

City of Lee's Summit

Development Services Department

January 14, 2022

TO: Board of Zoning Adjustments
FROM: Hector Soto, Jr., Planning Manager
RE: **PUBLIC HEARING – Application #PL2021-481 – Variance to Unified Development Ordinance Article 6, Section 6.1320.F, Swimming Pool Setback – 1804 SW River Run Dr; Scott Coster, applicant**

Recommendation

The Development Services Department recommends **APPROVAL** of a variance to the 30' swimming pool setback from the rear property line, to allow a 15' foot rear yard setback for a swimming pool.

Request

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

Site Characteristics

Location: 1804 SW River Run Dr

Zoning: R-1 (Single-Family Residential)

Property Owner: Mark A. Barrett

Surrounding Zoning and Uses:

North: R-1 – single-family residential

South: R-1 – single-family residential

West: R-1 – common area and detention basin

East (across SW River Run Dr): R-1 – single-family residential

Background

- May 11, 2020 – The Development Services Department issued a building permit (#PRRES20201062) for a single-family residence in the Whispering Woods subdivision.

Ordinance Requirement

Swimming Pool Setback Requirements. The Unified Development Ordinance requires the following:

- [w]hen an accessory structure (e.g. a swimming pool)...is located within ten (10) feet of the principal structure (i.e. the house), it shall comply with the yard requirements of the principal structure to which it is accessory (UDO Article 6, Section 6.1320.F). The minimum rear yard setback requirement for a house in the R-1 zoning district is 30 feet.

The required setback from the rear property line is inclusive of the concrete apron or deck surrounding the swimming pool.

Existing Conditions. The subject property is developed with a single-family home. To the rear (west) of the property is a common area tract that houses a detention basin. To the west of the

common area is an existing creek. The common area tract with detention basin and the creek all lie within the boundaries of the 100-year floodplain.

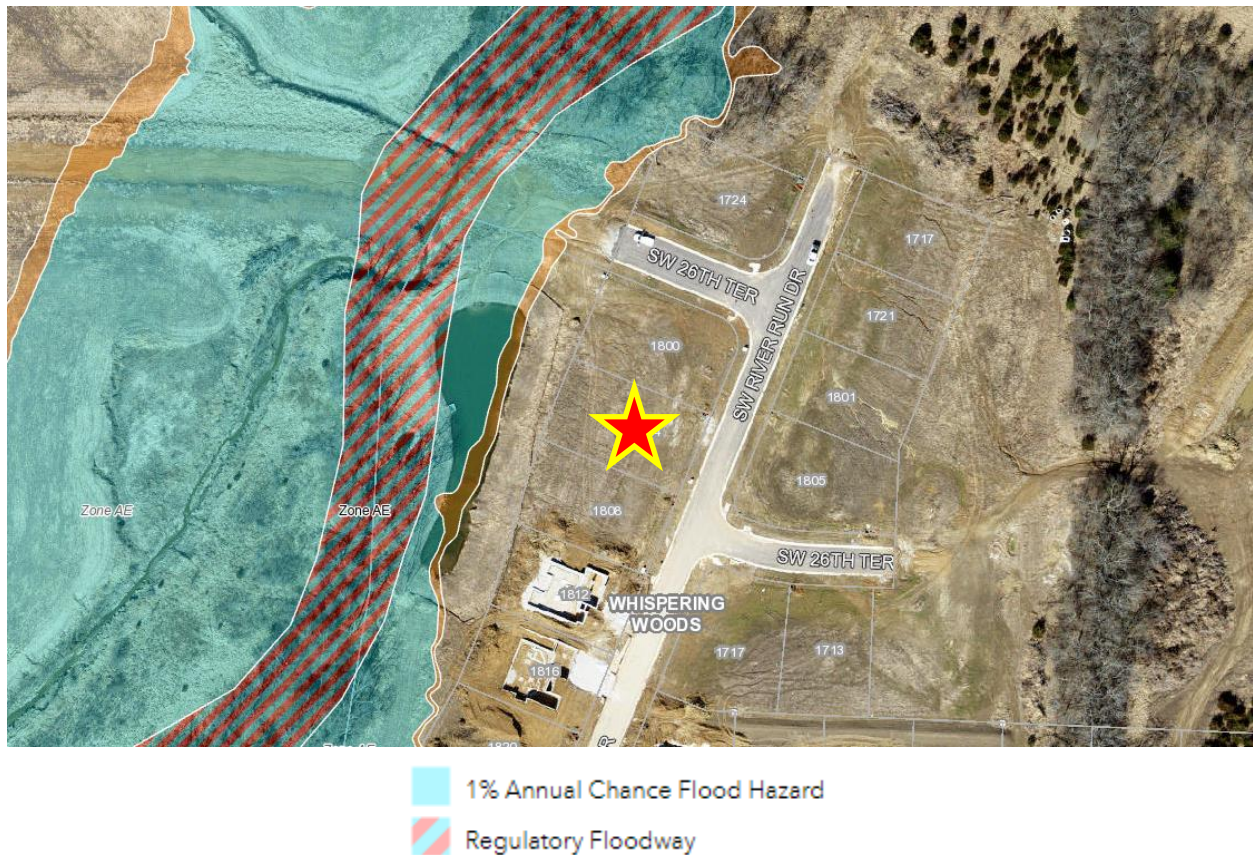


Figure 1 - Aerial photo of 1804 SW River Run Dr, abutting common area, detention basin and floodplain boundaries.

Request. The applicant proposes to construct an in-ground swimming pool to the rear of the residence. The edge of the water for the proposed swimming pool is located 9 feet from the rear of the house, and thus the swimming pool (inclusive of surrounding concrete apron) is subject to a 30-foot rear yard setback. The swimming pool is proposed with a 15-foot rear yard setback. The applicant requests a 15-foot variance to the rear yard 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 2, Sec. 2.530.B.3.:

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

Granting a variance is not expected to adversely affect the rights of adjacent landowners or residents. The proposed setback encroachment is toward the rear where the subject property backs up to common area, a detention basin and 100-year floodplain. A future phase of the Whispering Woods will be developed west of the creek and floodplain boundary, adjacent to SW Pryor Rd. The nearest future lot in that future phase will be located approximately 340 feet away.

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. The proposed encroachment is not toward the two adjacent single-family lots to the north and south. The encroachment is toward the large common area, detention basin and 100-year floodplain to the west.

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

The requested variance is not expected to adversely affect the public health, safety or general welfare.

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.

From a geometric and dimensional standpoint, the subject property is not unusual or unique. From a topographical standpoint, there is a 15-foot loss in elevation from the front property line to the rear property line. The lot's topography necessitates a retaining wall to flatten the rear yard to accommodate construction of a swimming pool. There is a 15-foot wide utility easement along the rear property line that occupies approximately 1/3 of the subject property's back yard. Structures, including retaining walls and swimming pools, cannot encroach into the utility easement and so requires the retaining wall and pool to be pushed closer to the house, in this case resulting in a need for a variance.

Criteria #5 – Substantial justice will be done.

Substantial justice would be done by granting a variance. The need for the variance is triggered by topographical conditions and the presence of a 15-foot utility easement in the back yard that limits the area in which the swimming pool can be located. If the requested variance is granted, the proposed setback encroachment is toward common area, a detention pond and 100-year floodplain.

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 2, Sec. 2.530.B.2.:

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

It is not impossible to carry out the strict letter of the UDO. The proposed pool can be designed to be narrower, but doing so would yield a disproportionately narrow swimming pool given the existing lot conditions.

In making such recommendation, the Staff has analyzed the following considerations set forth in the Unified Development Ordinance Article 2, Sec. 2.530.B.2.:

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

The applicants request a variance of 15 feet to the 20-foot rear (west) yard setback.

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

Approval of the variance request 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 substantially change the character of the neighborhood or be a substantial detriment to adjoining properties. The encroachment is toward common area, a detention pond and 100-year floodplain. The required swimming pool setbacks are met in the direction of the abutting single-family lots to the north and south. The nearest residence to be constructed in the future subdivision phase in the direction of the encroachment is across the common area and creek, will be located approximately 340 feet away.

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

The difficulty can be obviated by not building a swimming pool at all or reducing the width 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 need for a variance is attributed to existing topographical conditions necessitating the construction of a retaining wall and the presence of a 15-foot wide utility easement resulting in the reduced buildable area for the proposed swimming pool. The setback encroachment is toward a common area tract, detention basin, and creek located in the 100-year floodplain and therefore is expected to have negligible impact on any surrounding properties.

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 subject property has limitations in being able to meet the minimum swimming pool setbacks due to topographical conditions and presence of a 15-foot wide utility easement along the rear property line that limits the buildable area for the swimming pool and as a result requires a variance.

Attachments:

1. Board of Zoning Adjustment Application and Variance Criteria – 7 pages
2. Plot Plan – 2 pages
3. Location Map