

City of Lee's Summit

Development Services Department

January 15, 2021

TO: Board of Zoning Adjustments
FROM: Hector Soto, Jr., Planning Manager
RE: **PUBLIC HEARING – Application #PL2020-381 – Variance to Unified Development Ordinance Article 6, Section 6.1320.F, Swimming Pool Setback – 400 SW Waterfall Ct; Chad Dumas, applicant**

Recommendation

The Development Services Department recommends **APPROVAL** of the variance to allow a 0' foot rear yard setback for a swimming pool.

Request

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

Site Characteristics

Location: 400 SW Waterfall Ct

Zoning: R-1 (Single-Family Residential)

Property Owner: Chad & Stacy Dumas

Surrounding Zoning and Uses:

North: R-1 – single-family residential

South: R-1 – single-family residential

West: R-1 – common area tract

East: R-1 – single-family residential

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)

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 sit two common area tracts totaling 11.6 acres serving the Winterset Park subdivision. The nearest residence to the west is located across the common tracts, approximately 275 feet away. The common area is a heavily-wooded, natural drainage area with steep slopes that lead to a Cedar Creek tributary. The common area also contains a trail system along the creek.



Figure 1 - Aerial photo of 400 SW Waterfall Ct and abutting common area.

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 spa and swimming pool is located within 10 feet from the deck 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 0 foot rear yard setback. The applicant requests a 30-foot variance from 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 a wooded 11-acre common area. The nearest residence in the direction of the encroachment is approximately 275 feet away.

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

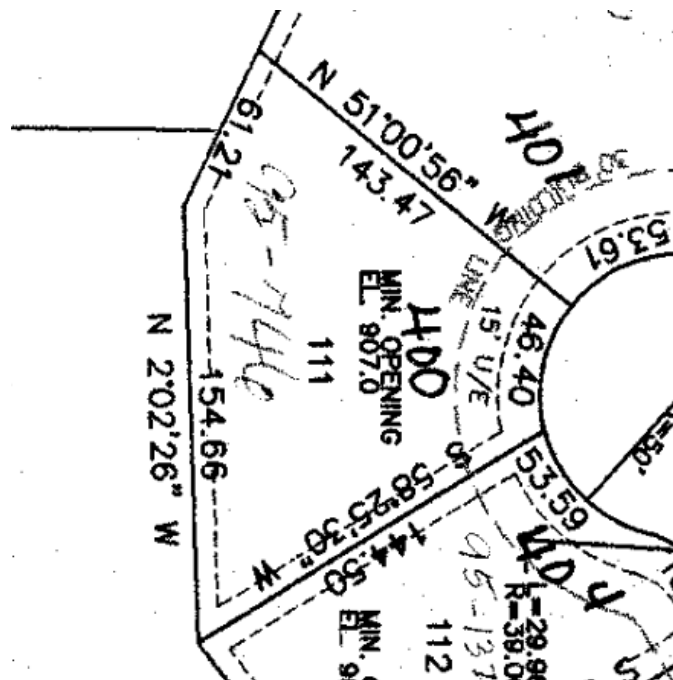
The intent of setbacks is to keep privacy and separation between uses and structures. The proposed encroachment is not toward the two adjacent single-family lots to the north and south. The encroachment is toward the large common area tract to the west.

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.

The variance request arises from the nature of lots on cul-de-sac bulbs that result in a reduced and irregularly-shaped buildable area due to the curvature of the bulb projecting into the lot.



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 nature of cul-de-sac bulbs having the depth of its buildable reduced due to the curvature of the cul-de-sac bulb. If the requested variance is granted, the proposed setback encroachment is toward the 11-acre common 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 (approx. 10 feet wide) 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 30 feet to the 30-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 a wooded 11-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 275 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 by about half. However, shrinking the pool by half would yield an approximately 10-foot wide pool 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 reduced buildable area due to the property being a cul-de-sac lot. The fact that the side property lines radiate from the bulb at an angle, rather than running straight back when compared to a typical rectilinear lot, also contributes to the shallower nature of the buildable area.

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 its lot shape and relative lot dimensions.

Attachments:

1. Board of Zoning Adjustment Application and Variance Criteria – 4 pages
2. Plot Plan and Photos – 4 page
3. Location Map