

City of Lee's Summit

Planning & Special Projects

February 28, 2017 *CS*

TO: Board of Zoning Adjustments
FROM: Christina Stanton, AICP, Senior Planner
RE: **PUBLIC HEARING – Application #PL2017-018 – Variance to Unified Development Ordinance Article 8, Table 8-1, Setback for Private Swimming Pool – 3933 NE Grant Street; Joseph A. Towns, applicant**

Recommendation

The Department of Planning & Special Projects recommends **DENIAL** of the variance, as requested.

Request

Variance Requested: a non-use variance to the setback requirement for a private swimming pool

Site Characteristics

Location: 3933 NE Grant Street

Zoning: RP-1 (Planned Single-Family Residential)

Property Owner: Joseph A. Towns

Surrounding Zoning and Uses:

North: RP-1 – single-family residence

South: RP-1 – single-family residence

West (across NE Grant St.): RP-1 – single-family residence

East: R-1 – single-family residence

Background

- April 12, 2016 – The Codes Administration Department issued Building Permit #PRESS20160750 for a single-family house at 3933 NE Grant Street. The plot plan did not show a swimming pool and the patio/deck was much smaller.

Ordinance Requirement

Private Swimming Pool Setback Requirements. The Unified Development Ordinance requires a minimum private swimming pool setback of 10 feet, inclusive of the concrete apron or deck surrounding the swimming pool. (UDO Article 8, Table 8-1)

Existing Conditions. The house is currently under construction. The plot plan submitted and approved for the building permit did not show a swimming pool and the patio/deck was much smaller. The house and patio/deck shown on the approved plot plan are set back approximately 24 feet from the side property line and 46.90 feet from the rear property line.

Request. The applicant requests a variance to allow the construction of a private swimming pool with the water's edge at 9.5 feet and the surrounding patio/deck at 8 feet from the property line. The request requires a variance of 2 feet to the 10 foot swimming pool patio/deck setback requirement.

Analysis of Variance

With respect to all variances, the following is an evaluation of the criteria set forth in the Unified Development Ordinance Article 4, Sec. 4.590.B.3.:

Criteria #1 – The granting of the variance will not adversely affect the rights of adjacent landowners or residents.

Granting the variance will not adversely affect the adjacent property owners's view since the structure is an in-ground swimming pool and there will be a 6' tall privacy fence surrounding the rear of the property.

Criteria #2 – The granting the variance will not be opposed to the general spirit and intent of this Ordinance.

The intent of setbacks is to keep privacy and separation between uses and structures. Granting the requested variance will not be opposed to the spirit and intent of the ordinance. The proposed in-ground swimming pool will be separated and kept private by the use of a 6' tall privacy fence.

Criteria #3 – The variance desired will not adversely affect the public health, safety or general welfare.

It is not anticipated that the proposed in-ground swimming pool will have any adverse affect to the public health, safety or general welfare since a 6' tall privacy fence will be installed and the private swimming pool will not be visible to the public or any neighbors.

Criteria #4 – The variance requested arises from a condition that is unique to the property in question, is not ordinarily found in the same zoning district, and is not created by an action or actions of the landowner or the applicant.

The lot itself is not unique relative to other lots in the same subdivision. However, the 60' lot is significantly narrower than a standard 70' wide single-family lot for which the pool setbacks were tailored.

Criteria #5 – Substantial justice will be done.

Substantial justice would be done. The subject property is zoned RP-1. RP-1 zoned lots are narrower than standard R-1 zoned single-family lots. Due to the smaller lot sizes in the RP-1 District, these lots are afforded reduced front, side, and rear setbacks for homes placed on these lots. However, the UDO is silent in granting similarly reduced setbacks for accessory uses/structures (such as swimming pools) in the RP-1 District. As proposed, the swimming pool and deck will be set back further from the north property line than the house, which has a 5' setback. The pool and patio/deck are not expected to have any greater impact on the adjacent property than this home.

Analysis of Non-Use Variance

With respect to a non-use variance, the following is an evaluation of the criteria set forth in the Unified Development Ordinance Article 4, Sec. 4.590.B.2.:

Criteria #1 – Whether practical difficulties exist that would make it impossible to carry out the strict letter of the Ordinance.

Following the strict letter of the UDO would limit the construction of the desired private swimming pool. However, these limitations are no different than those placed upon other property owners within this subdivision and other subdivisions with somewhat smaller lot sizes. There are no practical difficulties making it impossible to carry out the strict letter of the ordinance requirement and construct a private swimming pool of the same or similar shape and functionality.

In making such recommendation, the Staff has analyzed the following considerations set forth in the Unified Development Ordinance Article 4, Sec. 4.590.B.2.:

Consideration #1 – How substantial the variation is, in relation to the requirement.

The applicant requests a ½ foot variance from the waters' edge or a 2 foot variance to the required 10 foot setback from the swimming pool concrete apron.

Consideration #2 – If the variance is allowed, the effect of increased population density, if any, on available public facilities and services.

Approval of the setback encroachment will not increase population and thus would have minimal, if any, effect on the available public facilities.

Consideration #3 – Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties is created.

Granting a variance will not produce a substantial change in the character of the neighborhood. The swimming pool apron encroachment would only be a few feet and is unlikely to have a negative impact on the adjacent properties since it will be screened with a 6' tall privacy fence. In addition, it should be noted that there is no setback requirement for a patio.

Consideration #4 – Whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance.

The UDO requires a minimum 10 foot setback from any concrete apron or deck surrounding the swimming pool. The proposed swimming pool apron is set back 8 feet from the side property line. The applicant could obviate the need for a variance by moving or reducing the size of the swimming pool.

Consideration #5 – Whether, in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the variance.

The interests of justice would be served by granting the requested variance.

Consideration #6 – Conditions of the land in question, and not conditions personal to the landowner. Evidence of the applicant's personal financial hardship unrelated to any economic impact upon the land shall not be considered.

The lot itself is not unique relative to other lots in the same subdivision. RP-1 zoned lots are narrower (60' wide) than standard R-1 zoned single-family lots (70' wide). The pool setbacks were tailored towards to standard 70' wide lots in the R-1 District.

Attachments:

1. Copy of original plot plan approved on April 12, 2016, for construction of a single-family home with 13' x 13' patio
2. Architectural plan showing proposed patio and swimming pool layout – date stamped January 25, 2017
3. Board of Zoning Adjustment Application and Variance Criteria – 7 pages
4. Location Map

PRRES20160750

RESUB

AS-GRADED PLOT
PLAN IS REQUIRED

This approval is issued in reliance upon information submitted by the applicant. Any permit issued pursuant to this approval may be suspended or revoked whenever the permit is issued in error, or on the basis of incorrect information supplied, or in violation of any ordinance or regulation. Approved plans shall not be changed, modified or altered without authorization. The issuance or granting of a permit or approval of plans shall not be construed to be a permit for, or approval of, any violation of any of the provisions of the ordinance of the City of Lee's Summit.

APPROVED *[Signature]* DATE 4/12/16
PRINT NAME *Hector Soto Jr.*

MH 1-B
STA 10+00
TOP 931.37
FL IN 921.07

SAN STUB
STA 12+73
LENGTH 74
MBFE 932.69

TOP CURB
E=936.61

N.E. GRANT STREET
50' RW

TOP CURB
E=937.50

CURB INLET
TOP=938.17

MH 2-B
STA 13+81.01
TOP 940.17
FL OUT 929.67

LEGEND

- Gas Meter
- Telephone or Fiber-Optic Pedestal
- Cable TV Pedestal
- Electric Pedestal
- Light Pole
- Mailbox
- Fire Hydrant
- Water Valve

PROPOSED HOUSE

TOP FOUNDATION = 941.75
GARAGE FLOOR = 940.00
TOP FOOTING = 932.75
BASEMENT FLOOR = 933.08

E = EXISTING ELEVATION
F = PROPOSED FINAL ELEVATION
G = ADJACENT GRADE AT EGRESS

U.E. = UTILITY EASEMENT
B.L. = BUILDING LINE

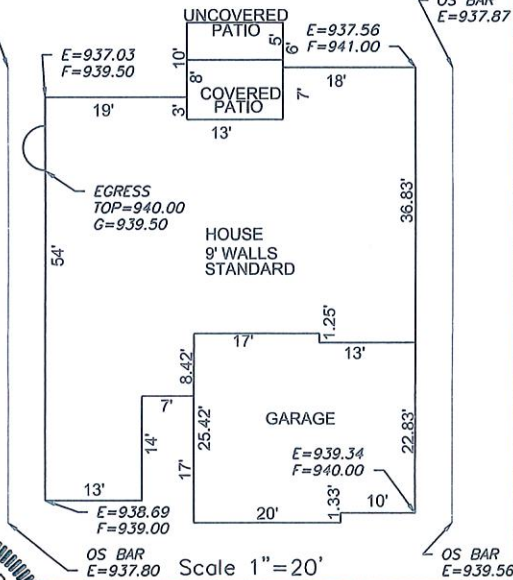
NOTES

1. BUILDER TO VERIFY ALL BUILDING ELEVATIONS AND DIMENSIONS.
2. THIS PLOT PLAN DOES NOT CONSTITUTE A BOUNDARY SURVEY.
3. THE EASEMENTS SHOWN ON THIS PLOT PLAN ARE TAKEN FROM THE FINAL PLAT. OTHER EASEMENTS MAY EXIST.

NOTE: DECK APPROVAL WILL BE REQUIRED PRIOR TO (FUTURE) DECK CONSTRUCTION

DRIVEWAY SLOPE = 6.8 %

OS BAR
E=937.00



Scale 1"=20'

OS BAR
E=937.87

OS BAR
E=939.56

PLOT PLAN - LOT 29

FAIRFIELD WOODS
LEE'S SUMMIT, JACKSON COUNTY, MISSOURI

DAHMER CONTRACTING
18707 EAST 191ST STREET
PLEASANT HILL, MISSOURI, 64080

PROJECT NO.	FILE NAME	DATE	SHEET	OF
1	LOT 26,27,28,29, FAIRFIELD WOODS	3/29/16	1	1

Scale 1"=30'

LOT INFORMATION

8,396.7 SQ. FT.
MBFE = 932.69
ADDRESS
3933 NE GRANT ST.

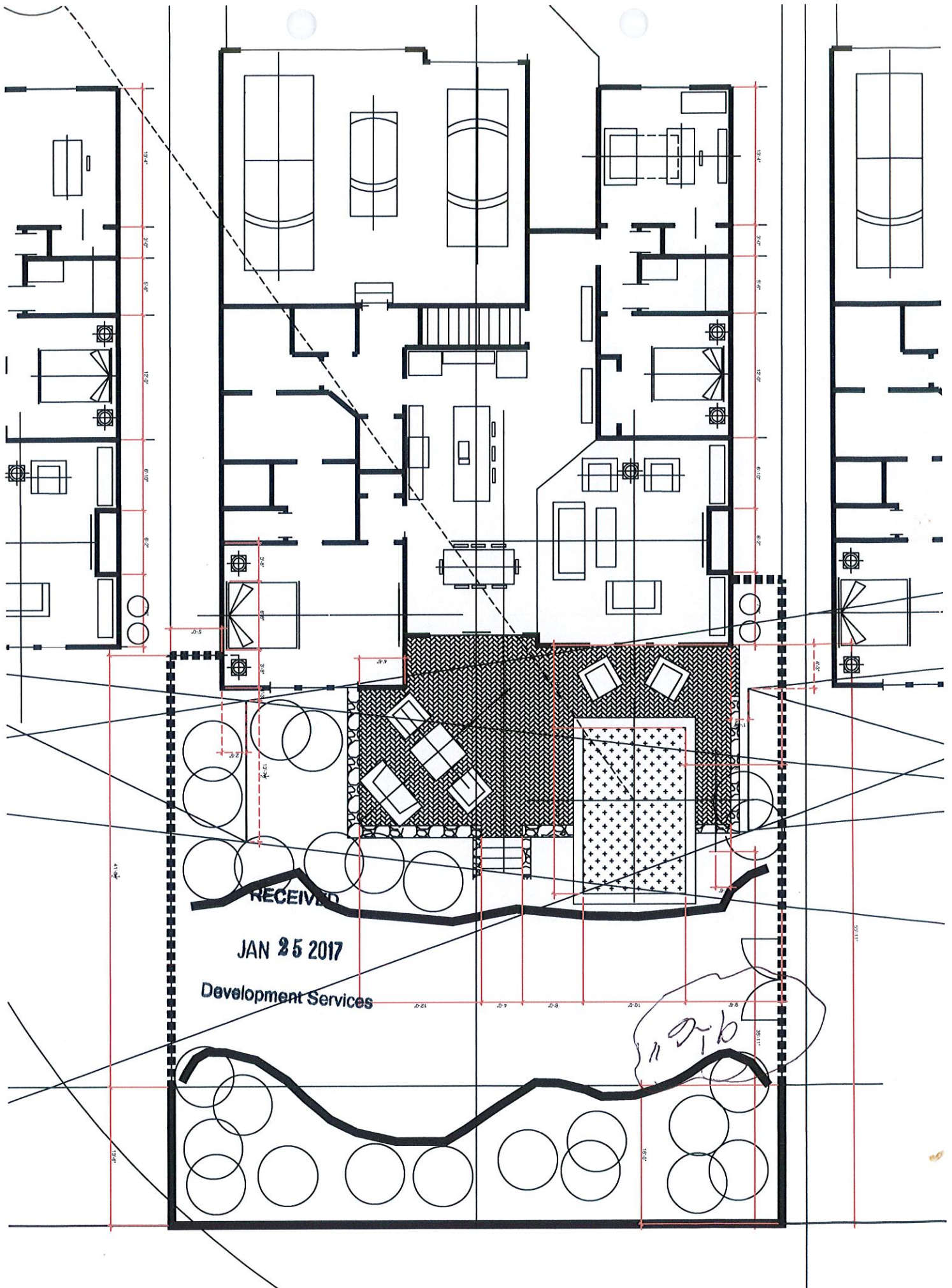
LEGAL DESCRIPTION

LOT 29, FAIRFIELD WOODS, A SUBDIVISION AS RECORDED IN LEE'S SUMMIT, JACKSON COUNTY, MISSOURI.

ENGINEERING SOLUTIONS
ENGINEERING & SURVEYING
50 SE 30TH STREET
LEE'S SUMMIT, MO 64082
P: (816) 623-9888 F: (816) 623-9849
WWW.ENGINEERINGSOLUTIONS.COM



THIS DRAWING IS NOT VALID UNLESS THE SIGNATURE, DATE AND SEAL OF THE ENGINEER WHO SUPERVISED THE PREPARATION OF THIS DRAWING HAS BEEN AFFIXED HERETO.





USE VARIANCE APPLICATION FORM

Application No. PL2017-018

APPLICATION IS HEREBY MADE TO THE BOARD OF ZONING ADJUSTMENT OF THE CITY OF LEE'S SUMMIT, MISSOURI, REQUESTING A VARIANCE TO THE UNIFIED DEVELOPMENT ORDINANCE, AS SET FORTH BELOW,

VARIANCE REQUEST (Give description of variance(s) requested) Request waiver
of 10'-0" ORDINANCE FOR POOL separation
from side Property line to pool apron

PROPERTY ADDRESS 3933 NE GRANT

LEGAL DESCRIPTION LOT 29, Fairfield Woods subdivision

PROPERTY OWNER JOSEPH A. TOWNS
ADDRESS 8009 NE Panther Valley / 3933 NE GRANT
CITY—STATE—ZIP L.S. 64064
PHONE 816-529-4019 FAX _____

APPLICANT Joseph A. Towns
ADDRESS 3933 NE Panther Valley
CITY—STATE—ZIP L.S. MO. 64064
PHONE 816-529-4019 FAX _____

THIS APPLICATION MUST BE ACCOMPANIED BY:

- Acknowledgement of the Board of Adjustment Process.
- One set of drawings to clearly indicate the requested variance in relation to the property and/or structures. These could include plot plan, plat, site plan, survey and/or building elevation(s).
(Note: These drawings must be able to be clearly read as well as being reproduced. If the drawings are larger than 11" by 17", a smaller copy of the drawings shall also be provided.)



- Statement of Use Variance Criteria.
- Enclosed is the fee in the amount of \$ 465.00 (\$300 filing fee plus \$165 advertising charge)
Payable to the **City of Lee's Summit.**

The application must be signed by the legal property owner AND the applicant, if other than the owner. The property owner may grant permission for the filing of the application by means of a signed and notarized affidavit to that effect.

APPLICANT

Print name here: Joseph Downs

Joseph Towns

Receipt #: 2017024016 Date Filed: 1/25/17 Processed by: LS



BOARD OF ZONING ADJUSTMENTS PROCESS

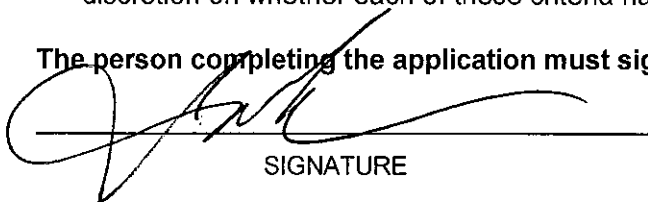
its case to the Board, FULLY describing the situation and the variance criteria. (See Statement of Variance Criteria.)

- Any evidence presented to the Board will become public record and must be provided in duplicate to the City or tagged as an exhibit at the hearing.

Board's Authority

- The Board of Zoning Adjustment may grant a variance only if application of the UDO, when applied to a particular property, would significantly interfere with the use of the property.
- The Board's authority is limited by the statutes of the State of Missouri and the UDO. The Board may only grant a variance if, in its discretion, each of the variance criteria is met. (See Statement of Variance Criteria.) **It is the applicant's responsibility to demonstrate to the Board that each of these criteria have been met.** The Board may evaluate the evidence in the record, and exercise its discretion on whether each of these criteria has been met on a case by case basis.

The person completing the application must sign below.



SIGNATURE



PRINT NAME HERE



STATEMENT OF VARIANCE CRITERIA

In accordance with Section 4.530.B.3. of the Lee's Summit Unified Development Ordinance, the applicant must meet each of the following requirements to support the granting of the requested variance. **Failure to complete each may result in an incomplete application.** Describe in detail how this application meets each of the following requirements.

1. The granting of the variance will not adversely affect the rights of adjacent property owners or residents.

No Above Ground Structure - in Ground Pool - 6' fencing to be used.

2. The granting of the variance will not be opposed to the general spirit and intent of the ordinance from which the variance is sought.

The lot is very narrow - the requested variance is proportionately reduced 9'-6" from side lot line to edge of pool.

3. The variance requested will not adversely affect the public health, safety, morals, or general welfare of the community.

6' fencing to be used and will not be visible to public or neighbors



LEE'S SUMMIT MISSOURI

STATEMENT OF VARIANCE CRITERIA

4. The variance requested arises from a condition which is unique and peculiar to the property in question and which is not ordinarily found in the same zone or district, and further, is not created by an action or actions of the property owner or applicant.

*This condition unique to small pool
installation*

5. Substantial justice will be done by the granting of this variance.

*Variance follows intent of ordinance
but adjusts for square of lot.*



LEE'S SUMMIT MISSOURI

STATEMENT OF VARIANCE CRITERIA (NON-USE)

5. Substantial justice will be done by the granting of this variance.

* Further, in accordance with Section 4.530.B.2 of the Lee's Summit Unified Development Ordinance, the applicant must meet each of the following requirements to support the granting of the requested non-use variance. Explain **IN DETAIL** how this application meets each of the following requirements.

1. Practical difficulties exist that would make it impossible to carry out the strict letter of the Unified Development Ordinance when considered in light of the following factors:

- a. How substantial the requested variation is, in relation to the requirement of the Ordinance.

LOT SIZE IS NARROW & ANY ADDED

FEATURE WOULD BE UNDULY CONSTRAINED

- b. The effect of increased population density, if any, on available public facilities and services, if the variance is allowed.

N/A

- c. Whether a substantial change will be produced in the character of the neighborhood, or whether a substantial detriment to adjoining properties will be created if the variance is allowed.

THIS ELEMENT WOULD/WILL ENHANCE THE
NEIGHBORHOOD



STATEMENT OF VARIANCE CRITERIA (NON-USE)

- d. Whether it is feasible for the applicant to pursue a method, other than a variance, to obviate the practical difficulty.

ARCHITECTURAL CONSIDERATIONS REQUIRE
FLATTERMENT AS SHOWN

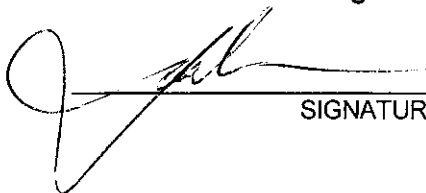
- e. Whether the interests of justice will be served by allowing the variance, in view of the manner in which the practical difficulty arose in consideration of all of the above factors.

NO FALSIFICATION

- f. Conditions of the land in question, and not conditions personal to the landowner. (The Board will not consider evidence of the applicant's or landowner's personal financial hardship unrelated to any economic impact on the land.)

REALT VARIOUS

This sheet must be signed by the person completing this sheet.


SIGNATURE


PRINT NAME HERE

Appl. #PL2017-018--VAR to swimming pool setback
3933 NE Grant St.;
Joseph A. Towns, applicant

