



BOARD OF ZONING APPEALS
Zoom Webinar (**VIRTUAL**)
Thursday, April 8, 2021
6:30 P.M.

1. VARIANCE (Case 2021-15V)

Applicant: Michael & Aileen Joseph
Location: 8652 Rutherford Estates Drive
Zoning: (PR) Planned Residence District
Request: Review and approval of a variance to reduce the required setback for a swimming pool from 12 feet to 2 feet from a drainage easement.

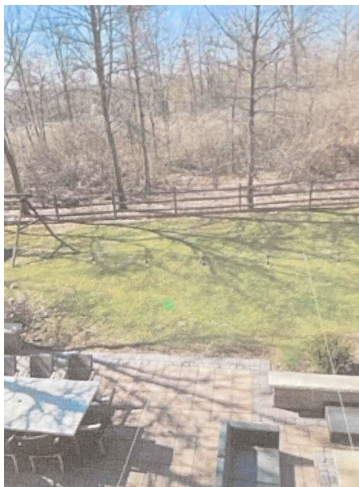
Aerial Site Image: <https://www.google.com/maps/@40.1745602,-83.0903861,210m/data=!3m1!1e3>

Property Overview

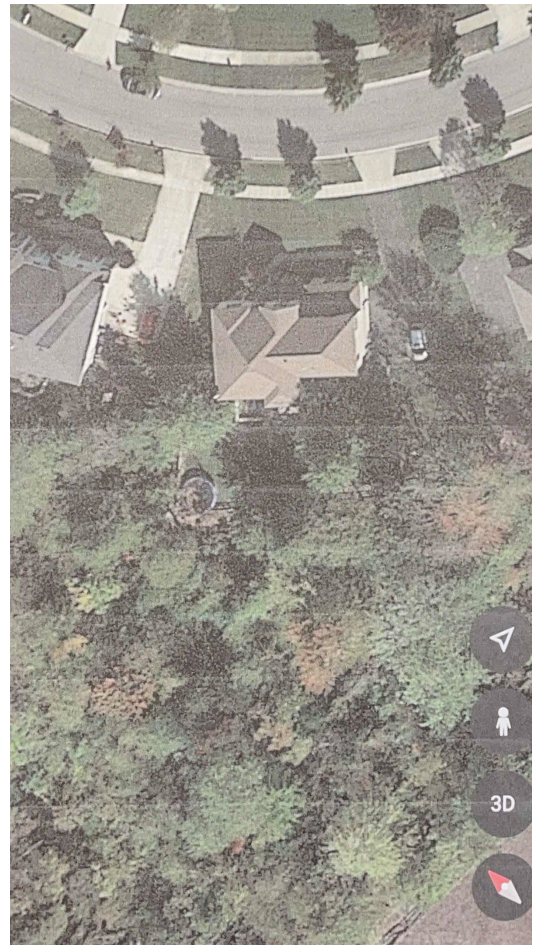
This property is located in the Rutherford Estates Subdivision, which was approved by the City of Powell in 2013. The 0.870-acre lot is on the southeast side of Rutherford Drive. To the rear for the property is Sawmill Parkway and to the south are institutional and commercial uses as part of the Golf Village Subarea G commercial development. The lot is irregular shaped with approximately 90 feet of frontage along the right-of-way, the approximate lot depth is 300 feet. There is a scenic conservation and drainage easement which encompasses approximately one half of the rear of the lot. In addition, a drainage easement with a width of 20 feet is located approximately 30 feet from the rear of the home.

The home includes an at-grade patio with a seating wall to the rear and the lot is extensively wooded on the southeast and south sides. A split-rail fence is located along the easement line, which, according to the applicant, was installed in 2010.

Proposal Overview



The applicant is proposing a 15-foot by 28-foot in-ground pool with an automatic cover to the rear of the home. Code Section [1147.06](#) regulates the location of swimming pools in residential districts and specifically states “The pool may be located anywhere on the premises except in required front yards, provided that it shall not be located closer than 12 feet to any property line or easement.” Due to the wooded nature of the site, the existing patio and the extent of the existing easements, the applicant is proposing to locate the pool within 2 feet of the drainage easement.



Ordinance Review

In accordance with the requirements of codified ordinance [1127.05\(a\)](#), the Board of Zoning Appeals may authorize upon appeal in specific cases such variance from the terms of this Zoning Ordinance as will not be contrary to the public interest where, owing to special conditions of the land and/or buildings that are unique to the property in question, and not self-created, a literal enforcement of the provisions of this Zoning Ordinance would result in deprivation of all beneficial use of the land.

Staff Comments

The applicant's submission provided the following information in response to codified ordinance [1127.06 – Application Standards for Variances](#):

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property
Applicant statement: The proposed pool location will allow existing, mature trees to remain and will therefore not be a nuisance to any neighbors.
Standard met. Staff concurs that this proposal will yield a reasonable return and a benefit to the property particularly given that existing trees will not be removed with this proposed location.
- (2) Whether the variance is substantial
Applicant statement: The applicant does not view the variance as substantial. If only the patio space were permitted it would rarely be used due to sun/heat exposure.
Standard Met: The location of the home and the shape of the lot limit the area for exterior amenities as sought by the homeowners.
- (3) Whether the character of the neighborhood would be adversely affected or whether adjoining properties would suffer an adverse impact as a result of the variance
Applicant statement: The applicant states that there would be no adverse impacts to the drainage easement and a 2-foot setback will be maintained.
Standard Met: Staff is not aware what the purpose of the 12-foot setback requirement is for pools from easements. Other outdoor amenities are permitted within 12 feet of easements. A visit to the site confirmed that the easement exists to allow for runoff from neighboring properties across the rear yard. Locating the pool within 2 feet from the easement will not interfere with accommodating runoff.
- (4) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage)
Applicant statement: There will be no impact to these services.
Standard Met: There will be no disruption to these services.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction
Applicant statement: The homeowners were not aware of the restriction of a pool location 12 feet from an easement.
Standard Met: As the applicant stated the homeowners were not aware of the limitation for the proposed pool.
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance
Applicant statement: The proposed location will allow for trees to remain and is setback from neighboring properties.
Standard Met: While a pool is permitted in the neighborhood, this particular lot does not have adequate rear yard space for such an amenity without impacting existing trees or the

existing patio. The applicant has received permission from the Homeowners Association for this proposal.

- (7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance

Applicant statement: The applicant states that the variance allows for the pool to be in the most appropriate location in regard to trees and neighboring properties.

Standard Met: The spirit and intent of the zoning requirement would be observed. The pool will not interfere with the drainage for this site nor adjacent lots.

Staff Recommendation

Staff recommends approval of the variance to permit an in-ground swimming pool to encroach 10 feet into the required 12-foot setback from an easement.