

MEMORANDUM

TO: Howey-in-the-Hills Town Council
CC: J. Brock, Town Clerk
FROM: Thomas Harowski, AICP, Planning Consultant
SUBJECT: 489 Avila Place Variance Request
DATE: June 8, 2023

The applicant is requesting relief from the requirement that swimming pools and pool decks be set back 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 4.5 feet to allow the pool and pool deck to extend within 5.5 feet of the rear property line.

The Planning Board reviewed this application at their regular meeting of May 25, 2023. There was extensive discussion about the proposed variance and the opportunity to modify the proposed pool to avoid the need for a variance entirely or reduce the amount of the variance if granted. The applicants participated in the discussion stressing their desire to have a larger pool and deck area than has been considered in past variance applications. After extensive discussion the Planning Board considered a motion to recommend the variance as requested by the applicant. The motion failed on a three-to-three vote and no other action was taken.

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 on the interior of the loop closed end with the subject property having a house on each side of the property and two lots abutting the property to the rear. 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 4.5 feet at the deepest penetration. The plans as submitted address several questions and conditions considered with past variance applications.

- The variance request of 4.5 feet preserves the full width of the drainage and utility easement that runs across the rear of the parcel.

- The plan addresses the property's impervious surface by including a one-foot-deep swale area in the side yard to accommodate a little over 101 cubic feet of run-off. The engineer's calculations are provided as evidence that the property will not contribute more than the 50-percent impervious area runoff to the subdivisions stormwater management system.
- Other similar variance applications have included a condition that no fill or other obstruction be placed in the easement area. The plan shows the extent of construction as falling outside of the easement area, but the Council may wish to emphasize this need with a condition should the variance be granted.
- Other similar variance applications have addressed the requirement for a minimum of three shade trees be provided on the subject parcel. During the Planning Board hearing the applicants testified regarding their intent to comply with this requirement, and again the Council may wish to include a condition regarding trees.

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.

Summary

Technically the request does not meet all of the criteria for approval of the requested variance (refer to the staff report to the Planning Board for details), however, 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. As noted above, the Planning Board deadlocked on a motion to approve the variance. In order to recommend the variance, the Council 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.