



MEMO

Date: 11/27/2023
To: Board of Adjustment
From: Andrew Golden, Planner
Re: 2001 Grey Rd – Variance Request for a Pool Location

1. INTRODUCTION

APPLICANT INFO

- **Owner:** Paul Cicchetti
- **Location:** 2001 Grey Rd, Davidson NC 28036, Parcel 00302104
- **Area:** 0.83 Acres
- **Planning Area:** Rural Planning Area (Scenic Byway Overlay)

The subject site(s) is currently occupied by a single-family home.

2. DESCRIPTION OF REQUEST

The applicant, Paul Cicchetti, owns the single-family detached house at 2001 Grey Road, Davidson, NC. The applicant intends to construct an inground pool within the left side yard. A permit application was submitted on April 26, 2023, and subsequently denied due to the proposed location of the pool (see Exhibit C). The location, as noted on the submitted site plan, does not comply with Section 4.5.8.C.6 of the Davidson Planning Ordinance (DPO), which requires pools to be located in the rear yard only.

The applicant seeks relief through variance from the pool location requirement per Davidson Planning Ordinance (DPO) Section 4.5.8.C.6. so that they may be permitted to build a swimming pool in their side yard.

3. ANALYSIS

Below is a summary of the relevant standards, along with an explanation of how the proposal seeks to modify those standards:

The DPO **Section 4.5.8.C.6**, “Specific Building Type Requirements – Location of Accessory Structures” states:

- “Pools must be located in the rear yard only. Pools must also be at least 5 feet from the property line. All pools must meet Mecklenburg County’s rules governing swimming pools.”

Paul Cicchetti (the applicant) filed a variance request per Section 14.21 of the DPO. This section grants the Board of Adjustment the right to hear and decide requests for variances from the DPO pursuant to these regulations and in accordance with NCGS 160D-705(d). To grant a variance for the applicant, the Board of Adjustment must determine, based on the evidence provided, that all four findings of fact are in the affirmative:

1. Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

NCGS 160D-705(d) also indicates that “appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.”

The rear yard setback for the single-family residence is 30'. Per DPO Section 4.5.8.C.6, pools must be at least five feet from the property line. This leaves a 25' space for which to construct a pool in the rear yard. The subject parcel is located in the Rural Planning Area (Scenic Byway Overlay District). The Overlay District requires an 80' front yard setback.

The applicant's original variance request was heard on September 25 and subsequently denied by the Board. According to the Board of Adjustment Rules of Procedure §5.5 “...If an applicant wishes to present evidence of the requisite substantial change in circumstances to permit a second hearing on the same matter, the applicant may do so and the BOA shall decide if such a substantial change exists. If the BOA decides there has been a substantial change, the applicant may proceed with the second application and the BOA shall treat it the same as any other matter seeking a hearing...”

On October 30th the applicant presented new evidence before the Board which showed a 30' utility easement running along near the rear property line. The language stated that no structure, grading, or filling was allowed within the easement. The applicant claims that this causes hardship by preventing them from locating a pool in the rear yard. The Board determined that this new evidence was a substantial change in circumstances and voted 10-0 in the affirmative to reopen the hearing.

4. CONCLUSIONS & PROCESS

The applicant wishes to be granted a variance allowing construction of a pool in the side yard of 2001 Grey Road. Since a swimming pool built in the side yard does not comply with DPO Section 4.5.8.C.6, the applicant must secure a variance from the Board of Adjustment to legally construct a pool in the side yard. If the BOA approves a variance, the applicant would still be required to secure building permits from both the Town and Mecklenburg County.

5. EXHIBITS/RESOURCES

- **Exhibit A:** Complete Application
- **Exhibit B:** Vicinity Maps
- **Exhibit C:** Denied Building Permit (Pool)
- **Exhibit D:** Building Permit (Single Family Residence)
- **Exhibit E:** Building Permit (Detached Garage)
- **Exhibit F:** DPO Section 4 Design Standards

- **Exhibit G:** New Evidence