

# City of Lee's Summit

## Development Services Department

December 13, 2019

TO: Board of Zoning Adjustments  
FROM: Hector Soto, Jr., Current Planning Manager  
RE: **PUBLIC HEARING – Application #PL2019-396 – Variance to Unified Development Ordinance Article 6, Section 6.1320.F, Swimming Pool Setback – 204 NW Carson Dr; Clark & Megan Halferty, applicants**

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### Recommendation

The Development Services Department recommends **APPROVAL** of the variance to allow a 16.76' rear yard setback for a swimming pool.

### Request

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

### Site Characteristics

**Location:** 204 NW Carson Dr

**Zoning:** R-1 (Single-Family Residential)

**Property Owner:** Chad McGraw

**Surrounding Zoning and Uses:**

**North:** R-1 – single-family residential

**South:** R-1 – single-family residential

**West:** R-1 – common area tract

**East (across NW Carson Dr):** R-1 – single-family residential

### Background

- November 7, 2019 – A building permit (#PRRES20193198) was issued for the construction of a new single-family residence with 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 are inclusive of the concrete apron or deck surrounding the swimming pool.

**Existing Conditions.** The applicants were issued a building permit for construction of a single-family residence with deck. No swimming pool is shown on the plot plan approved for the building permit.

**Request.** The applicants propose to construct an in-ground swimming pool at the rear of their future residence currently under construction. The proposed swimming pool's water edge is located 5 feet from the house, and thus is subject to a 30 foot rear yard setback. However, the swimming pool is proposed with a 16.76 foot rear yard setback. A variance of 13.24 feet is sought from the rear yard setback.

## **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 heavily wooded 1.9-acre common area tract.

*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.*

It is not anticipated that a variance to allow the swimming pool encroachment toward the west and property line will create any increased risk in the health, safety, morals and 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 does not arise from a condition created by the applicants, but rather an existing condition related to the location of a sanitary sewer main and its impact on the ability to have an accessory structure on the subject property. A sanitary sewer main is located immediately adjacent to the rear property line. Section 6501.E.1.d.ii of the City's Design and Construction Manual requires a minimum 15 feet of separation between a public sanitary sewer main and any building or structure.

The first iteration of the swimming pool submitted to the City showed the water's edge at least 10 feet from the house, making the pool subject to only a 10 foot rear yard setback. The proposed pool apron/coping was approximately 12 feet from the rear property, all in compliance with the UDO's 10 foot minimum rear yard setback. However, the pool location violated Section 6501.E.1.d.ii of the City's Design and Construction Manual that requires a minimum 15 feet of separation between a public sanitary sewer main and any building or structure.

The second iteration submitted to the City is that which is presented as part of this application. The swimming pool was relocated in order to meet the minimum separation requirement from the sanitary sewer main, but in doing so now requires a variance to the rear yard setback. The

purpose for the separation requirement of any structure from the sanitary sewer main is to facilitate access to said infrastructure, as well as to provide a certain measure of protection for said infrastructure from the potential impacts of a nearby structure.

*Criteria #5 – Substantial justice will be done.*

Substantial justice would be done by granting a variance. The need for the variance does not arise from a condition created by the applicants, but rather the presence of an existing sanitary sewer main.

### **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. Compliance with the required pool (and associated deck) setbacks can be achieved by reducing the pool width by 5 feet from 16 feet to 11 feet, but this would yield a disproportionately narrow pool given its length.

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 applicant request a variance of 13.24' to the 30' 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 1.9-acre heavily wooded common area tract. The required minimum setbacks in the direction of the abutting single-family lots to the north and south are met.

*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 reducing the pool width by approximately one-third.

*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 a result of the applicants relocating the swimming pool on their property in order to satisfy a City requirement intended to maintain access and provide protection to existing public infrastructure, in this case a sanitary sewer main, but in doing so encroaches into a required property line setback.

*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 presence of an existing sanitary sewer main immediately adjacent to the rear property line makes adherence to the required rear yard setback impractical. The applicant is in a situation where construction of a swimming pool in accordance with property line setback requirements results in a violation of infrastructure separation requirements. Conversely, construction of a swimming pool in accordance with infrastructure separation requirements results in a violation of property line setback requirements. Given a choice, the City prefers that the minimum infrastructure separation requirement is met at the expense of a property line setback encroachment, particularly in a case such as this where the setback encroachment is toward a large, heavily wood common area tract.

Attachments:

1. Board of Zoning Adjustment Application and Variance Criteria – 7 pages
2. Copy of approved plot plan – 1 page
3. Site Plan for proposed swimming pool – 1 page
4. Sanitary sewer map – 1 page
5. Location Map