

**PLANNING AND ZONING BOARD
MINUTES
CITY COMMISSION CHAMBERS
THURSDAY, AUGUST 10, 2023
6:00 P.M.**

Vice Chair Arnold called the Planning and Zoning Board to order at 6:00 p.m. in the City Hall Chambers located at 120 E. Pomelo Street, Lake Alfred, Florida.

Vice Chair Arnold led the Pledge of Allegiance followed by the invocation provided by **Alternate Board Member Reinert**.

Board Members in Attendance: Vice-Chair Brenda Arnold, Board Member Herb Nigg, Board Member Ron Pestone, Board Member Scott Gearhart, Board Member Bancroft Fisher, Alternate Member Cathy Long, and Alternate Board Member John Reinert. A quorum was present.

Board Members Absent: Chair Ike Fountain and Board Member Wanda Daley.

Staff: Community Development Director Ameer Bailey, City Attorney Seth Claytor, City Clerk Linda Bourgeois, and City Planner Erika Tulloch.

City Attorney Claytor reviewed the meeting procedures, swore in the staff and audience members providing testimony, and asked if there was a need for an interpreter. There was no need for an interpreter. He continued and provided an overview of the Standards of Review for the quasi-judicial actions.

Vice Chair Arnold presented the July 13, 2023, Planning and Zoning Board meeting minutes for consideration of approval.

Board Member Nigg made a motion to approve the Planning and Zoning Board meeting minutes for July 13, 2023. The motion was seconded by **Board Member Pestone**. The motion was unanimously approved.

Vice Chair Arnold introduced the business item.

City Planner Tulloch presented the first item of business.

Applicant: Laura and Brian Skaggs

Request: A request for a variance to the minimum five (5) feet clear walk path separation from the swimming pool structure or any other structures and a request for a variance from the maximum 30% rear yard coverage for a residential lot.

Property Information:

Address: 871 Galloway Street
Parcel ID: 26-28-04-522756-000120
Land Use: Residential (RES)
Zoning: Vintage Residential Neighborhood (VRN)

Variance from Section: **§ Section 3.8.1.F.3** and **§ Section 3.8.12.A.1** of the Unified Land Development Code (ULDC) Development Standards Table.

The applicant submitted a construction permit application on May 17, 2023, for the construction of an inground pool at the rear of the primary residence. The Planning and Zoning Department reviewed the application and determined that the applicant's request was not in compliance with existing standards and would require a variance for the application to be approved as submitted. The application proposed exceeding the maximum 30% rear yard coverage and providing less than the minimum required 5 feet clear walk path between the pool and any other structure. As a result, on June 6, 2023, the applicant submitted a Variance application requesting a minimum clear walk path of three feet (3') and a rear yard coverage of 34%.

City Planner Tulloch continued and said the case was advertised in the newspaper on July 27, 2023, with forty-six mailers sent out to the property owners within 300 feet of the subject property. There were no responses. She continued and reviewed the comparisons between the Unified Land Development Code (ULDC) and the Florida Building Code (FBC).

Director Bailey reviewed the addresses where a permit was issued for the pool and then later when a permit was issued for the enclosures on the same properties. This led to pool enclosures that were 2-3 feet from the edge of the pool. Once planning staff began consistently reviewing all accessory structures, the inconsistency around the pools was discovered. Therefore, planning staff began requiring the initial pool deck to meet the 5-foot walkway to eliminate confusion later for screen enclosures. She said she was unable to locate the historical perspective as to why the 5-foot walkway was included in the Unified Land Development Code and asked if the Planning and Zoning Board wanted to discuss potential code modifications with the 5-foot walkway and also be more consistent with the FBC which allows for access to two sides of the pool or more.

City Planner Tulloch presented the photos of the subject property which showed a rear yard sloping downhill.

City Attorney Claytor asked if that would be a characteristic that was specific to the lot, the topography or slope of the lot that would be something uncharacteristic or specific to this particular property.

Director Bailey said not in this particular development.

City Planner Tulloch continued the presentation and reviewed the variance criteria. There are no special conditions or circumstances that exist that are peculiar to the land or structure involved that are not applicable to other lands or structures in the same land use classification. However, it must be noted that this lot has ten feet (10') drainage wall easement to the rear of the lot, and the lot slopes downhill to the rear and sides. There are no special conditions or circumstances resulting from the applicant's action. The applicants have submitted a permit application for review and based on the review comments have since applied for a variance. If approved, this will not confer on the applicant any special privileges that are denied by the Code Residents are required to submit building permit applications to construct accessory structures such as pools and screen enclosures meeting all ULDC regulations. In the event said permit is denied or deemed nonconforming, residents may also request ISR variances for accessory structures.

She went on to say that a literal interpretation of the ULDC would not deprive the applicant of rights commonly enjoyed by other properties in the identical land use classification since this is a variance application that is unique to the applicant. Literal enforcement of the five (5) feet clear walk path would require that the applicant install additional decking area to the rear and western side of the pool, thereby further increasing the rear yard coverage rate or requiring them to reduce

the size of the pool, but not totally excluding the use. The granting of this variance is not the minimum variance that will make possible a reasonable use of the land. This can be further explained by the fact that the applicant would still have the option to be permitted for the construction of a pool and concrete deck but of a smaller size in order to meet all the requirements of the ULDC. Granting of the variance may not be in harmony with the general intent of the ULDC however, such variance will not be injurious to the area or otherwise be detrimental to the public welfare.

Staff Recommendation

Denial: Sec. 9.9.3.D states that a variance shall not be granted unless the appropriate reviewing board/official affirmatively finds that each of the following criteria listed above have been met. The staff has evaluated the variance request and recommends denial of the variance request solely because the evidence presented by the applicant did not meet all of the variance review criteria listed above.

Director Bailey said the staff is required to recommend the denial of a request if all the criteria were not met. However, staff has provided conditions for approval as approval of the variance will not adversely impact public health or welfare.

City Attorney Claytor requested clarification for the Planning and Zoning Board on the ten-foot drainage easement and inquired whether the easement was specific to the wall easement located on the back portion of the parcel. He asked the director if this was specific to this parcel or due to the slope of the lot or the topography.

Director Bailey said this subdivision has a retention wall with a black slotted fence on top. This is the way they designed the subdivision and there is a small swell on the backside where the property slopes downhill. The swell leads to a retention pond. This is the way it was designed so most properties have the drainage and wall easements in their backyards.

City Attorney Claytor said with the topography, and the manner in which the lot is located, other property owners were able to have pools in their backyards. This topography is specific and unique to this parcel and this was outside of the control of the property owner, and therefore the board may conclude that the issue(s) were not created by the property owner.

City Planner Tulloch read the recommended condition of approval into the record.

1. That the applicant be permitted to construct a pool with a minimum three feet (3') clear walk path.
2. The pool and paver deck to the rear of the pool may not be modified without an additional permit.
3. The variance shall only apply to the pool and paver deck to the rear of the property located at 871 Galloway Street.
4. The pool and paver deck shall meet all other requirements of the Lake Alfred Unified Land Development Code.
5. That the approval of this variance request shall not constitute a variance or additional waiver from any applicable development regulation unless specifically noted in the conditions of approval and consistent with the ULDC.
6. The applicant shall apply for, receive, and finalize all necessary City of Lake Alfred

building permits for this pool and screen enclosure by August 10, 2024, or this approval shall be void.

If addition area variance:

7. That the applicant be permitted to construct a pool measuring no more than 805 sqft (35' x 23') to the rear of the property with a thirty-four percent (34%) rear yard coverage.

Alternate Board Member Reinert asked if a study had been done for the water drainage downstream and Director Bailey said it was only 4% over the allowable coverage.

A brief discussion ensued regarding there being seep holes in the wall, the water would move towards the stormwater pond, and the staff felt it had an insignificant impact due to it being a small number.

Board Member Pestone asked if there could be a slightly smaller pool and wanted to know if anyone had asked the owner. Director Bailey said the applicant had requested a reasonable use of the property.

Alternate Board Member Long asked if the pool was five feet from the house, and it was shared by the staff it was eight feet from the house.

Board Member Pestone asked about the August 10, 2024, expiration for the variance and it was shared by the staff that the City did not want a hanging out there in perpetuity.

Vice Chair Arnold opened the floor for the applicants to speak.

Laura Skaggs said they had considered moving the pool closer to the house and said they would need a two-foot knee-high wall because it was on a sloped lot. She said there was no issue with drainage because they are not going over the 10-foot easement. She explained they would like to have a yard and pool just like the neighbors. She concluded by saying pouring a five-foot walkway was more expensive and they should not be held to different standards.

Brian Skaggs said the yard was not big enough for a five-foot walkway around the pool. He said they are being held to different standards than the neighbors and wanted to install decking for some pool chairs.

Laura Skaggs said the pool was only twelve feet wide and that is why they went longer. She said they were not going over the allowable 45% impervious surface ratio (ISR).

Robert Levatory of Serenity Pools and Spas said he has never seen this type of code in other places. He doesn't know why the walkway could not be reduced to 36".

Alternate Board Member Reinert shared his concerns about the neighbors and there being future issues because there was not a lot of room. He asked the pool company representative what the standards were around a pool and Mr. Levatory said it was one foot.

Director Bailey said that is in compliance with the Florida Building Code. She asked the Chair if the board could have a discussion on the size of the walkway.

City Attorney Claytor reminded the board about the differentiating standards in other

jurisdictions and not being competent substantial evidence for the purposes of distinguishing the provisions of our code and what they can consider when making their decision.

Board Member Pestone asked how the staff felt about the current code asking if it was reasonable or not reasonable.

Director Bailey said in having the conversations with the building official, and understanding why the building code has it the way they have it, she thinks we would almost want to have two standards. If we are going to have a walkway, it should be a walkway that is walkable. To her, that is a minimum of three feet. If we are going to allow, like the Florida Building Code, and have the structure be adjacent then that would not be a walkable area, then that could be like an edge to sit on or curbing on the pool. She thinks that overall, it does seem a little excessive, the five-foot, but she also understands that generally we look at sidewalks and sidewalks should be five-foot. She could see where there is a five-foot separation from another structure makes sense. She would like to hear from the board, not just for this variance, but for the code and not being able to track back as to why the code was recommended in the first place is the reason why she wanted to have this as a bigger conversation with them as a board. She does not think that three feet is unreasonable.

Alternate Board Member Reinert asked what if the pool was moved two feet closer to the house.

Director Bailey said that was a separate question and asked them if they were comfortable with a three-foot walkway versus a five-foot walkway as required by the code.

All board members said they were comfortable with the three-foot walkway.

Director Bailey addressed Mr. Reinert's question and said that it was referencing going from 30% to 34% coverage and said that is 336 square feet.

Alternate Board Member Reinert said to move the pool in one foot.

Vice Chair Arnold asked Mr. Reinert if he anticipated protecting them from issues in the long run, and Mr. Reinert said that was his experience, said he was okay with the three feet, and shared his experience with a pool that had a one-foot walkway. He said there was room there, just bring back the pool one foot and it eliminates the 4% problem and he doesn't think it is asking too much.

Director Bailey had a conversation with the applicants during the discussion.

City Attorney Claytor asked the builder if we were considering moving the footprint of the pool would the excavation threaten the integrity of the foundation - and the answer was no from Mr. Levatory. Mr. Levatory said the rule is whatever the depth of the pool is you have to be one foot greater off of the house so if the pool is six feet deep then you have to be seven feet minimum off of the house. There would be a one-foot option to bring the pool closer to the house.

Director Bailey said the one foot would reduce it to 35 feet and doesn't help it a lot.

Vice Chair Arnold asked how deep the pool was, and it was shared by the builder that the pool would be five and one-half feet.

Board Member Pestone asked about narrowing the pool and it was shared it was a very small pool.

Alternate Board Member Long commented that she thought they were trying to stay consistent with what was on the record.

City Attorney Claytor said that based on the board's discussion, the board is determining what may be the minimum variance that could be issued and would provide reasonable use for the property. He said we are talking inches.

Director Bailey said they were discussing taking a foot off of the lanai and a foot off of the side - the 336 is where they are over - it would take away almost half of that so they would be over 186 square feet at that point. One foot off the length and one foot off of the width would take 150 square feet off of the 336. That would put them at 31.4%.

Board Member Nigg said he thought these folks decided to build their pool at the wrong time. He asked when the city would put a step on this and change the standards.

Director Bailey said everyone seems to be comfortable with the three-foot and we move forward with a recommendation from this board to consider revising the code to address that, she thinks that is a great suggestion. The next question is the 30% or ISR will require a separate discussion on that and that is a much bigger conversation.

It was agreed to have that conversation at another time.

Board Member Nigg made a motion to grant the variance request as presented, with staff conditions of approval, after hearing competent substantial evidence that meets all the variance criteria as set forth; and I hereby authorize the Chairman to sign a Development Order to be recorded in Polk County Public Records. The motion was seconded by **Board Member Fisher**.

A roll call vote was conducted by the City Clerk.

Alternate Board Member Long	Nay
Board Member Pestone	Nay
Vice Chair Arnold	Nay
Board Member Gearhart	Aye
Board Member Nigg	Aye
Board Member Fisher	Aye
Alternate Board Member Reinert	Nay

The motion failed.

Director Bailey requested that the board first consider the three-foot walkway variance.

Alternate Board Member Reinert made a motion to approve the variance for a three-foot walkway, excluding the variance for the impervious area [and I hereby authorize the Chairman to sign a Development Order to be recorded in Polk County Public Records]. **Board Member Pestone** seconded the motion.

A roll call vote was conducted by the City Clerk.

Alternate Board Member Long	Aye
Board Member Pestone	Aye
Vice Chair Arnold	Aye
Board Member Gearhart	Aye
Board Member Nigg	Aye
Board Member Fisher	Aye
Alternate Board Member Reinert	Aye

The motion carried.

Director Bailey requested the board consider the modified request of 31.4% for the overall ISR.

Alternate Board Member Reinert made a motion to approve the variance for a 31.4% Impervious Surface Ratio (ISR) [and I hereby authorize the Chairman to sign a Development Order to be recorded in Polk County Public Records]. **Board Member Nigg** seconded the motion.

A roll call vote was conducted by the City Clerk.

Alternate Board Member Long	Aye
Board Member Pestone	Aye
Vice Chair Arnold	Aye
Board Member Gearhart	Aye
Board Member Nigg	Aye
Board Member Fisher	Aye
Alternate Board Member Reinert	Aye

The motion carried.

City Attorney Claytor clarified for the record that, as applied for, the first vote for the purposes of the variance, and then two separate motions were made and approved for a three-foot requirement and then a modified ISR.

Director Bailey requested to adjourn the meeting due to a family emergency. She requested the discussion be continued until the next meeting.

The next Planning and Zoning Board meeting date in September will be determined at a later time. The regularly scheduled Planning and Zoning Board meeting date conflicts with the City Commission meeting.

Without any further business, the Planning and Zoning Board meeting was adjourned at 6:55 PM.

Respectfully submitted,



Linda Bourgeois, BAS, MMC, ADAC
City Clerk