house models chosen there leave more rear yard room. The worst of the problem appears confined to Talichet. There is no effective way to address the issue legislatively, so the Town has used the variance process to seek an equitable outcome for the property owners.

In the case at hand the applicant has provided a survey of the property and a copy of the proposed plan for the swimming pool. The plan shows a 12-foot wide pool with two feet of deck area on the rear side of the pool. The deck area from the pool to the house varies from 8' 10" to 11' 7" based on the bay window projection. If the requested five-foot variance is not granted, the pool deck area would shrink to 3' 10" by the bay window and 6' 7" for the balance of the deck area. The Board can consider whether the 3' 10" space is sufficient for safety and general daily use. In other recent cases considered by the Board, the survey showed a drainage swale along the rear five feet of the lot. The survey in this case also shows a five-foot drainage and utility easement.

The land development code provides a series of standards that are used to judge the approval of a variance. The standards are listed below with a commentary on each.

- 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 conditions evident in this application are similar to other cases and properties in the Talichet Subdivision. The home builder has chosen to build units to the rear setback line, leaving less room for typical accessory uses and structures like swimming pools.

- B. That the special conditions and circumstances do not result from the actions of the applicant,

We do not know if the applicant selected the model for home built on the lot or whether the applicant chose a home already constructed. The resultant condition generating the variance request results from the lesser rear setback requirement and the choice to build the home to the maximum rear setback.

- 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,

The Board can make a determination if a deck area of less than four feet, which would be the result of applying the full pool setback, is sufficient for safety around the pool. Note is taken of the location of the lot backing up to a retention area and beyond the retention area a wetland restricted from development. Extending the pool closer to the rear property line would have no impact on other home sites.

- D. That the variance created is the minimum variance that will make possible the reasonable use of the land, building or structure, and

Should the Board recommend a variance, the recommendation should be for the minimum area needed. As a basic rule no incursion should be allowed in the five-foot drainage and utility easement at the rear of the lot. Any additional distance to the rear of the structure that can be preserved will help prevent impacts to the easement area. Should the Board recommend a variance, an allowance of an additional two feet incursion into the pool setback would allow nearly six feet of available deck area by the bay window and would give another three feet of space to the easement to allow for any change of grade from the pool edge to the drainage and utility easement.

- 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.

As noted, there is no home located behind the unit and the requested variance will not impact the side yard setbacks that might result in moving the pool closer to a neighboring unit. As discussed, the issue generating the variance has arisen several times in this subdivision.

- 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.

Should the Board recommend a variance a condition should be included in the recommendation that no disturbance is allowed in the five-foot easement area including any fill placed in the easement area.

## Summary

In order to recommend the variance, the Board needs to find that there is a sufficient condition applicable to this property that would deny the applicant a right typically available to other similar properties. Should the Board recommend the variance, staff recommends the variance be limited to two feet which would allow for additional room for the pool deck and further protect the drainage and utility easement. The Board should also condition the recommendation that no disturbance of the drainage and utility easement be allowed.