

City of Lee's Summit

Planning & Special Projects

March 17, 2017

TO: Board of Zoning Adjustments
FROM: Christina Stanton, AICP, Senior Planner *CS*
RE: **PUBLIC HEARING – Application #PL2017-041 – Variance to Unified Development Ordinance Article 8, Table 8-1, Setback for Private Swimming Pool – 1412 NE Kenwood Drive; Sallee Homes, 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: 1412 NE Kenwood Drive

Zoning: R-1 (Single-Family Residential)

Property Owner: Sallee Homes, Inc.

Surrounding Zoning and Uses:

North: AG (Agricultural) – park land

South (across NE Kenwood Cir.): R-1 – single-family residence

West: R-1 – single-family residence

East: R-1 – single-family residence

Background

- October 13, 2016 – The Codes Administration Department issued Building Permit #PRESS20162547 for a single-family house with a swimming pool at 1412 NE Kenwood Drive. The approved plot plan did show a swimming pool and surrounding deck.

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 show a swimming pool and surrounding deck. The swimming pool and surrounding deck shown on the approved plot plan are set back approximately 1 foot from the rear and west side property lines. The pool and surrounding deck were approved as a staff oversight.

Request. The applicant has met with staff and revised the pool and surrounding deck layout. The applicant requests a variance to allow the construction of a private swimming pool with the water's edge at 5 feet from the rear property line. The request requires a variance of 5 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' view since the structure is an in-ground swimming pool and the abutting property to the north is owned by the Army Corps. In addition, the retaining wall is approximately 3-5 foot tall around the northwest corner 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 3-5' tall retaining wall and landscaping. Additionally, the proposed reduced setback is in the direction of the Army Corps property that will never be developed.

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 the requested variance of 5' encroaches toward the Army Corps property to the north and not any of the abutting residential lots.

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 has the uncommon characteristic of backing up to property owned by the Army Corps of Engineers. The Army Corps property will not be developed, and so would be negligibly impacted by granting the variance as requested.

Criteria #5 – Substantial justice will be done.

Substantial justice would be done. As proposed, the swimming pool will meet the required 10' setback from the side property lines. The requested variance is for 5' of the required 10' setback from the rear property line, which is shared with the Army Corps. Because the Army Corps property will not be developed, a variance would not violate the spirit of maintaining privacy and separation between uses and structures.

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 and other subdivisions. 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 5 foot variance from the required 10 foot setback from the swimming pool.

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 encroachment would be 5 feet and is unlikely to have a negative impact on the adjacent properties since the encroachment is towards the Army Corps property and it will be screened with a 3-5' tall retaining wall and landscaping.

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 the swimming pool and any concrete apron or deck surrounding the swimming pool. The proposed swimming pool is set back 5 feet from the rear property line. The applicant could obviate the need for a variance by 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. The variance would not violate the spirit and intent of maintaining privacy and separation between uses and structures.

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 size of the lot itself is not unique. The fact that the rear of the lot abuts property owned by the Army Corps is somewhat unique.

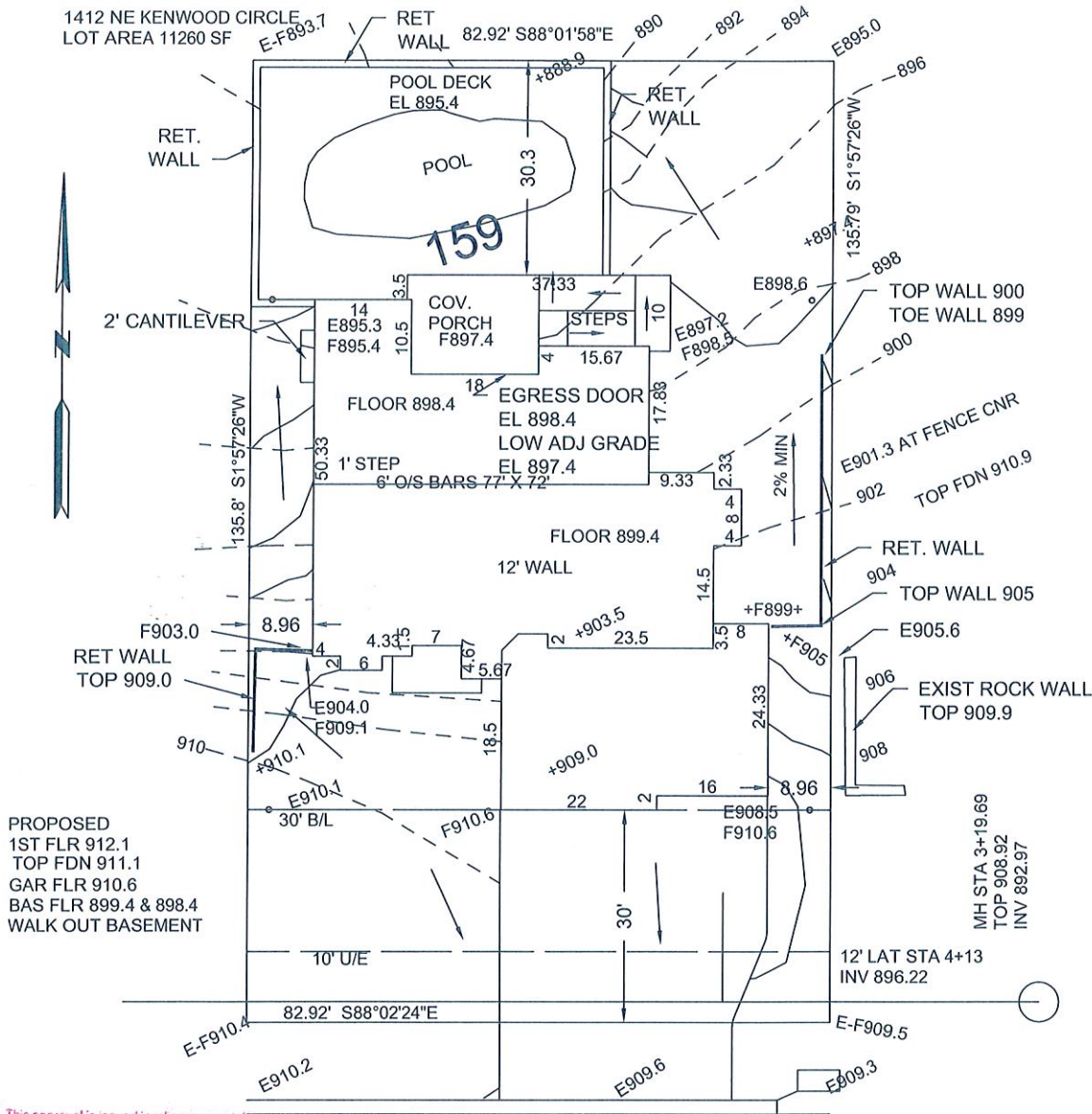
Attachments:

1. Copy of original plot plan approved on October 10, 2016, for construction of a single-family home with pool and deck surrounding
2. Copy of revised site plan showing proposed layout of swimming pool and pool deck – date stamped March 1, 2017
3. Board of Zoning Adjustment Application and Variance Criteria – 6 pages
4. Location Map

CONSTRUCTION STAKE PLOT PLAN *RESUB*

ORDERED BY: SALLEE HOMES

DESCRIPTION: LOT 159, DALTON'S RIDGE 9TH PLAT IN LEE'S SUMMIT, MISSOURI



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 the approval of the issuing authority. The issuance or granting of a permit or approval of plans shall not be construed as a warranty for, or an approval of, any violation of any of the provisions of the ordinance of the City of Lee's Summit, Missouri.

NEKENWOOD CIRCLE

APPROVED: *Christina Stanton* DATE: 10/10/16

PRINT NAME

This plot plan is not an "as-built" survey as the house was staked prior to being built and cannot be used in place of a "Surveyors Real Property Report". This plot plan was prepared for use before and during foundation construction only and should not be used to establish property lines for fences or other structures. House staked as shown on this plot plan. House dimensions may have been assumed and contractor must check house dimensions shown and compare to the final house plans. Contractor to verify all elevations at job site. Builder must make final decision as to cuts and foundation heights at the job site, any floor elevations shown are shown as a guide only. Sanitary sewer and lateral elevations cannot be verified at time of staking, and it may be necessary to verify sanitary sewer elevation and location (BY DIGGING UP THE SEWER LATERAL) prior to excavation for foundation. Underground utilities and un-platted easements may not be shown. This does not constitute a boundary survey and builder must check to make sure description shown is correct with the deed for the property. It is recommended that no work be done until building permits are obtained and plot plan has been verified by local building codes authorities to comply with all setback and other restrictions.

= DRAINAGE PATTERN



LEE BODENHEIMER, P.E., L.S.
Professional Engineer - Land Surveyor

CONSTRUCTION ENGINEERING SERVICES, INC.
16810-C East 40 Highway
Independence, MO 64055
(816)478-2323
lee@engineeringkc.com
SCALE: 1"=20'
DATE: 09-07-16
JOB NO: 14809

LEE BODENHEIMER, P.E., L.S.
Professional Engineer - Land Surveyor



LEE'S SUMMIT MISSOURI

BOARD OF ZONING ADJUSTMENTS PROCESS

- 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 before it, 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

R. Tyler Sallee - Sallee Homes, Inc.
PRINT NAME HERE



LEE'S SUMMIT MISSOURI

NON-USE VARIANCE APPLICATION FORM

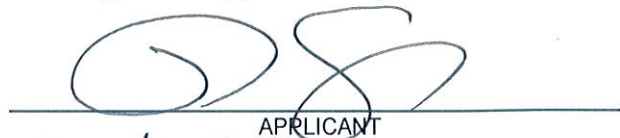
(Note: These drawings must be able to be clearly read as well as being reproduced. If the drawings are larger than 11" by 17", a smaller copy of the drawings shall also be provided.)

- Statement of Non-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.


PROPERTY OWNER

Print name here: R. Tyler Sallee


APPLICANT

R. Tyler Sallee

Receipt #: _____

Date Filed: 3/1/17

Processed by: HIS



NON-USE VARIANCE APPLICATION FORM

Application No. #PL2017-041

APPLICATION IS HEREBY MADE TO THE BOARD OF ADJUSTMENTS 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 to reduce rear yard setback for personal pool. Reduce to 5' from rear property line to water's edge of pool

PROPERTY ADDRESS 1412 NE Kenwood Cl.
Lee's Summit, MO 64064 - Lot #159 Dalton's Ridge.

LEGAL DESCRIPTION Lot #159 Dalton's Ridge - 9th plat

PROPERTY OWNER R. Tyler Sallee - Sallee Homes, Inc.

ADDRESS 1416 NE Kenwood Cl.

CITY—STATE—ZIP Lee's Summit, MO 64064

PHONE (816) 582-8865 FAX _____

APPLICANT R. Tyler Sallee - Sallee Homes, Inc.

ADDRESS 1416 NE Kenwood Cl.

CITY—STATE—ZIP Lee's Summit, MO 64064

PHONE (816) 582-8865 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).



LEE'S SUMMIT MISSOURI

STATEMENT OF VARIANCE CRITERIA (NON-USE)

In accordance with Section 4.520.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.** Explain **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.

Rear property line is adjacent to Army CORPS property. No neighbor behind property. Side yard setback and requirement to meet current city ordinance. Reduced rear yard setback to pool has no impact on property owner to rear.

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.

This variance has no impact on residents of community or neighbors. Only reduces setback of pool to rear property line, that adjoins CORPS ground.

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

Variance request has no affect on public health, safety of neighbors, morals of community or general welfare. Applicant to meet all other stipulations of ordinance (i.e. fencing, sideyard setbacks, etc.)

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

The requested variance only impacts rear property line



LEE'S SUMMIT MISSOURI

STATEMENT OF VARIANCE CRITERIA (NON-USE)

setback to personal pool. Rear property adjoins Army CORPS property, no personal residence behind property.

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

Rear yard variance to pool will have no impact on neighbors or community. Only requesting reduced setback in rear, adjoining CORPS ground.

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.

Reducing rear yard setback from 10' to 5'. 5' from rear property line to water's edge.

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

No effect of increased density on public services. Variance request has no impact on public facilities.

- 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.

No substantial change in character of the neighborhood. Only effect to adjoining properties is distance from pool to rear property line. Rear property adjoins CORPS ground, no personal residence behind property.



LEE'S SUMMIT MISSOURI

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.

Installation of personal pool is not feasible without variance and reduction of rear yard set back to water's edge.

- 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.

Variance has no impact on neighbors, community or adjoining property owners.

- 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.)

Variance has no impact on personal financial hardship unrelated to any economic impact on the land.

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



SIGNATURE

R. Tyler Sallee - Sallee Homes, Inc.

PRINT NAME HERE

**Appl. #PL2017-041--VAR to swimming pool setback
1412 NE Kenwood Cir.;
Sallee Homes, Inc., applicant**

