



DEVELOPMENT SERVICES

To: Board of Adjustment

From: Brady Cudd, Building Official

Re: Board of Adjustment Meeting – January 30, 2023

Agenda Item:

Conduct a Public Hearing, and consider and act upon a request for a Variance to the Zoning Ordinance, to allow a pool to encroach upon the required 3' minimum backyard setback, located in the Star Trail subdivision at 1710 White Tail Drive. (V22-0004)

Description of Agenda Item:

The Town has received a request of the Board of Adjustment (BOA) to consider a request for a Variance to allow a pool to encroach upon the required 3' minimum backyard setback, located in the Star Trail subdivision at 1710 White Tail Drive. Article 3.16.002 of the Town of Prosper Code of Ordinance requires that *Pools and spas shall have a required minimum backyard setback of three feet*. Due to the unique characteristics of the lot, the applicant feels this results in an undue hardship and is requesting a variance in order to construct a pool within the backyard setback, but still 3' from the existing retaining wall located at the rear of the property. In particular, the applicant has stated they developed an initial vision for their proposed backyard modifications based on the assumption that the retaining wall was located on the property line. Given that the attached survey dated 12/12/18, which was supplied to the Town as a Final Grade Certificate at time of Final Inspection, does show the property line to be at the retaining wall, this assumption seems entirely reasonable. The adjacent property owner, the Villages of Star Trail Homeowners Association, supports this request as they do not intend on relocating the retaining wall that runs adjacent to, but several feet to the North of, the property line.

According to the Zoning Ordinance, the Board of Adjustment may consider, in specific cases, a variance of height, yard, area, exterior structure, lot coverage, off-street parking and loading requirements from the terms of the Zoning Ordinance, if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship, and so that the spirit of the Ordinance is observed and substantial justice is done. A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by Ordinance to other parcels of land in the Town or the district. No variance may be granted if it results in an unnecessary hardship, as herein defined, on another parcel of land.

In order to make a finding of hardship and to grant a variance, the Board of Adjustment must determine that the following four (4) criteria have been met:

1. The requested variance does not violate the intent of the Zoning Ordinance or its amendments; and
2. Special conditions of restricted area, shape, topography, or physical features exist that are peculiar to the subject parcel of land and are not applicable to other parcels of land in the same zoning district; and
3. The hardship is in no way the result of the applicant's own actions; and
4. The interpretation of the provisions in the Zoning Ordinance or its amendments would deprive the applicant of rights commonly enjoyed by other properties, in the same zoning district, that comply with the same provisions.

The applicant has provided a letter with responses to each of these criteria which has been included with this packet of information. The concurring vote of four (4) members of the Board of Adjustment is necessary to authorize a variation from the terms of the Zoning Ordinance.

Legal Obligations and Review:

Notification of the Variance was provided in accordance with the Zoning Ordinance. To date, staff has not received any responses to the request.

Attached Documents:

1. Location Map
2. Survey and Pool Layout
3. Letter of Intent
4. HOA Letter

Staff Recommendation:

Staff recommends the Board of Adjustment approve the request for a Variance to the Zoning Ordinance, to allow a pool to encroach upon the required 3' minimum backyard setback, located in the Star Trail subdivision at 1710 White Tail Drive.