



TMHConsulting@cfl.rr.com
97 N. Saint Andrews Dr.
Ormond Beach, FL 32174
PH: 386.316.8426

MEMORANDUM

TO: Howey-in-the-Hills Planning Board
CC: J. Brock, Town Clerk
FROM: Thomas Harowski, AICP, Planning Consultant
SUBJECT: 414 Amola Way Variance Request
DATE: August 8, 2022

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 seven feet to allow the pool and pool deck to extend within three 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. The applicant has owned the property since May 2021. Amola Way is a short cul-de-sac serving seven residential lots. Amola Way backs up to a wetland and stormwater retention area so that there are no houses to the rear of units accessed from Amola Way. The applicant has submitted a survey showing the pie-shaped 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 deck intruding into the required rear yard setback by up to four feet at the deepest penetration. Subsequently the applicant submitted a revised pool and pool deck layout with the deck extending to within three feet of the rear property line, extending up to seven feet into the required rear yard. The main difference between the two designs is the amount of deck area between the house and the pool. The variance review will be based on the most recent site plan layout.

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

- The orientation of the house to the rear property line narrows the distance to the rear property line from 29 feet on one end to 23 feet on the other end.
- The rear lot orientation leaves inadequate room for a typical pool and pool deck.
- The proposed deck area is necessary to allow full access to all sides of the pool.
- There are no neighbors to be impacted by the reduced rear yard setback.

The applicant has also stated that other variances for pools have been granted, but the granting of a variance in one case has no bearing on future cases. Each variance is supposed to address a specific hardship 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. The pie shaped lot does make the design of a pool and pool deck somewhat more difficult than for a standard rectangular lot, but the type of lot in question is not really unique in shape in the current subdivision or for other similarly zoned property.
- B. We do not have information on whether the applicants picked the design for the house and planned the site for the eventual construction of a pool. The house design could have been modified to accommodate a pool or a different house design selected if the intent was to include a pool.

- C. A literal interpretation of the code does not prohibit the construction of a pool, but would require a different design of the pool and pool deck.
- D. The proposed minimum variance of seven feet exceeds the minimum variance to accommodate the proposed design. The applicant submitted a design with the original application that has a lesser impact on the rear yard setback. The pool and pool deck cannot extend into the utility and drainage easement area unless the easement is vacated.
- 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. The fact that the parcel abuts a large wetland and stormwater retention area provides a visual and spacial shield and buffer from any properties to the rear of the parcel.
- F. In order to construct the pool at least two trees will need to be removed or relocated. 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. Note is taken of the placement of the lot in the subdivision such that construction of the pool and pool deck as proposed would have no measurable impact on neighboring properties. 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 it is not the minimum relief needed to overcome any hardship linked to the property. Should the Planning Board elect to recommend the variance to Town Council, approval of the variance should be for a lesser incursion into the rear yard set back (maximum four feet); conditioned on excluding any incursion into the drainage and utility easement; and requiring relocation or replacement of the trees in the proposed pool area.