



**TOWN LAKE OF PARK
PLANNING AND ZONING BOARD
Meeting Date: February 5, 2024
PZ-24-01**

Applicant(s): Gregory Sawyer
Owner: Gregory Sawyer
Agent: N/A
Address: 1021 Seminole Boulevard
Net Acreage: 0.2834
Legal: KELSEY CITY LTS 27, 28, 29, 30 BLK 102
Existing Zoning: R-1A
Future Land Use: Single-Family Residential

Adjacent Zoning

North: R-1A residence district
South: R-1A residence district
East: R-1A residence district
West: R-1A residence district

Adjacent Future Land Use

North: Single-Family Residential
South: Single-Family Residential
East: Single-Family Residential
West: Single-Family Residential

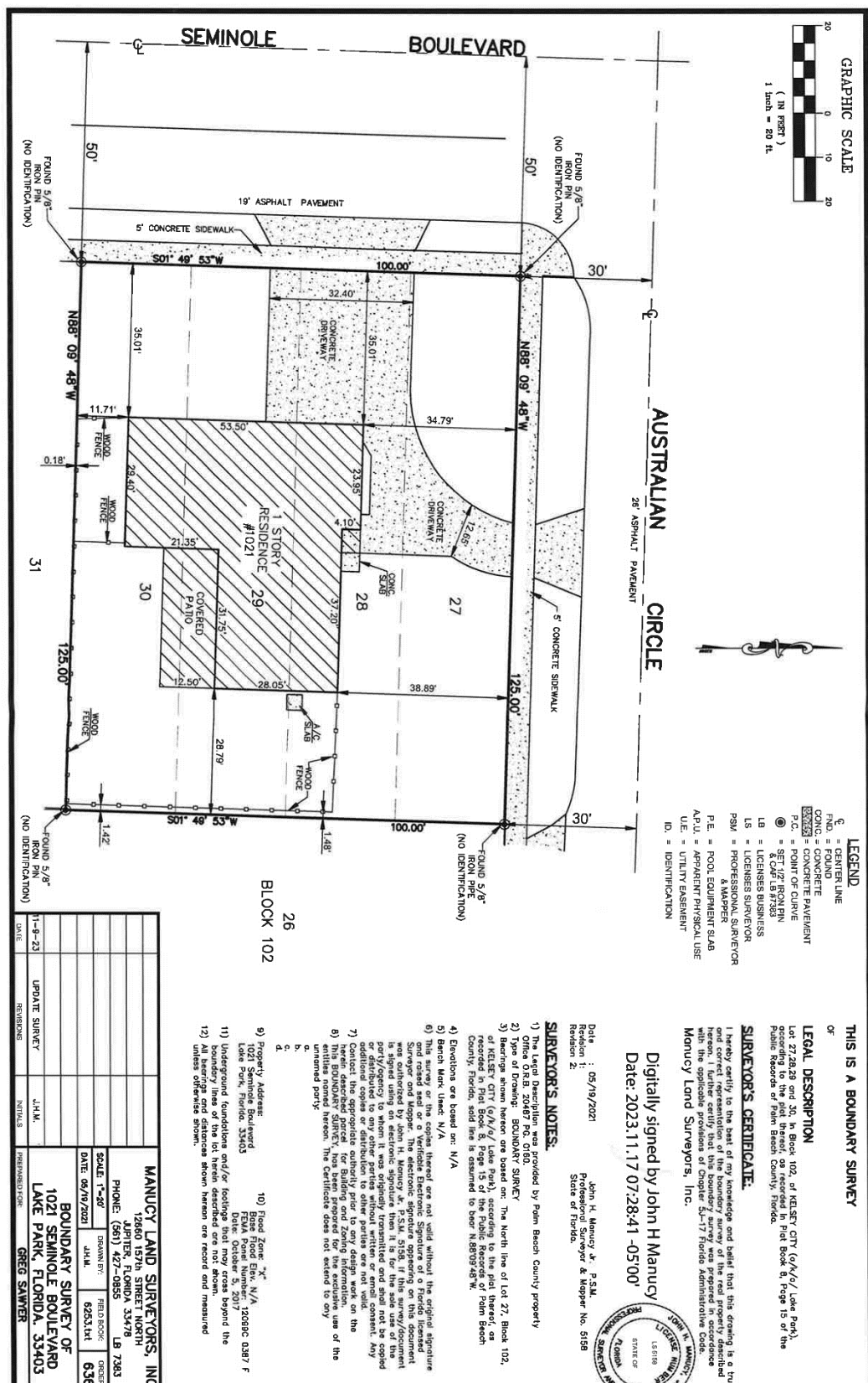
I. VARIANCE REQUEST

Decrease pool setback from property line from the required 10 feet to 5 feet, on both the side and rear of the property.

II. BACKGROUND INFORMATION AND SUMMARY OF REQUEST:

Background of Request

This variance request is being brought forward in advance of planned improvements to 1021 Seminole Boulevard; no building permit application has been pulled at this time as the applicant is waiting for the outcome of the Board's consideration of their variance request before proceeding. The applicant is contemplating a new swimming pool for their property, which they would like configured in the way they feel most compliments their existing home. Specifically, they would like the pool placed in the southeastern corner of their lot where it will be visible from the home's kitchen and living rooms. This configuration would require that the width of the pool be abnormally skinny (approximately 5' width) to accommodate the required 10' side yard setback for swimming pools; as a result, the applicant is seeking a variance to provide a 5' setback instead of the required 10', which would allow them a pool width of approximately 10 feet. Planning staff discussed alternative configurations prior to the applicant's variance submittal such as placing the pool along the eastern side of the lot, however the proposed configuration is their preference. Consequently, they have submitted this variance request to determine whether their preferred configuration can be accommodated under the allowances of the variance code.



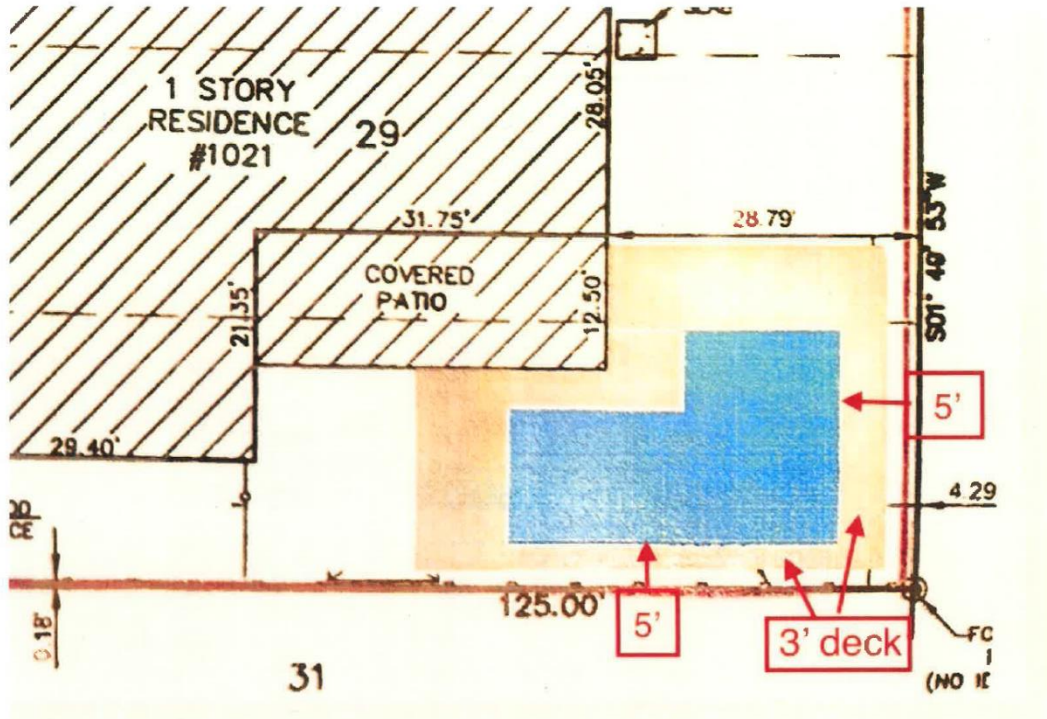


Figure 2 – Conceptual Diagram

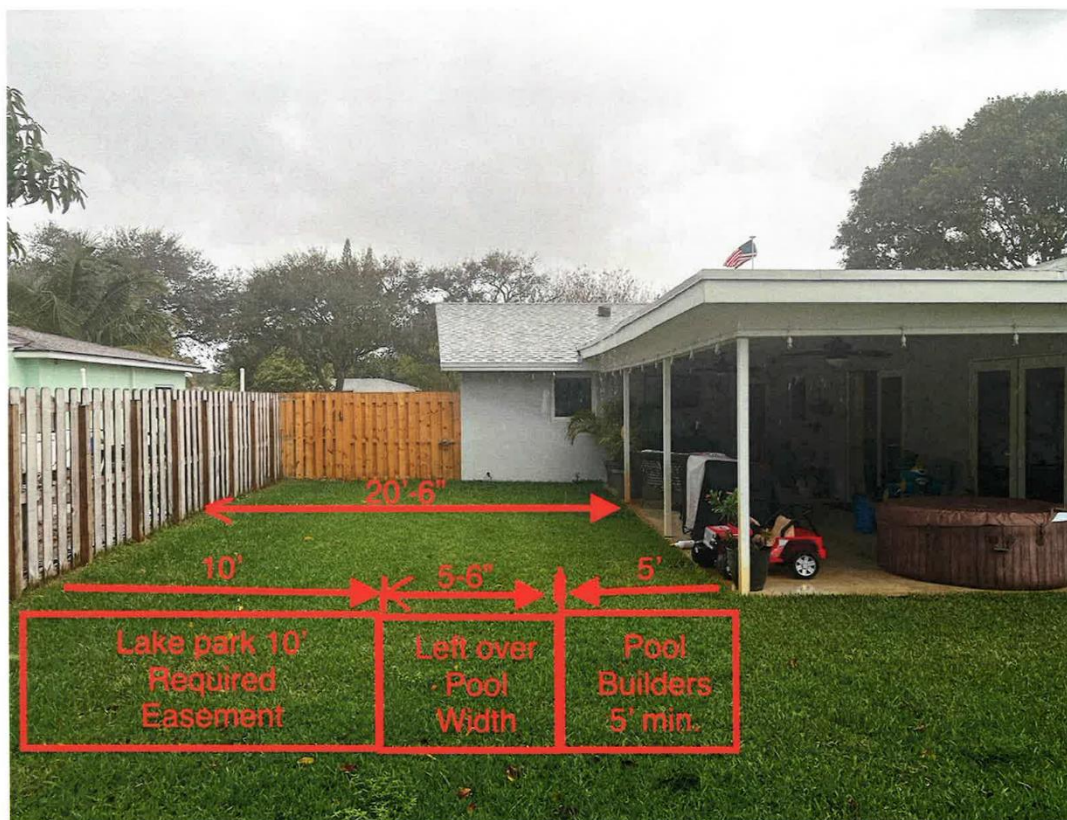


Figure 3 - Illustrative Diagram

Summary of Request

The applicant requests a variance from Sec. 26-61 so that he can provide 5' rear and side yard setbacks rather than the required 10'. The language of the governing code section is as follows:

“The outside rim of a private swimming pool shall be set back not less than ten feet from both rear and side property lines.”

The provision, like all setbacks, is designed to ensure harmony and compatibility between uses and structures. Without this variance, the pool would need an approximate 5' width in order to accommodate the minimum 10' setback and a 5' setback from the existing home as recommended by the pool builder. The applicant states granting this variance will be a positive benefit to the property and surrounding properties, improving their aesthetics.

Variance Number	Section:	Required:	Proposed:
1	26-61	10 feet	5 feet

III. CONSISTENCY WITH THE COMPREHENSIVE PLAN

The following Comprehensive Plan statements are applicable in this case:

Policy 5.4: Utilize such techniques as distance requirements, buffering, landscaping, lower-intensity development, and scale-down requirements to provide appropriate transitions between uses and districts of different intensities, densities, and functions.

IV. LAWS ON VARIANCES

Section 55-63 (2) of the Town Code vests the Planning and Zoning Board with final authority regarding variances. Section 78-185 of the Town Code establishes criteria which must be met to entitle an applicant to a variance. The Board must find that all 7 criteria have been met to entitle an applicant to the requested variance relief. The 7 criteria are:

- (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building;
- (2) The special conditions or circumstances are not a result of actions by the Owner/applicant;
- (3) Granting the variance will not confer on the Owner any special privilege that is denied to others;
- (4) A literal interpretation of the land development regulations would deprive the Owner of rights commonly enjoyed by other properties in the same zoning district;
- (5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;
- (6) The granting of the variance will be in harmony with the general intent and purpose of the land development regulations and will not be injurious to the area involved or otherwise detrimental to the public welfare and;
- (7) Granting the variance would not be contrary to the comprehensive plan.

In evaluating these criteria, Courts have placed emphasis on criteria # 4, by holding the owner/applicants for variance relief and the governing board evaluating the application to the rigorous standard of whether the denial of the variance would render the Property virtually unusable. See Bernard v. Town of Palm Beach, 569 So. 2d 853 (Fla. 4th DCA 1990).

IV. ANALYSIS OF CRITERIA AND FINDINGS FOR VARIANCE

Below are listed the seven (7) variance criteria from Code Section 78-185 which all must be met before a variance can be granted.

CRITERIA 1:	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.
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Applicant Response:	“Residence has a shallow back yard depth. We would like the pool in the back so it can be seen from inside the home’s living/kitchen area.”
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Staff Response:	<p>Staff does not agree that special circumstances exist.</p> <p>Firstly, the lot generally conforms to the minimum required setbacks and lot area. According to a survey performed by Manucy Land Surveyors on 5/19/21 and updated 11/9/23, a 28.79’ rear yard setback exists which would be available for new construction. On the south side yard, the side yard setback is at least 11.71’ at the narrowest and as large as 20.6’ between the covered patio and the side yard property line. This ~20’ area is where the applicant is proposing their pool and thus they cannot meet the required 10’ setback from the edge of the pool to the property line and a 5’ setback from their home. Additionally, the plot of land is over the minimum required lot area for a corner lot in the R-1A district at 12,500 SF.</p>
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While the front street side setback along Australian Circle is above the code minimum at 39.79’ instead of the required 15’, there nevertheless remains the 28.79’ rear yard area where an ~13’ wide pool could be accommodated. There is no entitlement in the code that guarantees a home owner can build on any given side of their property; most other single family home owners in the R-1A district observe a 10’ side yard setback between their home and property line and thus could not place pools in their side yards in most cases. As it pertains only to corner lots, there are numerous other single-family properties with configurations which would not permit new development on all sides given the unique orientations of their homes; as a result, their designs have to respond to the existing site conditions. If there was no other outlet for the property owner to install improvements whatsoever, staff would be more inclined to accept this is a special condition or circumstance unique to the land, but since that is not the case we cannot find they meet criteria 1.

Criteria 1 is failed.

CRITERIA 2: That the special conditions and circumstances do not result from the actions of the applicant.

Applicant Response: “These are the existing property dimensions. We did not alter any of the back yard dimensions or add any structures.”

Staff Response: Staff did not find special conditions or circumstances to exist on this property in the strict sense intended by the variance criteria guidelines. The lot is typical in size and configuration for many single family corner parcels in that the structure does not strictly observe the minimum required setbacks and instead has a larger setback in one area, here being the side yard. The conflict between the required setback and the proposed pool placement does not qualify as a special condition or unique circumstance because it derives from the actions of the applicant.

Criteria 2 is failed.

CRITERIA 3: That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.

Applicant Response: “There is no special privilege given to the applicant that would be denied to other homeowners who also request construction of a pool in the same zoning district.”

Staff Response: The granting of this variance would confer upon the applicant the special privilege of building within a required setback based solely on their preference. This is not permitted elsewhere in the R-1A district or anywhere in the entire Town. Staff does not support variances that are based on the applicant’s preference when other code-compliant alternative designs are possible.

Criteria 3 is failed.

CRITERIA 4: That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter, and would work unnecessary and undue hardship on the applicant.

Applicant Response: “We would like to have the same rights commonly enjoyed by other neighbors who also have pools. The reason for the requested variance is because the pool builder requires a 5’ buffer from any foundations of the existing structures. Without this variance, our pool would only be 5 feet wide.”

Staff Response: The applicant is not being deprived of rights commonly enjoyed by other properties in the same zoning district; regardless of the above-required side yard setback on Australian and the resultant smaller side yard, there remains ample area in the backyard to provide the required setback from the property line and the builder's recommended setback from the home, so the applicant is not being deprived of their ability to build a pool.

Additionally, the Applicant is not subject to unnecessary and undue hardship by the denial of this request. While staff acknowledges the applicant's desire to have the pool visible from their living room and kitchen, this is not a right explicitly granted in our code and we do not feel being denied the preferred pool configuration constitutes an unnecessary and undue hardship.

Criteria 4 is failed.

CRITERIA 5: That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Applicant Response: "We are requesting a variance of 5 feet to the back and side yard property lines. The pool cannot be moved closer to the house because pool builder requires a foot buffer from existing foundations and structures."

Staff Response: While this variance would be the minimum necessary to allow for a pool in the side yard, staff does not believe it would be the minimum necessary to make reasonable use of the land. If "reasonable use of the land" were construed as the owner's ability to create a pool, per the provided survey, this property is still entitled to ~13 feet of buildable area in the rear yard (where most pools are built) behind the building meeting the required pool builder and zoning setbacks. The applicant has not compellingly demonstrated how having their pool in the side yard is essential to making reasonable use of their property; on the contrary, there is no reasonable expectation of using a setback for construction.

Criteria 5 is failed.

CRITERIA 6: That the granting of the variance will be in harmony with the general intent and purpose of the land development regulations of the Code, and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Applicant Response: "We will be in harmony with the code. There will be no detriment to the public welfare as we have a safety barrier fence consisting of at least 5 feet with gates that are self-closing."

Staff Response: While staff notes that this variance would likely not be injurious to the immediate area or otherwise detrimental to the public welfare, the requested variance is simply not consistent with the general intent and purpose of the code by attempting to waive the code-mandated setbacks without a compelling and essential reason for doing so.

Criteria 6 is failed.

CRITERIA 7: That the variance would not be contrary to the comprehensive plan of the town.

Applicant Response: “Approval of this variance would not be contrary to the comprehensive plan of the Town. There would still be room for the Town to access the property lines if needed.”

Staff Response: This proposal is contrary to the intent of Policy 5.4 of the Goals, Objectives, and Policies section of the comprehensive plan, which requires adequate buffering be provisioned for all properties to ensure harmony and minimize adverse impacts between uses. In this case, a variance would be an inconsistent and capricious exercise of zoning power that would be unfair to other property owners who have observed the requirements of our code and the underlying Comprehensive Plan principles even when it is not their preference. This variance would serve to undermine both the code and Comprehensive Plan, setting a poor precedent for the use of variances going forward.

Criteria 7 is failed.

V. STAFF RECOMMENDATION

Staff recommends DENIAL of the requested variance because it does not meet any of the 7 criteria required for the granting of a variance.

Summary of Consistency with Criteria for variance request

		Consistent	Inconsistent
1.	Special Conditions		X
2.	Actions of the Applicant		X
3.	Special Privilege		X
4.	Literal Interpretations		X
5.	Minimum Variance		X

6.	Public Interest		X
7.	General Harmony		X

VI. MOTION FOR THE BOARD TO CONSIDER:

I move to **DENY** variance request.