

City of Lee's Summit

Development Services Department

June 13, 2020

TO: Board of Zoning Adjustments
FROM: Hector Soto, Jr., Planning Manager
RE: **PUBLIC HEARING – Application #PL2020-169 – Variance to Unified Development Ordinance Article 6, Section 6.1320.F, Swimming Pool Setback – 1721 NE Woodland Shores Ct; Vincent & Victoria Bresnahan, applicants**

Recommendation

The Development Services Department recommends **APPROVAL** of the variance to allow a 5 foot rear yard setback for a swimming pool.

Request

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

Site Characteristics

Location: 1721 NE Woodland Shores Ct

Zoning: R-1 (Single-Family Residential)

Property Owner: Vincent & Victoria Bresnahan

Surrounding Zoning and Uses:

North: R-1 – single-family residential

South: R-1 – single-family residential

West (across NE Woodland Shores Ct): R-1 – single-family residential

East: R-1 – common area tract

Background

- December 9, 2011 – A building permit (#PRRES20116155) was issued for the construction of a new single-family residence with a deck.

Ordinance Requirement

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

- a minimum setback of 30 feet from the rear property line when the water's edge of the pool is located less than 10 feet from the house (UDO Article 6, Section 6.1320.F); or
- a minimum setback of 10 feet from the rear property line when water's edge of the pool is 10 feet or greater from the house (UDO Article 6, Table 6.IV-1).

In both cases above, required setbacks from the rear property line are inclusive of the concrete apron or deck surrounding the swimming pool.

Existing Conditions. The property is developed with a single-family home with a deck. To the rear of the property sits a 1.02-acre common area tract that serves as a drainage area for a large portion of the northern part of the Woodland Shores subdivision.



Figure 1 - Aerial photo of NE Woodland Shores Ct.

The back yard of the subject property slopes to the north and northeast toward the drainage area; the front yard of the subject property slopes to the street.



Figure 2 - Aerial photo with contours and storm sewer info

Request. The applicants propose to construct an in-ground swimming pool to the rear of their residence. The edge of the water for the proposed swimming pool is located 5 feet from the deck attached to the rear of the house, and thus the swimming pool is subject to a 30-foot rear yard setback. The swimming pool is proposed with a 5 foot rear yard setback. The applicant requests a 25-foot variance from the rear yard setback requirement.

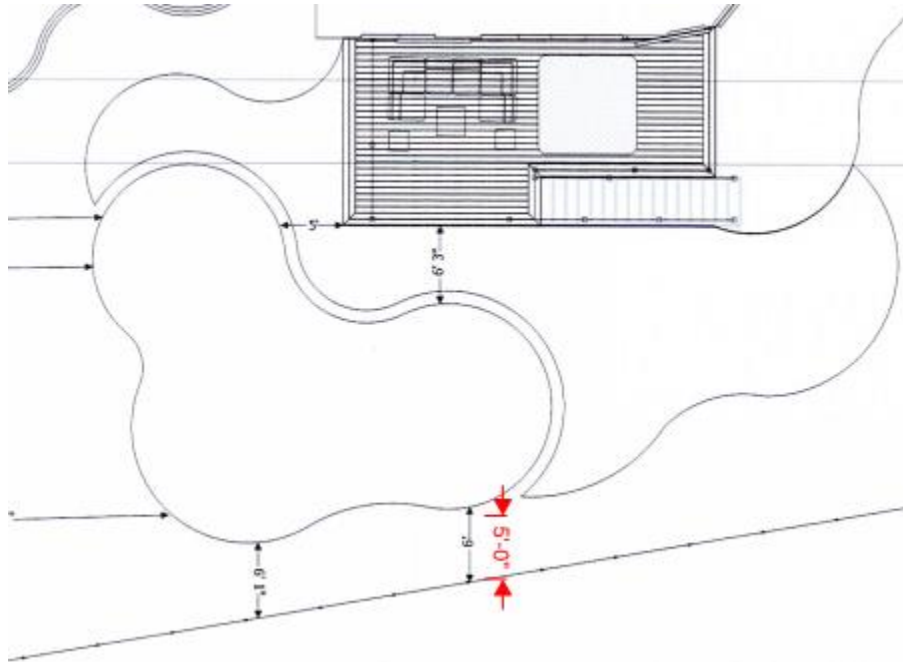


Figure 3 - Proposed swimming pool layout with dimensions



Figure 4 - Rendering of proposed swimming pool improvements

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 a wooded 1-acre drainage area. The nearest residence in the direction of the encroachment is approximately 180 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 tract to the east.

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

In response to the notice of public hearing mailed to surrounding property owners in the area for the proposed variance request, staff received concerns about the potential impact of an increase in stormwater runoff as a result of the swimming pool improvements. More specifically, there appear to be some concerns about the ability for the existing storm sewer inlet at the northern end of NE Woodland Shores Ct, which is the terminus and low point of the cul-de-sac, to handle existing runoff. The length of the NE Woodland Shores Ct cul-de-sac drains to the north toward three (3) storm inlets at the bottom of the hill. In response to these concerns, staff is in the process of gathering information about known stormwater issues in the area in order to address resident concerns.

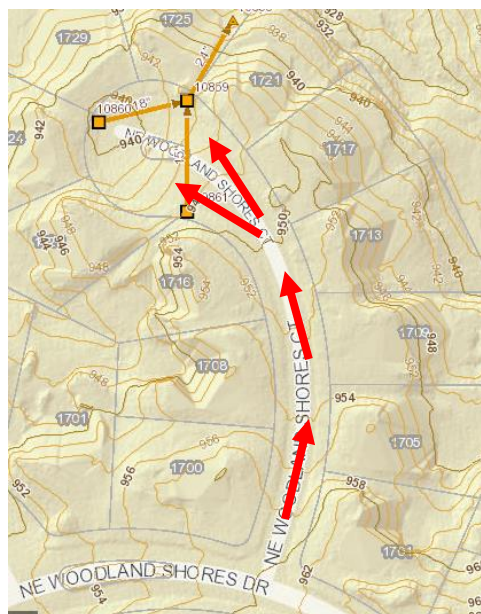


Figure 5 - Existing cul-de-sac storm water drainage

Based on the topographical information for the area, it is not anticipated that a variance to allow the swimming pool encroachment in the back yard toward the east property line will create any increased risk in the health, safety, morals and general welfare of the area. The proposed swimming pool improvements will result in an increased amount of impervious coverage and stormwater runoff from the property. However, the house sits on the ridge of the subject property. The property's back yard drains directly into the natural drainage area to the east, opposite of the location of the cul-de-sac, and will not contribute to any drainage that is currently directed toward the cul-de-sac.

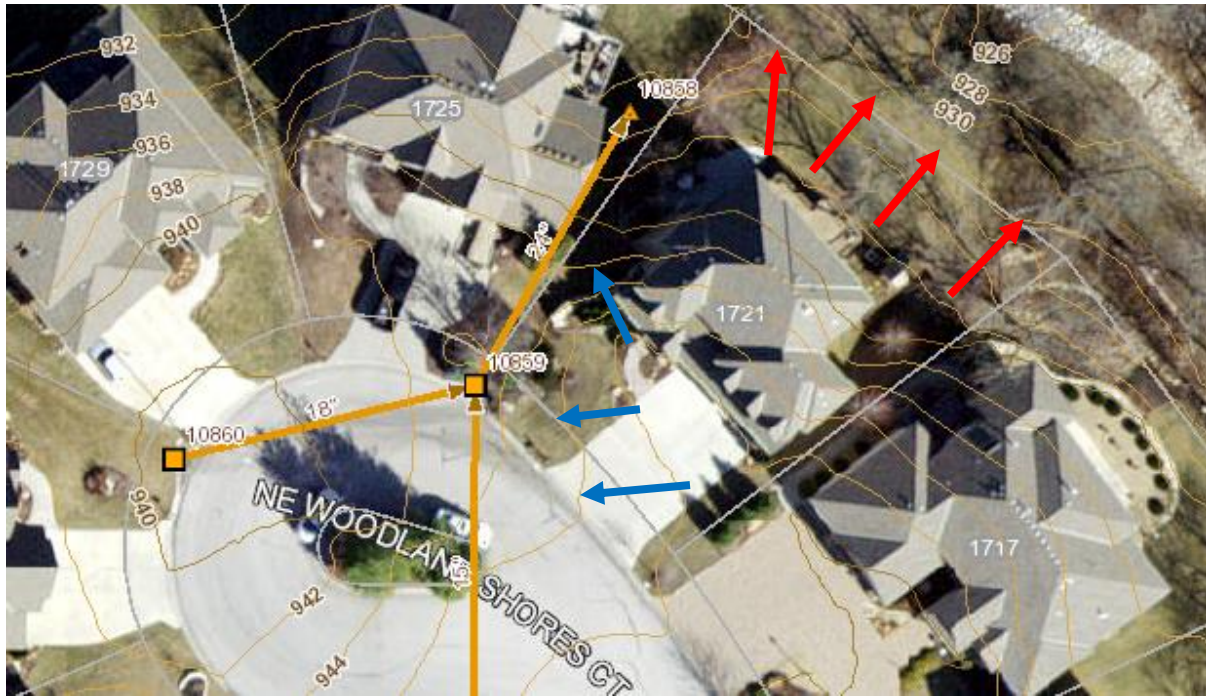


Figure 6 – Existing lot drainage (front yard -- blue; back yard -- red)

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 variance request arises from interconnected land conditions not created by the landowner. These conditions are the presence of the abutting drainage area, lot size and irregular lot shape. As previously stated, the subject property abuts a 1-acre common area tract. The common area tract houses a natural drainage area that is incorporated in the stormwater management system for a 14-acre area of the Woodland Shores subdivision. The presence of the natural drainage area directly influenced the street layout and lot configurations in the surrounding area.

Woodland Shores is a 211-lot (183 standard lots + 28 villa lots) single-family residential subdivision. At 10,707 sq. ft., the subject property (Lot 148) is the smallest of all the standard single-family lots in the entire Woodland Shores subdivision. The small lot size is directly attributed to the presence and need for the preservation of the abutting drainage area, which did not allow for the creation of a larger lot. The table below compares the size of the subject property to that of the other lots on the same street and to the other lots that abut the same natural drainage area. The table illustrates that the applicants' property is 25% smaller than the average lot in the same cul-de-sac and 17% smaller than the average lot that backs up to the same natural drainage area (Tract E-3).

| Location | Lot Size Range | Average Lot Size |
|----------------------------------|---------------------------------|------------------|
| Lots along NE Woodland Shores Ct | 10,707 sq. ft. – 21,886 sq. ft. | 14,171 sq. ft. |
| Lots abutting Tract E-3 | 10,707 sq. ft. – 14,975 sq. ft. | 12,824 sq. ft. |

Another characteristic contributing to the need for a variance is the uneven lot depth resulting from the dissimilar side lot line dimensions. While it is not uncommon for lots to have some difference in the length of their side lot lines, in this case there is a 17.61' difference in length between the two side lot lines. This condition is again attributed to the presence of the abutting natural drainage area and the need to follow the drainage area's topography for the creation of lots in this area.

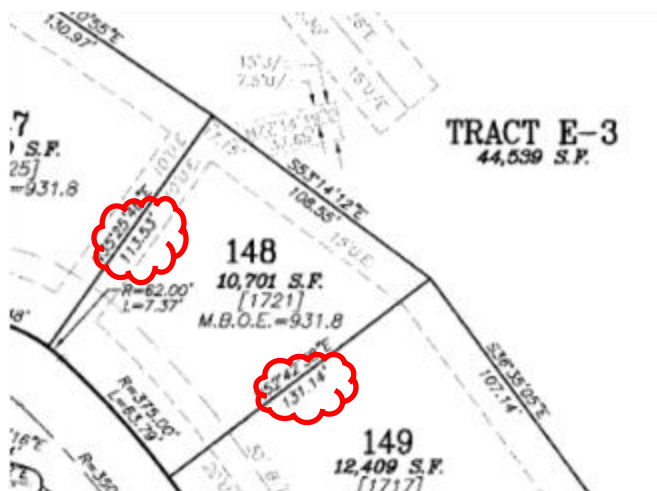


Figure 7 - Copy of plat showing lot dimensions of Lot 148

Criteria #5 – Substantial justice will be done.

Substantial justice would be done by granting a variance. The need for the variance is tied to the impact that an abutting natural drainage area has on the subject property's lot size and lot dimensions. If the requested variance is granted, the proposed setback encroachment is toward the 1-acre natural drainage area.

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. However, 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 25 feet to the 30-foot rear (east) 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 a wooded 1-acre natural drainage area. The required swimming pool setbacks in the direction of the abutting single-family lots to the north and south are met. The nearest residence in the direction of the encroachment is across the drainage area, approximately 180 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 or perhaps by reducing the size of the existing deck attached to the house by half in order to gain open space in the back yard. However, shrinking the deck by half would yield an approximately 7.5-foot deep deck with limited functionality.

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 lot conditions resulting from the presence of an abutting natural drainage area and its impact on the subject property's lot size and dimensions that limit the ability to comply with the setback requirements for a swimming pool.

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 lot size and lot dimension constraints directly attributed to the presence of the abutting natural drainage area. The need to preserve the drainage area for stormwater management purposes resulted in the subject property's irregular lot shape and small lot size relative to the rest of the subdivision as previously addressed.

Attachments:

1. Board of Zoning Adjustment Application and Variance Criteria – 7 pages
2. Site Plan – 1 page
3. Copy of Plat – 1 page
4. Swimming Pool Rendering – 1 page
5. Location Map