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**MEMORANDUM**

**TO: HOWEY-IN-THE-HILLS PLANNING BOARD**  
**CC: D. BURKE, TOWN CLERK**  
**FROM: THOMAS HAROWSKI, AICP, PLANNING CONSULTANT**  
**SUBJECT: 487 BELLISSIMO REAR YARD VARIANCE**  
**DATE: NOVEMBER 12, 2018**

The applicant is requesting a variance of five feet from the required rear yard setback of 10-feet for a swimming pool to allow a swimming pool to be constructed five-feet from the rear property line. The applicant has submitted an application for the variance; a survey with two proposed setback configurations; and diagram of the proposed pool. The property is located in the Venezia subdivision on the standard lot size of 75 feet wide by 120 feet deep. The main house is setback 30.5 feet from the rear property line and a covered patio projects six to seven feet into the rear yard. The Venezia South Development Agreement does not contain any specific regulations regarding the placement of swimming pools so the general regulations of Section 5.01.08 of the land development regulations apply. This section requires that swimming pool decks and enclosures be setback 10-feet from rear property lines.

Properties to the sides and rear of the subject parcel are similar in size and are or will be developed with single-family homes. There is an existing house to the right (north) of the subject property and one house to the rear. The house to the rear has a fence separating the two parcels. There is a second lot to the rear of the subject parcel which is undeveloped, and parcel to the left (south) of the subject property is also undeveloped. All of the surrounding parcels are the same size at 75 by 120 feet.

In their submittals the applicant stated that most communities have a five-foot rear yard setback for swimming pools as part of the justification for granting the requested variance. Staff reviewed the ordinances of several other Lake County communities regarding swimming pool setbacks, with the results as shown in the following table.

City	Rule	Application
Clermont	Pool must meet side yard setback for side and rear yards	R-2 (75-foot lot) requires 7.5 foot rear yard setback
Groveland	Pool must meet building setback	R-1 zoning requires 10-foot setback
Leesburg	Pools must meet 5-foot rear yard setback	

Montverde	Pool must meet side yard setback for side and rear yards	R1-M setback is 7.5 feet
Mt. Dora	Pool must meet 5-foot rear yard setback	
Tavares	Pool must meet 5-foot rear yard setback.	

About half the communities cited have 5-foot rear yard setbacks for pools and the others have larger setbacks. In those cases where the setback for rear yards is linked to the side yard setback, the zoning category that was closest to the lot size of the subject property was consulted to determine the applicable rear yard setback. While the swimming pool regulations for other communities are not relevant to the application, this information has been provided to give the Board some additional background.

The land development code sets for specific criteria in Section 4.13.04 for granting of a variance. The criteria are listed below with commentary for the application and from the staff.

**4.13.01 Standards in Granting a Variance**

The Board of Adjustment may authorize a variance from the terms of this LDC as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Code will result in unnecessary and undue hardship. In authorizing a variance from the terms of this LDC, the Board of Adjustment shall find:

- A. That special conditions and circumstances exist which are peculiar to the land, structure or building involved, and which are not applicable to other lands, structures or buildings in the same zoning district,

*Commentary: The subject property is a standard sized lot for the subdivision. There is no difference between the subject property and nearly every other lot in the subdivision.*

*The applicant states that there is insufficient room to construct a pool that would be safe for their needs.*

- B. That the special conditions and circumstances do not result from the actions of the applicant,

*Commentary: The applicant had the option of selecting a different house model that left more room for the desired pool or select a different pool design that could fit in the space available.*

*The applicant stated that the proposed pool is the minimum size appropriate for the family use.*

- C. That literal interpretation of the provisions of this LDC would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this LDC and would work unnecessary and undue hardship on the applicant,

*Commentary: Every 75 x 120-foot lot in the subdivision has the same limitations and opportunities for construction of homes and accessory structures. The applicant has not been deprived of any rights enjoyed by other properties in the neighborhood.*

- D. That the variance created is the minimum variance that will make possible the reasonable use of the land, building or structure, and

*Commentary: The applicant has proposed two alternative plans with a 3-foot and a 5-foot setback. Should the Board decide to recommend the variance, the minimum grant should be 5 feet as the applicant has documented that this setback will accommodate the proposed construction.*

- E. That the granting of the variance will be in harmony with the general intent and purpose of this LDC and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

*Commentary: The Board must find that the reduced rear yard setback will not prove to be detrimental to other properties in the neighborhood.*

- F. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this LDC. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this LDC.

*Commentary: Should the Planning Board recommend the variance; the staff recommends that the Board require the two trees located in the rear yard be replanted or replaced elsewhere on the property. These trees are part of the minimum landscaping requirements and therefore are required on the parcel.*

## **Recommendation**

The application as presented does not appear to meet criterion A (unique conditions on the property) or criterion C (deprivation of rights allowed to other property); and criterion B likely could be met with the selection of a different pool configuration. Should the Board elect to recommend the variance to the Town Council the Board should clearly state its determination that the application meets the tests set out in criteria A, B, C and E; and the Board should specifically recommend one of the two setback options proposed by the applicant. The Board should also require the replanting or replacement of the two trees now located in the rear yard.