



## City of Powell Board of Zoning Appeals

### APPLICATION FOR VARIANCE

Applicant: Michael & Aileen Joseph, Property Owners  
Location: 8652 Rutherford Estates Court  
Zoning: (PR) Planned Residence District  
Request: Review and approval of a variance to reduce the setback for the water surface of a swimming pool from a drainage easement from 12 feet to 2 feet in the rear of an existing property.

A public hearing was held before the City of Powell Board of Zoning Appeals on April 8, 2021, pursuant to Codified Ordinance §1127.05(a) concerning the variance application of Michael & Aileen Joseph ("the Applicants") to reduce the required 12 foot setback to 2 feet.

Board Members Jim Hrivnak, Randy Duncan, Ryan Brickner, Gregory Short and Janice Hitzeman were present, constituting a quorum of the Board.

Claudia Husak, Planning Director, presented the Staff Report on the request, which recommended approval of the requested variance.

Michael & Aileen Joseph, the Applicants, testified in support of the variance request.

No one testified in opposition of the request.

Upon consideration of the oral testimony together with documents and exhibits marked and admitted, the Board makes the following findings and decisions:

### FINDINGS OF FACT

1. On March 22, 2021, Mr. Michael Joseph submitted an application for a variance to the City of Powell's Board of Zoning Appeals. The application sought a variance that would reduce the required 12 foot setback for the drainage easement for a swimming pool to 2 feet.

2. The subject property is located at 8652 Rutherford Estates Court and within the PR – Planned Residence District.
3. On April 8, 2021, a public hearing was held before the Board pursuant to Codified Ordinances §1127.05(a). That section permits the Board to authorize upon appeal a variance from the terms of the Zoning Ordinance that would 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 the Zoning Ordinance would result in deprivation of all beneficial uses of the land.
4. The Board reviewed the materials submitted with the application, heard testimony from the Applicants, considered the permissible standards for granting a variance, and voted to approve the request.

#### **LEGAL STANDARD**

1. A variance was sought by the Applicants pursuant to §1125.05(a) of the Zoning Code.
2. §1127.06(e) of the Codified Ordinances of the City of Powell sets forth the following standards for variance requests:
  - a. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property in question [without the variance];
  - b. Whether the variance is substantial;
  - c. 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;

- d. Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);
- e. Whether the property owner purchased the property with knowledge of the zoning restriction;
- f. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
- g. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

## DECISION

1. The Board applied these criteria and determined the following:

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property;** The Board concurs that this proposal will yield a reasonable return and benefit, particularly given that existing trees will not be removed with this proposed location.
- (2) Whether the variance is substantial;** 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;** other outdoor amenities are permitted within 12 feet of the easements. 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);** there will be no disruption to these services.
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction;** as the Applicants stated the homeowners were not aware of the limitation for the proposed construction.
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance;** and 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 Applicants have 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.** 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.

2. The Board conducted its hearing in an open meeting as required by state and local law.
3. All who testified before the Board were duly sworn in.
4. These proceedings were conducted in accordance with Chapter 1127 of the Powell Codified Ordinances, including all provisions for notice.
5. The application meets each of the standards set for granting variance.

## **CONCLUSION**

Upon consideration of the testimony, exhibits admitted, and the variance standards under the City's Codified Ordinances, by a vote of 5-0, the Board of Zoning Appeals agrees that

the variance is not substantial and therefore the Board **GRANTS** the Applicant's requested variance to reduce the required drainage easement from 12 feet to 2 feet in the rear of an existing property, in order to install a swimming pool.

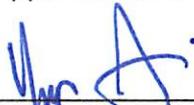
The City and/or the Applicant are authorized to take any further action consistent with this decision. The Board's decision is appealable as provided by law.

Dated this 9 day of April, 2021.

For the Board of Zoning Appeals:

  
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Jim Hrivnak, Chairman

Approved as to form per C.O. §1127.13:

  
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Yazan Ashrawi  
Law Director

