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MEMORANDUM

TO: Howey-in-the-Hills Planning Board
CC: J. Brock, Town Clerk
FROM: Thomas Harowski, AICP, Planning Consultant
SUBJECT: 489 Avila Place Swimming Pool Variance
DATE: May 5, 2023

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. As an example, the 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 in Venezia 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 locating the proposed pool on the survey. The plan shows a 14-foot-wide pool with a spa area in the middle of the pool. The deck area on the rear side of the pool is not clearly noted on the survey and plan. The deck area from the house to the end of the pool deck is 25 feet including the area proposed for the variance. If the requested 4.5-foot variance is not granted, the pool deck area would shrink to 20.5 feet from the house. As with most of the home models presented for variance, there is a bay window that projects on one side of the unit. If the variance is not granted, the site would have 6.5 feet of available area to be allocated to deck usage. The Board can consider whether the remaining deck 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 applicant submitted an impervious surface area calculation based on the proposed plan which shows the ISR exceeds 50% which is the maximum ISR allowed for Talichet. The applicant is proposing to construct a small swale in the side yard to provide additional stormwater storage to compensate for the excessive ISR area.

It appears that there is an opportunity to modify the pool design that could reduce or eliminate the need for the variance. Shifting the pool toward one of the side property lines and placement of the proposed spa at the end of the pool rather than in the middle would allow for more usable deck area between the rear of the house and the edge of the pool. Narrowing the pool width to 12-feet would provide an additional two feet of potential deck area. A pool width of 12 feet is the same as has been proposed by several other pools that have recently sought a variance. (464 Avila is 12-feet, 469 Avila is 11 feet, and 414 Amola is 11.5 feet.) If these changes were made it might be possible to provide a pool, spa, and deck area within the allowable building area, or at worst reduce the potential variance request.

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 the available deck area is sufficient for safety around the pool. The subject property does have portions of two lots that abut the rear property line.

- 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.

In order to determine the minimum necessary variance, the Board may wish to ask the applicant to provide a revised pool and deck layout based on the staff comments offered above.

- 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.

It is common for single-family homes to include a swimming pool for family recreation. In this case there are portions of two lots that abut the rear property line of the applicant. 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. In considering the proposed variance, the Board may wish to request the applicant revise the plan or otherwise provide a specific determination of the minimum area needed for the variance. The Board should also condition the recommendation that no disturbance of the drainage and utility easement be allowed. As a final condition, the Board should note that construction of a swimming pool either with or without a variance does not relieve the applicant of the responsibility to retain three shade trees on the property.

