



Town of Lake Park, Florida

Planning and Zoning Board Meeting Agenda

Monday, February 05, 2024 at 6:30 PM

535 Park Avenue Lake Park, Florida

Richard Ahrens	—	Chair
Jon Buechele	—	Vice-Chair
Evelyn Harris Clark	—	Regular Member
Gustavo Rodriguez	—	Regular Member
Patricia Leduc	—	Regular Member

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the Planning & Zoning Board, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate in the meeting should contact the Town Clerk's office by calling 881-3311 at least 48 hours in advance to request accommodations.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF AGENDA:

1. APPOINTMENT OF CHAIR
2. APPOINTMENT OF VICE-CHAIR

APPROVAL OF MINUTES:

3. [October 2, 2023 Meeting Minutes](#)

PUBLIC COMMENTS ON AGENDA ITEMS:

Any person wishing to speak on an agenda item is asked to complete a Public Comment Card located on either side of the Commission Chambers, and provide it to the Recording Secretary. Cards must be submitted before the agenda item is discussed.

ORDER OF BUSINESS:

The normal order of business for Hearings on agenda items as follows:

- Staff Presentation
- Applicant Presentation (when applicable)
- Board Member questions of Staff and Applicant
- Public Comments -3 minute limit per speaker
- Rebuttal or closing arguments for quasi-judicial items
- Motion on the floor
- Vote of Board

NEW BUSINESS:

- [4.](#) 1021 Seminole Boulevard Variance Request

PLANNING & ZONING BOARD MEMBER COMMENTS:**COMMUNITY DEVELOPMENT DIRECTOR COMMENTS AND PROJECT UPDATES:****ADJOURNMENT:**

FUTURE MEETING DATE: March 4, 2024



Town of Lake Park, Florida

Planning and Zoning Board Meeting Minutes

Monday, October 02, 2023 at 6:30 PM

535 Park Avenue Lake Park, Florida

Richard Ahrens	—	Chair
Jon Buechele	—	Vice-Chair
Evelyn Harris Clark	—	Regular Member
Gustavo Rodriguez	—	Regular Member
Patricia Leduc	—	Regular Member

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision of the Planning & Zoning Board, with respect to any matter considered at this meeting, such interested person will need a record of the proceedings, and for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate in the meeting should contact the Town Clerk's office by calling 881-3311 at least 48 hours in advance to request accommodations.

CALL TO ORDER

8:24 PM

PLEDGE OF ALLEGIANCE

Led by Vice-Chair Buechele.

ROLL CALL

PRESENT:

Vice-Chair Buechele

Board Member Harris Clark

Board Member Rodriguez

Board Member Leduc

Chair Ahrens was absent and excused.

APPROVAL OF AGENDA:

Motion to approve October 2, 2023 agenda made by Board Member Leduc, Seconded by Board Member Rodriguez. Voting Aye: All.

APPROVAL OF MINUTES:

Motion to approve September 11, 2023 Minutes made by Board Member Rodriguez, seconded by Board Member Harris Clark. Voting Aye: All.

1. SEPTEMBER 11, 2023 PLANNING & ZONING BOARD MEETING MINUTES

PUBLIC COMMENTS ON AGENDA ITEMS:

Any person wishing to speak on an agenda item is asked to complete a Public Comment Card located on either side of the Commission Chambers, and provide it to the Recording Secretary. Cards must be submitted before the agenda item is discussed.

ORDER OF BUSINESS:

The normal order of business for Hearings on agenda items as follows:

- Staff Presentation
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- Public Comments -3 minute limit per speaker
- Rebuttal or closing arguments for quasi-judicial items
- Motion on the floor
- Vote of Board

NEW BUSINESS:

2. Parking Code Text Amendments

Town Planner Anders Viane provided a summary of the proposal (Exhibit A).

Board Member Harris Clark asked if there were pictures they could see. Town Planner Viane stated he does not have any visual representation of the proposed changes. He also provided a comparison with other municipalities and their minimum parking space sizes. Vice-Chair Buechele clarified the reduction in parking space size to be a loss of 1 foot. Board Member Leduc asked how they came up with the numbers for compact car usage.

Town Planner Viane stated that the goal was to strike a good balance and representation of compact vehicles on the road.

Motion to approve Parking Code Text Amendments made by Board Member Rodriguez, seconded by Board Member Leduc.

Voting Aye: All.

ADJOURNMENT:

Vice-Chair Buechele adjourned the meeting at 8:38 pm

FUTURE MEETING DATE: The next Planning & Zoning Board Meeting is scheduled for November 6, 2023 at 6:30 PM

_____, Chair

Town of Lake Park Planning & Zoning Board

Town Seal

Town Clerk, Vivian Mendez, MMC

Deputy Town Clerk, Laura Weidgans

Approved on this _____ of _____, _____



Town of Lake Park
Planning & Zoning Board Meeting
Meeting Date: October 2, 2023
PZ ITEM 23-08 – PARKING CODE TEXT AMENDMENT

Item 3.

STAFF MEMO & PROPOSED ORDINANCE

PROPOSAL

Staff has often received feedback from building permit and site plan development applicants that our standard parking space dimensions of 10' X 18'6" are larger than average and thus can be difficult to adhere to, particularly on sites with land area constraints. Upon examination of other codes, it does indeed appear our spaces – specifically the widths – are on the larger end of the average. For example, in Palm Beach Gardens, their "general" parking space is 9' X 18'6"; in Tequesta, their standard is 9' X 18'; and in West Palm Beach, their standard parking space is only 8'6" X 18'. Palm Beach County also utilizes a 9' X 18' standard.

Especially as the Town pursues urban redevelopment projects, we feel a 1 foot reduction in the width of the required standard 90-degree parking space will prove beneficial for redevelopments while still providing a specification that is in keeping with other municipal and county code averages.

Furthermore, staff is also proposing a compact parking space dimension of 8'6" X 17'0", which is consistent with other compact parking codes which tended to range between 8' X 16' on the most compact end to 9' X 17' on the larger end. As proposed, compact parking spaces could account for no more than 25% of a site's required parking, which we believe will be especially helpful for urban redevelopment projects in the Downtown and along the US-1 corridor, though this provision is proposed to be made available to all districts.

Staff believes the effect of these changes will help existing sites with restricted land area meet the required parking dimensions when resurfacing and restriping their lots and assist new developments in adding more parking overall. It is staff's belief the result will be the net increase of parking throughout the Town in a greater variety of sizes, in anticipation of the continued relevance of automobile transportation and consumer trends in vehicle sizes tending toward more compact vehicles. Finally, it is important to note the code only establishes minimum specifications, so applicants could still provide larger stall sizes if they chose to do so.

The substance of the code changes is detailed below:

TABLE 78-142-1

**MINIMUM PARKING BAY DIMENSIONS FOR NONRESIDENTIAL USES
AND RESIDENTIAL USES WITH SHARED PARKING LOTS**

Angle	Stall Width	Stall Depth	Aisle Width	Curb Length	Wall to Wall Width	Interlock to Interlock Width	Stall Depth to Interlock	Land Use
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
45	10'0"	17'6"	12'0"	14'0"	47'0"	44'0"	15'6"	General
	12'0"	17'6"	12'0"	17'0"	47'0"	44'0"	15'6"	Handicapped



Town of Lake Park
Planning & Zoning Board Meeting
Meeting Date: October 2, 2023
PZ ITEM 23-08 – PARKING CODE TEXT AMENDMENT

Item 3.

60	10'0"	19'0"	14'0"	11'6"	53'0"	50'0"	17'6"	General
	12'0"	19'0"	14'0"	14'0"	53'0"	50'0"	17'6"	Handicapped
70	10'0"	19'6"	17'0"	10'6"	56'0"	54'0"	18'6"	General
	12'6"	19'6"	17'0"	12'6"	56'0"	54'0"	18'6"	Handicapped
75	10'0"	19'6"	21'0"	10'6"	60'0"	58'0"	18'6"	General
	12'0"	19'6"	21'0"	12'6"	60'0"	58'0"	18'6"	Handicapped
80	10'0"	19'6"	22'0"	10'0"	61'0"	60'0"	19'0"	General
	12'0"	19'6"	22'0"	12'0"	61'0"	60'0"	19'0"	Handicapped
90	9'0"	18'6"	24'0"	9'0"	61'0"	61'0"	18'6"	General
	12'6"	18'6"	24'0"	12'0"	61'0"	61'0"	18'6"	Handicapped
	<u>8'6"</u>	<u>17'0"</u>	<u>24'0"</u>	<u>8'6"</u>	<u>58'0"</u>	<u>58'0"</u>	<u>17'0"</u>	<u>Compact</u>

1.

In Column (I) above, "general" applies to parking spaces designated to serve all commercial uses and also residential uses with shared parking lots. Spaces to be reserved for use by disabled persons shall be governed by the rows labeled "handicapped." Up to 25% of required parking may utilize the "compact" category standards.

Staff Recommendation: Approval

ORDINANCE NO. __-2023

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 78, ARTICLE V, SECTION 78-142, AMENDING THE DIMENSIONAL STANDARDS FOR 90-DEGREE PARKING SPACES; CREATING A COMPACT PARKING SPACE CATEGORY; PROVIDING FOR CODIFICATION; PROVIDING FOR THE REPEAL OF ALL LAWS IN CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission has developed parking space dimensional standards, which has been codified in Chapter 78, Article V, Section 78-142 of the Town's Code of Ordinances; and

WHEREAS, the Community Development staff has recommended that the Town Commission amend Town Code, Chapter 78, Article V, Section 78-142, to reduce the required dimensions for standard parking spaces as well as create a new compact parking space category and allowances for the use thereof.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The whereas clauses are incorporated herein as true and correct and as the legislative findings of the Town Commission.

Section 2. Chapter 78, Article V, Section 78-142 of the Town Code is hereby amended to read as follows:

TABLE 78-142-1

MINIMUM PARKING BAY DIMENSIONS FOR NONRESIDENTIAL USES
AND RESIDENTIAL USES WITH SHARED PARKING LOTS

Angle	Stall Width	Stall Depth	Aisle Width	Curb Length	Wall to Wall Width	Interlock to Interlock Width	Stall Depth to Interlock	Land Use
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	12'0"	19'0"	14'0"	14'0"	53'0"	50'0"	17'6"	Handicapped
70	10'0"	19'6"	17'0"	10'6"	56'0"	54'0"	18'6"	General
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1.

In Column (I) above, "general" applies to parking spaces designated to serve all commercial uses and also residential uses with shared parking lots. Spaces to be reserved for use by disabled persons shall be governed by the rows labeled "handicapped." Up to 25% of required parking may utilize the "compact" category standards.

Section 3. Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 4. Codification.

The Sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "Ordinance" may be changed to "section", "article", or any other appropriate word.

Section 5. Repeal of Laws in Conflict.

All Ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. Effective Date.

This Ordinance shall take effect immediately upon adoption by the Town Commission.

PUBLIC NOTICE
TOWN OF LAKE PARK
NOTICE OF PUBLIC HEARINGS

Please be advised that immediately following the Historic Preservation Board, the Planning and Zoning Board of the Town of Lake Park will hold a public hearing on **Monday, October 2, at 6:30 p.m., or as soon thereafter as can be heard**, to hear the following item in the Lake Park Town Commission Chambers at Town Hall, located at 535 Park Avenue, Lake Park, Florida. Records related to this item may be inspected at the Community Development Department located at Town Hall.

The Town Commission will also conduct a public hearing at 535 Park Avenue, Lake Park, to consider the item listed below on **1st Reading Wednesday, November 1, 2023 at 6:30 PM and 2nd Reading Wednesday November 15, 2023 at 6:30 PM**, or as soon thereafter as can be heard. (Tentative date, please monitor www.lakeparkflorida.gov for any changes). A quorum of the Town Commission of the Town of Lake Park, Florida will convene and public participation will occur in-person at Town Hall.

The public hearing item is as follows:

Town Staff are bringing forward a text amendment to Chapter 78, Article V, Section 78-142. This amendment would provide revised dimensional standards for 90 degree standard parking spaces as well as create dimensional standards for a new compact parking space and an allotment for their use.

If a person decides to appeal any decision made by any board with respect to any hearing, they will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. For additional information, please contact Vivian Mendez, Town Clerk at 561-881-3311.

Town Clerk: Vivian Mendez

PUB: The Palm Beach Post – Friday, September 22, 2023



**TOWN OF LAKE PARK
COMMUNITY DEVELOPMENT DEPARTMENT**

APPLICATION FOR ZONING VARIANCE

APPLICANT INFORMATION

Owner

Name: Gregory Sawyer Phone: 561-248-8947
Address: 1021 Seminole Blvd City: Lake Park State: FL Zip: 33403
Email Address: greg@ibisbuild.com (REQUIRED)

Agent (if applicable)

Name: _____ Phone: _____
Address: _____ City: _____ State: _____ Zip: _____
Email Address: _____ (REQUIRED)

PROPERTY INFORMATION

1. Property Location/Address: 1021 Seminole Blvd., Lake Park 33403
2. Property Control Number(s): 3643422001102-0270 - _____
3. Zoning District: _____

PROJECT INFORMATION

Variance(s) requested: Decrease 10 ft setback to 5 ft

Brief description of work proposed (use additional sheets if necessary):

Install a new pool w/ a 5ft. setback from property lines, including a safety barrier fence at least 5 feet but less than 6 feet tall, with automatically closing gates. This will improve the property description as a value-added asset.

VARIANCE CRITERIA

In order to authorize any variance from the requirements of the Land Development Regulations, the Planning and Zoning Board must conduct a quasijudicial hearing, and must make findings of fact that all of the following criteria have been satisfied:

(Respond to each item below)

1. Special Conditions: 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.

Residence has a shallow back yard depth. (see attached photos). We would like the pool in the back so it can be seen from inside the home's living/kitchen area.

2. Actions of Applicant: That the special conditions and circumstances do not result from the actions of the applicant.

These are the existing property dimensions. We did not alter any of the back yard dimensions or add any structures.

3. Special Privilege: That granting the variance requested will not confer on the applicant any special privilege that is denied by the Land Development Regulations to other lands, buildings or structures in the same zoning district.

There is no special privilege given to the applicant that would be denied to other homeowners who also request construction of a pool in the same zoning district.

4. Literal Interpretation: That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter, and would work unnecessary and undue hardship on the applicant.

We would like to have the same rights commonly enjoyed by other neighbors who also have pools. The reason for the requested variance is because the pool builder requires a 5 foot buffer from any foundations of the existing structures. Without this variance, our pool would only be 5 feet wide.

5. Minimum Variance: That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

We are requesting a variance of 5 feet to the back and side yard property lines. (see attached drawings) The pool cannot be moved closer to the house because pool builder requires a 5 foot buffer away from existing foundations/structures.

6. Public Interest/Harmony with Code: That the grant of the variance will be in harmony with the general intent and purpose of the land development regulations of the Code, and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

We will be in harmony with the Code. There will be no detriment to the public welfare as we have a safety barrier fence consisting of at least 5 feet but no more than 6 feet with gates that are self-closing.

7. Harmony with Comprehensive Plan: That the variance would not be contrary to the comprehensive plan of the Town.

Approval of this variance would not be contrary to the comprehensive plan of the town. There would still be room for the Town to access the property lines if needed.

LIST OF REQUIRED DOCUMENTS

- Map showing property subject to this application
- Six copies of Site Plan(s), if necessary
- Building plans of structures to be erected, if necessary
- Certified survey of property (no more than 1 year old)
- Notarized Town of Lake Park Agent Authorization form, if applicable

FEES

Application Fee:
\$1,000 nonresidential;
\$750.00 residential
Minimum Escrow Deposit:
\$1,500.00*

**Unused portion of escrow is refundable – additional costs will be recovered in advance*

SIGNATURE

The undersigned states that the above is true and correct as s/he is informed and believes:

Signature of Owner or Agent

Print Name

Greg Sawyer

STATE OF FLORIDA
PALM BEACH COUNTY

(Seal)



SWORN TO OR AFFIRMED before me this

17 day of november, 2023.

By: Danielle Kinzie

☐ who has produced as identification ☒ whom I know personally



PLEASE DO NOT DETACH FROM APPLICATION.

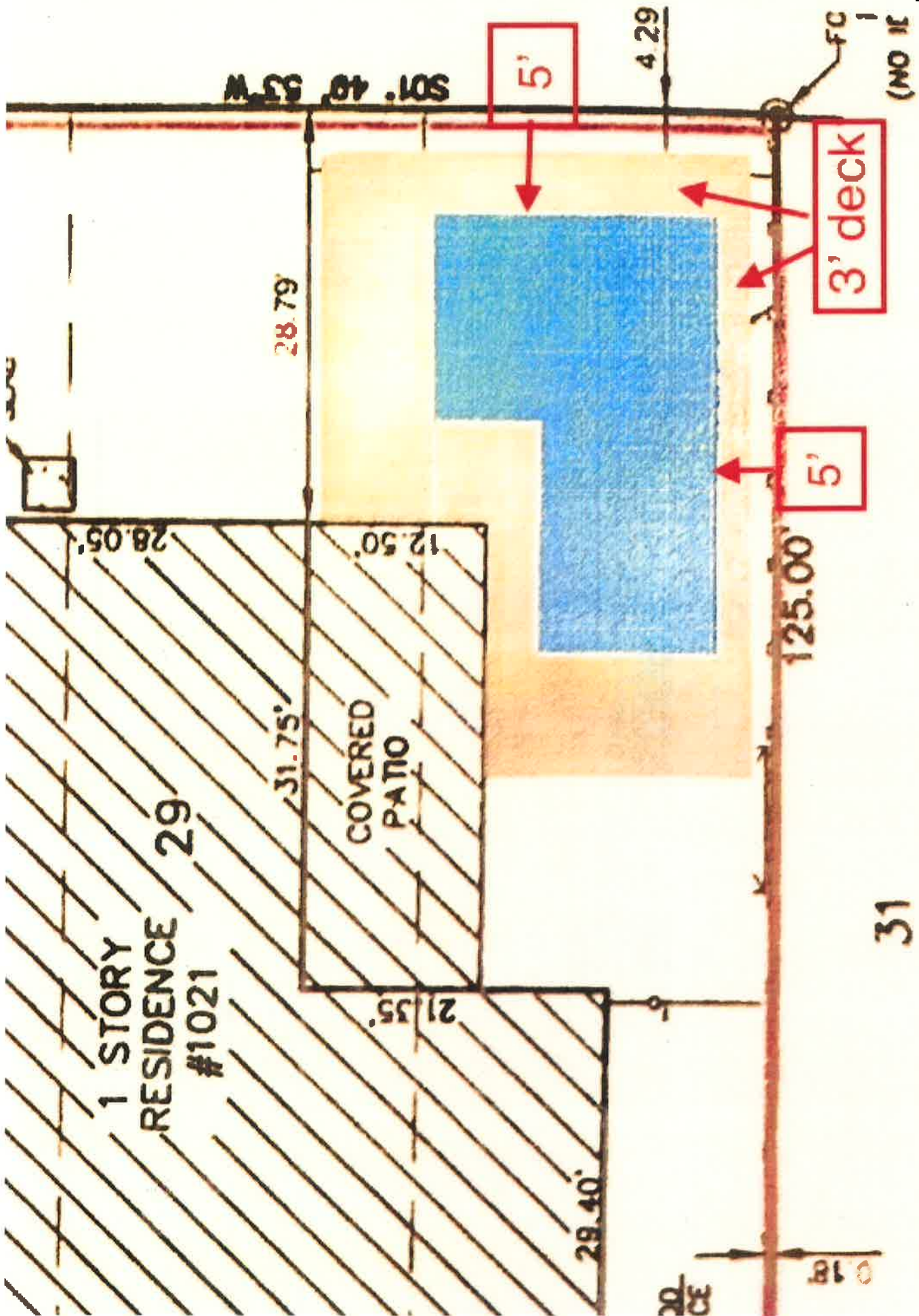
SIGNATURE REQUIRED BELOW.

Please be advised that Section 51-6 of the *Town of Lake Park Code of Ordinances* provides for the Town to be reimbursed, in addition to any application or administrative fees, for any supplementary fees and costs the Town incurs in processing development review requests.

These costs may include, but are not limited to, advertising and public notice costs, legal fees, consultant fees, additional Staff time, cost of reports and studies, NPDES stormwater review and inspection costs, and any additional costs associated with the building permit and the development review process.

For further information and questions, please contact the Community Development Department at 561-881-3318.

I, <u>Greg Sawyer</u> , have read and understand the regulations above regarding cost recovery.	
<u>[Signature]</u> Property Owner Signature	<u>11/17/23</u> Date

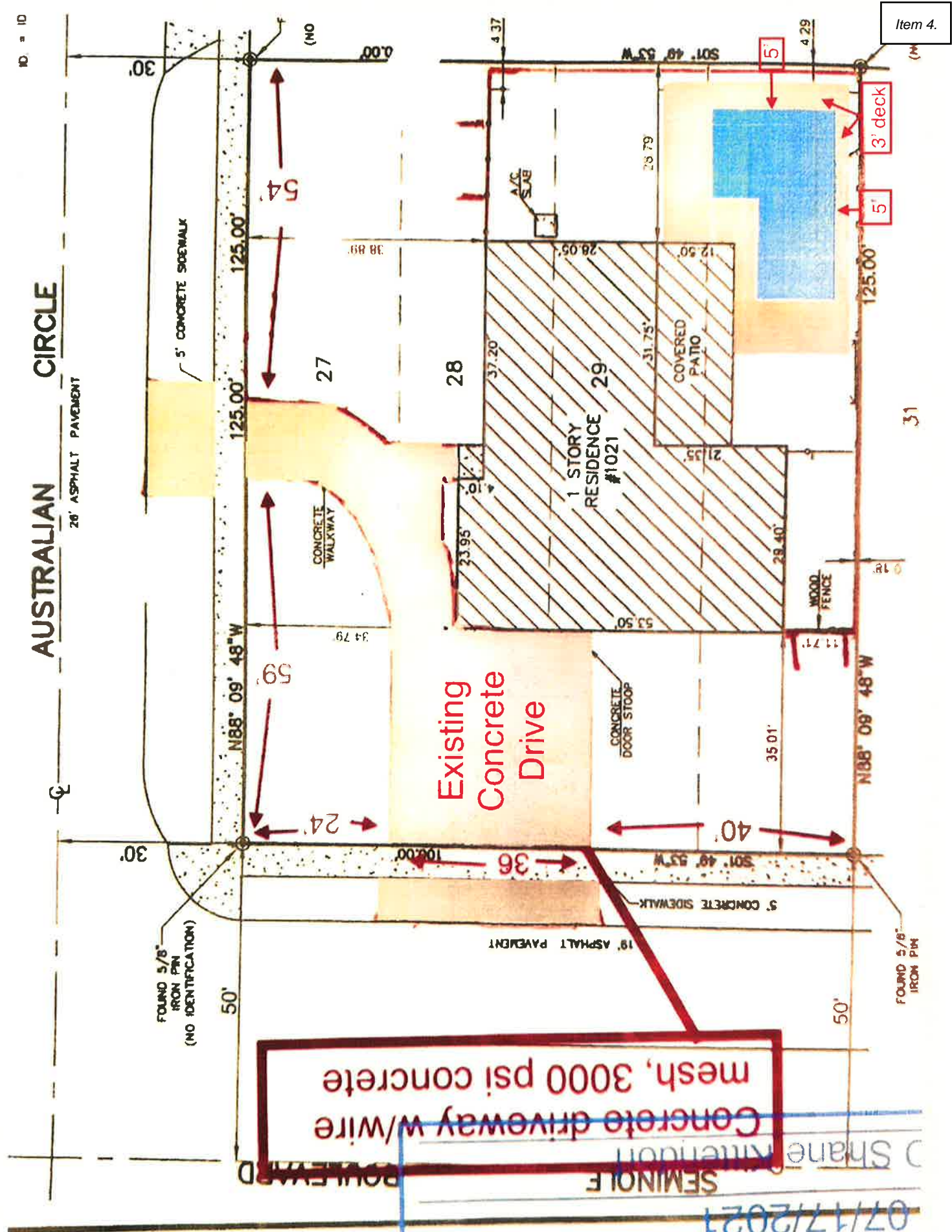


07/17/2021

SEMINOLE

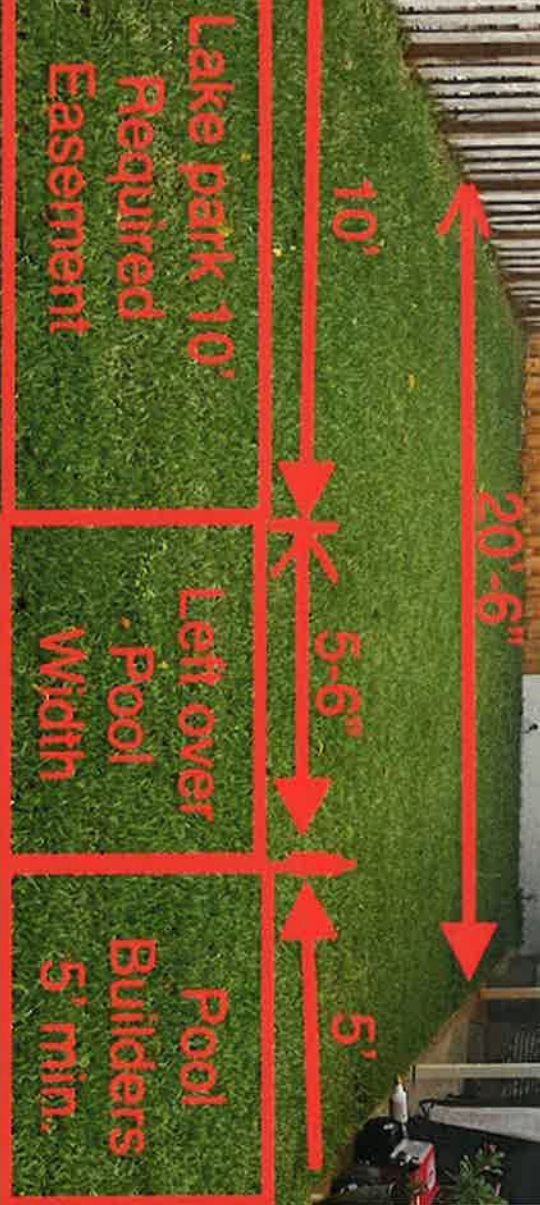
DO NOT REUSE

Concrete driveway w/wire mesh, 3000 psi concrete



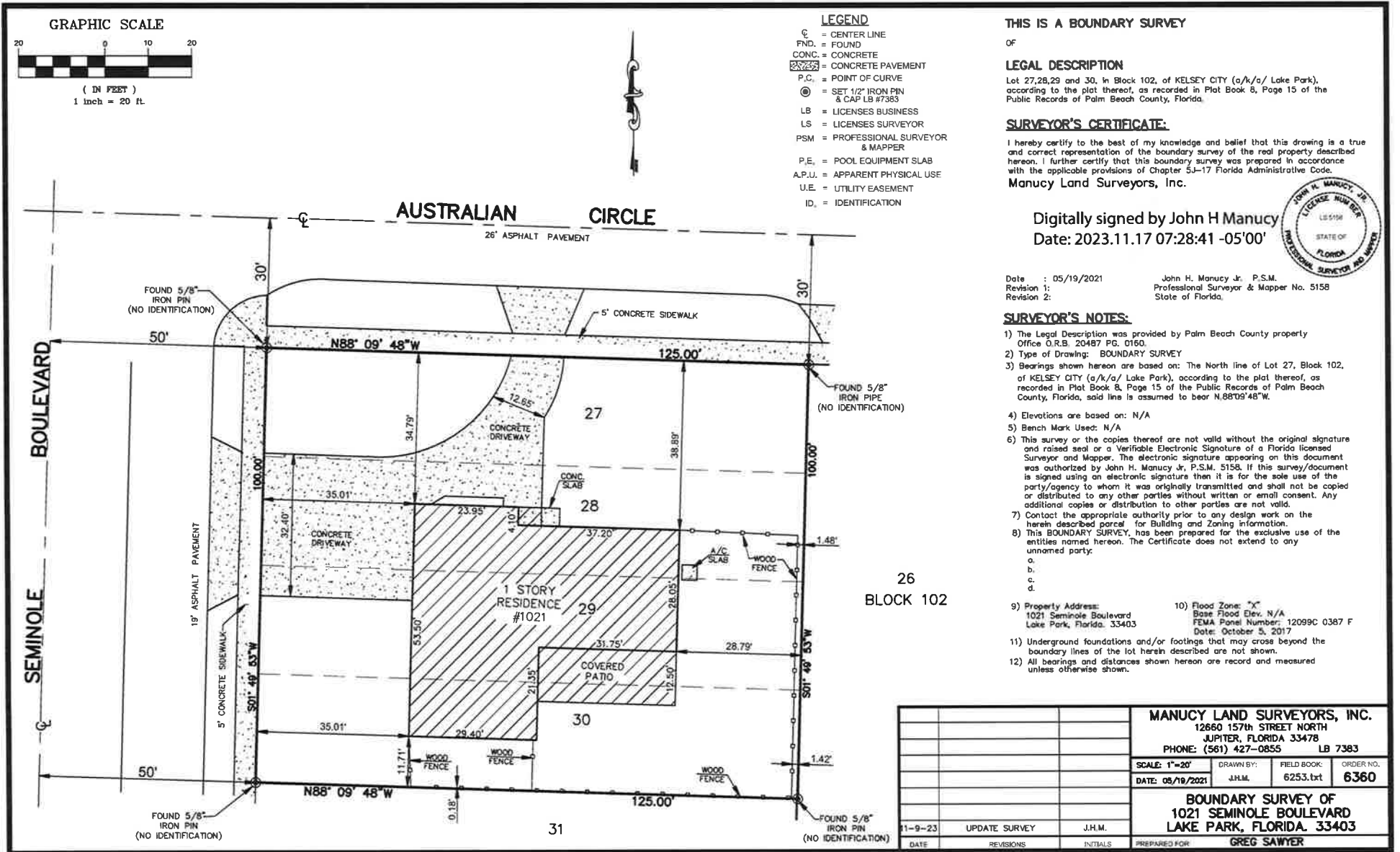








UPDATED SURVEY





**TOWN LAKE OF PARK
PLANNING AND ZONING BOARD
Meeting Date: February 5, 2024
PZ-24-01**

Applicant(s): Gregory Sawyer
Owner: Gregory Sawyer
Agent: N/A
Address: 1021 Seminole Boulevard
Net Acreage: 0.2834
Legal: KELSEY CITY LTS 27, 28, 29, 30 BLK 102
Existing Zoning: R-1A
Future Land Use: Single-Family Residential

Adjacent Zoning

North: R-1A residence district
 South: R-1A residence district
 East: R-1A residence district
 West: R-1A residence district

Adjacent Future Land Use

North: Single-Family Residential
 South: Single-Family Residential
 East: Single-Family Residential
 West: Single-Family Residential

I. VARIANCE REQUEST

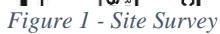
Decrease pool setback from property line from the required 10 feet to 5 feet, on both the side and rear of the property.

II. BACKGROUND INFORMATION AND SUMMARY OF REQUEST:

Background of Request

This variance request is being brought forward in advance of planned improvements to 1021 Seminole Boulevard; no building permit application has been pulled at this time as the applicant is waiting for the outcome of the Board's consideration of their variance request before proceeding. The applicant is contemplating a new swimming pool for their property, which they would like configured in the way they feel most compliments their existing home. Specifically, they would like the pool placed in the southeastern corner of their lot where it will be visible from the home's kitchen and living rooms. This configuration would require that the width of the pool be abnormally skinny (approximately 5' width) to accommodate the required 10' side yard setback for swimming pools; as a result, the applicant is seeking a variance to provide a 5' setback instead of the required 10', which would allow them a pool width of approximately 10 feet. Planning staff discussed alternative configurations prior to the applicant's variance submittal such as placing the pool along the eastern side of the lot, however the proposed configuration is their preference. Consequently, they have submitted this variance request to determine whether their preferred configuration can be accommodated under the allowances of the variance code.

2



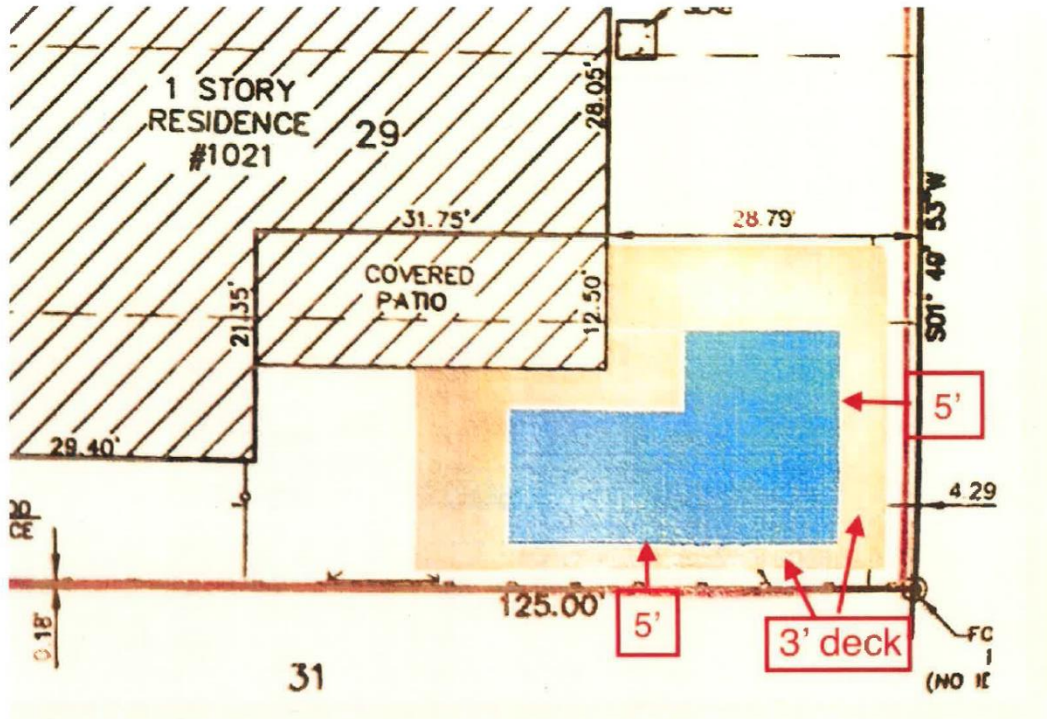


Figure 2 – Conceptual Diagram

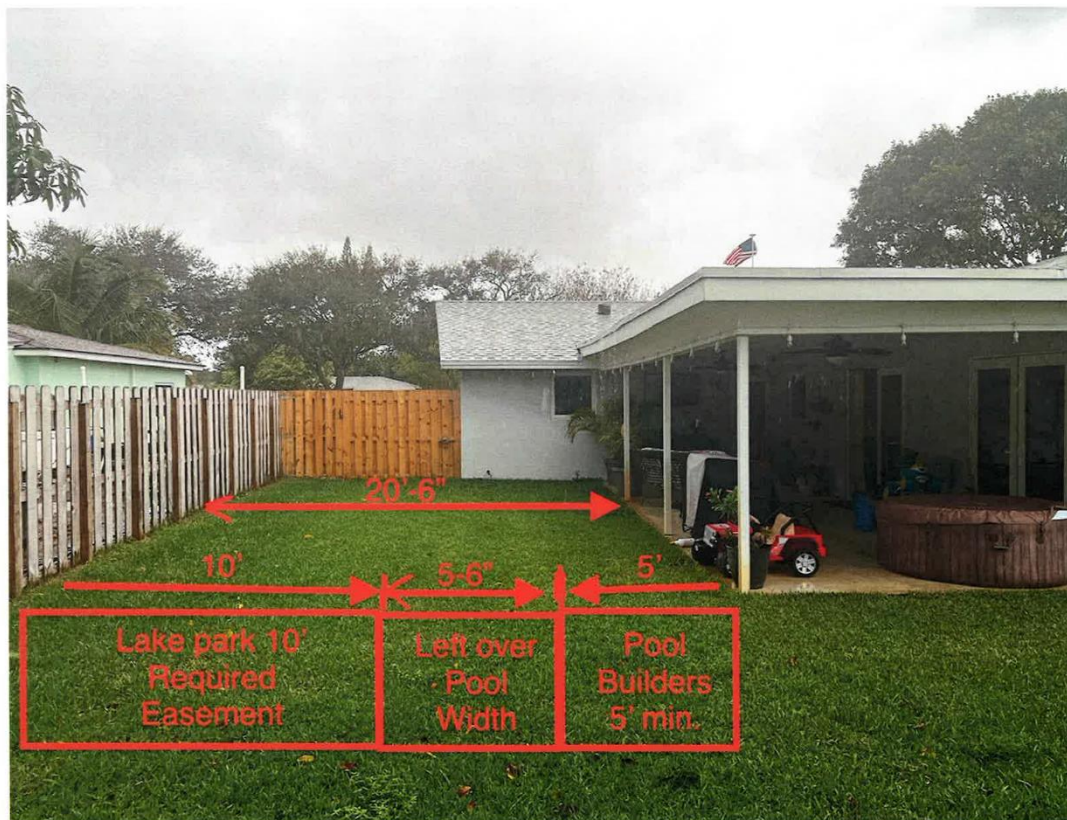


Figure 3 - Illustrative Diagram

Summary of Request

The applicant requests a variance from Sec. 26-61 so that he can provide 5' rear and side yard setbacks rather than the required 10'. The language of the governing code section is as follows:

"The outside rim of a private swimming pool shall be set back not less than ten feet from both rear and side property lines."

The provision, like all setbacks, is designed to ensure harmony and compatibility between uses and structures. Without this variance, the pool would need an approximate 5' width in order to accommodate the minimum 10' setback and a 5' setback from the existing home as recommended by the pool builder. The applicant states granting this variance will be a positive benefit to the property and surrounding properties, improving their aesthetics.

Variance Number	Section:	Required:	Proposed:
1	26-61	10 feet	5 feet

III. CONSISTENCY WITH THE COMPREHENSIVE PLAN

The following Comprehensive Plan statements are applicable in this case:

Policy 5.4: Utilize such techniques as distance requirements, buffering, landscaping, lower-intensity development, and scale-down requirements to provide appropriate transitions between uses and districts of different intensities, densities, and functions.

IV. LAWS ON VARIANCES

Section 55-63 (2) of the Town Code vests the Planning and Zoning Board with final authority regarding variances. Section 78-185 of the Town Code establishes criteria which must be met to entitle an applicant to a variance. The Board must find that all 7 criteria have been met to entitle an applicant to the requested variance relief. The 7 criteria are:

- (1) Special conditions and circumstances exist which are peculiar to the land, structure, or building;
- (2) The special conditions or circumstances are not a result of actions by the Owner/applicant;
- (3) Granting the variance will not confer on the Owner any special privilege that is denied to others;
- (4) A literal interpretation of the land development regulations would deprive the Owner of rights commonly enjoyed by other properties in the same zoning district;
- (5) The variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;
- (6) The granting of the variance will be in harmony with the general intent and purpose of the land development regulations and will not be injurious to the area involved or otherwise detrimental to the public welfare and;
- (7) Granting the variance would not be contrary to the comprehensive plan.

In evaluating these criteria, Courts have placed emphasis on criteria # 4, by holding the owner/applicants for variance relief and the governing board evaluating the application to the rigorous standard of whether the denial of the variance would render the Property virtually unusable. See Bernard v. Town of Palm Beach, 569 So. 2d 853 (Fla. 4th DCA 1990).

IV. ANALYSIS OF CRITERIA AND FINDINGS FOR VARIANCE

Below are listed the seven (7) variance criteria from Code Section 78-185 which all must be met before a variance can be granted.

CRITERIA 1: 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.

Applicant Response: “Residence has a shallow back yard depth. We would like the pool in the back so it can be seen from inside the home’s living/kitchen area.”

Staff Response: Staff does not agree that special circumstances exist.

Firstly, the lot generally conforms to the minimum required setbacks and lot area. According to a survey performed by Manucy Land Surveyors on 5/19/21 and updated 11/9/23, a 28.79’ rear yard setback exists which would be available for new construction. On the south side yard, the side yard setback is at least 11.71’ at the narrowest and as large as 20.6’ between the covered patio and the side yard property line. This ~20’ area is where the applicant is proposing their pool and thus they cannot meet the required 10’ setback from the edge of the pool to the property line and a 5’ setback from their home. Additionally, the plot of land is over the minimum required lot area for a corner lot in the R-1A district at 12,500 SF.

While the front street side setback along Australian Circle is above the code minimum at 39.79’ instead of the required 15’, there nevertheless remains the 28.79’ rear yard area where an ~13’ wide pool could be accommodated. There is no entitlement in the code that guarantees a home owner can build on any given side of their property; most other single family home owners in the R-1A district observe a 10’ side yard setback between their home and property line and thus could not place pools in their side yards in most cases. As it pertains only to corner lots, there are numerous other single-family properties with configurations which would not permit new development on all sides given the unique orientations of their homes; as a result, their designs have to respond to the existing site conditions. If there was no other outlet for the property owner to install improvements whatsoever, staff would be more inclined to accept this is a special condition or circumstance unique to the land, but since that is not the case we cannot find they meet criteria 1.

Criteria 1 is failed.

CRITERIA 2: That the special conditions and circumstances do not result from the actions of the applicant.

Applicant Response: “These are the existing property dimensions. We did not alter any of the back yard dimensions or add any structures.”

Staff Response: Staff did not find special conditions or circumstances to exist on this property in the strict sense intended by the variance criteria guidelines. The lot is typical in size and configuration for many single family corner parcels in that the structure does not strictly observe the minimum required setbacks and instead has a larger setback in one area, here being the side yard. The conflict between the required setback and the proposed pool placement does not qualify as a special condition or unique circumstance because it derives from the actions of the applicant.

Criteria 2 is failed.

CRITERIA 3: That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.

Applicant Response: “There is no special privilege given to the applicant that would be denied to other homeowners who also request construction of a pool in the same zoning district.”

Staff Response: The granting of this variance would confer upon the applicant the special privilege of building within a required setback based solely on their preference. This is not permitted elsewhere in the R-1A district or anywhere in the entire Town. Staff does not support variances that are based on the applicant’s preference when other code-compliant alternative designs are possible.

Criteria 3 is failed.

CRITERIA 4: That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter, and would work unnecessary and undue hardship on the applicant.

Applicant Response: “We would like to have the same rights commonly enjoyed by other neighbors who also have pools. The reason for the requested variance is because the pool builder requires a 5’ buffer from any foundations of the existing structures. Without this variance, our pool would only be 5 feet wide.”

Staff Response: The applicant is not being deprived of rights commonly enjoyed by other properties in the same zoning district; regardless of the above-required side yard setback on Australian and the resultant smaller side yard, there remains ample area in the backyard to provide the required setback from the property line and the builder's recommended setback from the home, so the applicant is not being deprived of their ability to build a pool.

Additionally, the Applicant is not subject to unnecessary and undue hardship by the denial of this request. While staff acknowledges the applicant's desire to have the pool visible from their living room and kitchen, this is not a right explicitly granted in our code and we do not feel being denied the preferred pool configuration constitutes an unnecessary and undue hardship.

Criteria 4 is failed.

CRITERIA 5: That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Applicant Response: "We are requesting a variance of 5 feet to the back and side yard property lines. The pool cannot be moved closer to the house because pool builder requires a foot buffer from existing foundations and structures."

Staff Response: While this variance would be the minimum necessary to allow for a pool in the side yard, staff does not believe it would be the minimum necessary to make reasonable use of the land. If "reasonable use of the land" were construed as the owner's ability to create a pool, per the provided survey, this property is still entitled to ~13 feet of buildable area in the rear yard (where most pools are built) behind the building meeting the required pool builder and zoning setbacks. The applicant has not compellingly demonstrated how having their pool in the side yard is essential to making reasonable use of their property; on the contrary, there is no reasonable expectation of using a setback for construction.

Criteria 5 is failed.

CRITERIA 6: That the granting of the variance will be in harmony with the general intent and purpose of the land development regulations of the Code, and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Applicant Response: "We will be in harmony with the code. There will be no detriment to the public welfare as we have a safety barrier fence consisting of at least 5 feet with gates that are self-closing."

Staff Response: While staff notes that this variance would likely not be injurious to the immediate area or otherwise detrimental to the public welfare, the requested variance is simply not consistent with the general intent and purpose of the code by attempting to waive the code-mandated setbacks without a compelling and essential reason for doing so.

Criteria 6 is failed.

CRITERIA 7: That the variance would not be contrary to the comprehensive plan of the town.

Applicant Response: “Approval of this variance would not be contrary to the comprehensive plan of the Town. There would still be room for the Town to access the property lines if needed.”

Staff Response: This proposal is contrary to the intent of Policy 5.4 of the Goals, Objectives, and Policies section of the comprehensive plan, which requires adequate buffering be provisioned for all properties to ensure harmony and minimize adverse impacts between uses. In this case, a variance would be an inconsistent and capricious exercise of zoning power that would be unfair to other property owners who have observed the requirements of our code and the underlying Comprehensive Plan principles even when it is not their preference. This variance would serve to undermine both the code and Comprehensive Plan, setting a poor precedent for the use of variances going forward.

Criteria 7 is failed.

V. STAFF RECOMMENDATION

Staff recommends DENIAL of the requested variance because it does not meet any of the 7 criteria required for the granting of a variance.

Summary of Consistency with Criteria for variance request

		Consistent	Inconsistent
1.	Special Conditions		X
2.	Actions of the Applicant		X
3.	Special Privilege		X
4.	Literal Interpretations		X
5.	Minimum Variance		X

6.	Public Interest		X
7.	General Harmony		X

VI. MOTION FOR THE BOARD TO CONSIDER:

I move to **DENY** variance request.