

DEPARTMENT MEMORANDUM

DATE: DECEMBER 9, 2021
TO: BOARD OF ADJUSTMENT
FROM: CARLOS TREJO, AICP
DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT
RE: 9 BLACKPOOL LANE
PETITION FOR SIDE YARD SETBACK VARIANCE FOR POOL STRUCTURE

PETITIONER: Ross Richardson
Poynter Landscape

OWNER: Ilana Rosman and Leonid Shmuylovich

SUMMARY OF STAFF'S REVIEW AND RECOMMENDATIONS:

1. Petitioner seeks side yard setback variances for the placement of an inground swimming pool. The calculated side yard setbacks are 23.5 feet. The proposed pool footprint is 12.0 feet from the north side yard lot line and 20 feet from the southwest side yard lot line.
2. Property:
 - The property grounds are zoned SR Single Family Residential District.
 - The property is a conforming lot with the SR District regulations under Section 400.235. It has an area in excess of 15,000 sf., has a width in excess of 100 feet, and has a depth in excess of 150 ft.
 - The property has 244.8 feet of frontage along the street curb. Using the measurements of the survey provided, the calculated lot width is 195.6 feet.
 - The required side yard setbacks are 12% of the lot width (Sec. 400.260.B.1), and in no case should be less than 12 feet. Based on the following: 195.6 ft width X 12% = the side yard setback is 23.47 feet.
3. Petition:
 - Petitioner proposes install an inground swimming pool in the rear yard area. Given the lot configuration, the rear lot line is the western most lot line that is listed as 30.27 feet wide. The two other lot lines, one the north and the other in the southwest, are considered side yards.
 - The side yard setback for pools is to be the same as the calculated side yard setback for the lot as a whole. Thus the pool is required to be 23.47 feet from both the north side yard and the southwest side yard lot lines.
 - The plans provided illustrate the pool footprint 12 feet from the north lot line and 20 feet from the southwest west lot line.
4. Lot Characteristics.
 - In review of the building permit plans and variance application, the lot is not "regular" in traditional lot shapes nor is it rectangular. Calling it uniquely shaped is "subjective", but it is different. There are, though, a handful of other similar lots with excessive frontage.
 - The setback requirements for a lot of this shape are excessive, nearly double of the minimum. Or another way to look at this, the setbacks applied to this lot, as compared to those of other lots in the same subdivision (neighborhood) are excessive.
 - A pool is not a three dimensional structure. It is flat. The setbacks applied to flat work traditionally are allowed to be less than 12 feet.
 - Finally, the rear yard setback, the shortest lot line, is permitted to have a 10 foot setback by Code.
 - There are no unique topography issues noted.
 - Are there alternative layouts to consider? In some form, the side yard setbacks may still be an issue. A pool of this size is not a guaranteed right under our Zoning Code.

5. Findings. Staff finds that under the conditions of Section 400.1650 Variances of the Olivette Municipal Code, the side yard setback as applied to this property are excessive, but they do not prohibit the construction of a pool on the property grounds.

Attachments

- Building Permit Plans
- Denial Letter in form of email, dated November 19, 2021
- Variance Application
- Public Hearing Notice and notifications

STAFF RECOMMENDATION.

Staff findings are as follows:

- This is a legal conforming lot but it has an excessive amount of frontage and therefore a lot width nearly 2.5-times greater than a regular lot.
- Since the side yard setback is based on a percentage of lot width, this lot provides nearly twice the side yard setback that other neighboring lots would in the same subdivision.
- There are other opportunities on the lot for the placement of a pool.
- A pool is a two dimensional surface not three dimensional. The Code, however, does not take into consideration.
- Staff does not oppose the granting of relief given the unique shape of the lot, excessive frontage, and two dimensional character of the pool.

ACTION: The Board shall motion on the variance request. The motion shall be in the affirmative to grant the variance request as submitted. Once the motion is seconded, the Board may:

1. Motion to amend the variance request.
2. Motion to incorporate any additional conditions the Board finds reasonable.

The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Official or to decide in favor of the applicant on any matter upon which it is required to pass under this Chapter or to effect any variance.

RECOMMENDED MOTION:

Motion to grant a variance to permit minimum 12-foot side yard setbacks under Section 400.260 for the property addressed as 9 Blackpool Lane to permit the construction of an inground pool as illustrated in the plans dated October 11, 2021, as prepared by Poynter Landscape, from the north and southwest side property lines.

CODE SECTIONS

Setbacks

The property grounds are zoned 'SR' Single Family Residential District. Under the 'SR' District, Section 400.260 Yard and Setback Requirements, establishes the minimum setbacks as follows:

Section 400.260. Yard and Setback Requirements.

- A. Minimum Front Yard Setback. The minimum front yard setback shall equal the front yard setback of the legal lot of record as set out on the plat thereof. In no event shall the front yard setback be less than twenty-five (25) feet.
- B. Minimum Side Yard Setback. The minimum side yard setback for each side yard shall be as follows:
 1. Lots greater than sixty (60) feet in width: Twelve percent (12%) of the lot width.
 2. Lots sixty (60) feet or less in width: Ten percent (10%) of the lot width.
 3. In no event shall a side yard setback be less than five (5) feet.
- C. Rear Yard Setback. Each interior lot shall provide a minimum rear yard setback of twenty percent (20%) of the lot depth. No lot shall provide a rear yard setback less than twenty (20) feet.

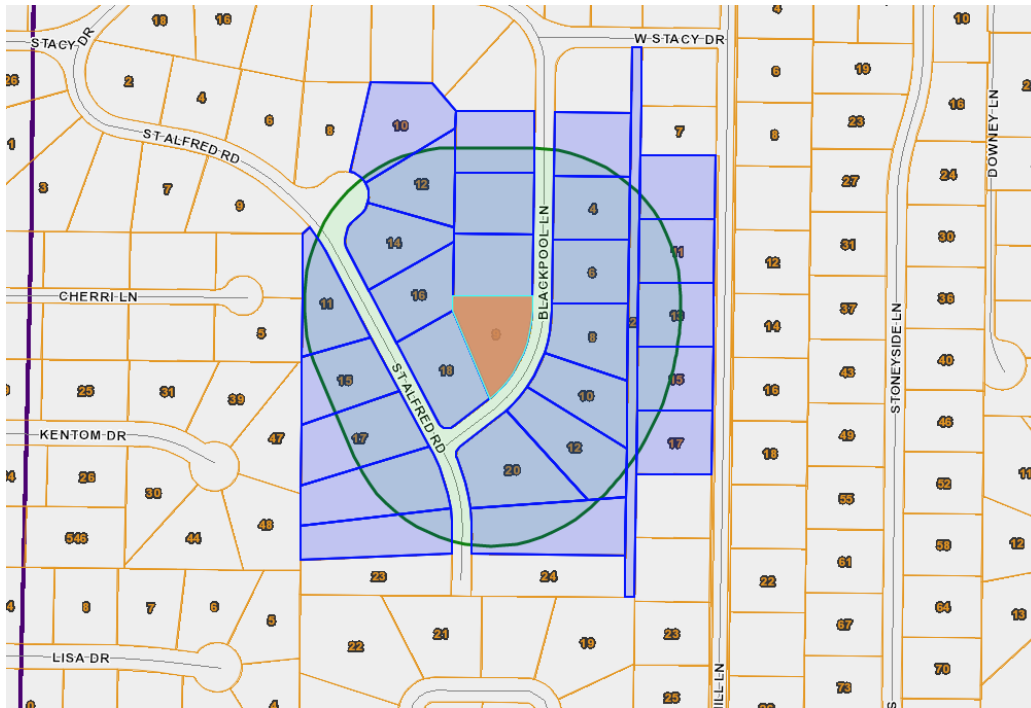
Section 400.1630 Jurisdiction.

- A. The Board shall have jurisdiction in the following instances:
 1. To hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by the Building Official in the enforcement of this Chapter.
 2. To interpret the provisions of this Chapter in such a way as to carry out the intent and purpose of the Zoning Map fixing the several districts, where the street layout actually on the ground varies from the street layout as shown on the Zoning Map.
 3. To permit the erection and use of a building or the use of premises in any location for a public service corporation or for public utility purposes necessary to the public convenience or welfare.
 4. To permit the reconstruction of a non-conforming building which has been destroyed or partially destroyed by fire or other act of God where the Board shall find some compelling public necessity requiring a continuance of the non-conforming use and in no case shall such a permit be issued if its primary function is to continue a monopoly.
 5. To grant relief by from the strict application of the Zoning Ordinance to a specific piece of property by issuing an area or a use variance as allowed herein.

Section 400.1650 Variances.

- A. Area Variance. An area variance may issue to permit the building or enlargement of a structure when specific enforcement of the Zoning Ordinance would prohibit such construction. The Board of Adjustment may issue an area variance only upon findings that:
 1. The property has a unique condition, one not typically found in the same zoning district, relating to the width, depth, or shape of the lot, its topography, or other exceptional circumstance not created by an owner or the applicant; and
 2. Strict application of the Zoning Ordinance would result in practical difficulties, as distinguished from a mere inconvenience, which would deprive an owner of the reasonable use of the property; and
 3. The variance would not unreasonably affect adjacent properties; and
 4. The variance would observe the spirit of the Zoning Ordinance, secure public safety and welfare, and do substantial justice; and
 5. The variance would satisfy the additional criteria of Subsection 400.1650(C), below.
- C. Additional Variance Criteria. Before issuing any variance, the Board shall find that the variance will not:
 1. Impair an adequate supply of light and air to adjacent property, or
 2. Unreasonably increase the congestion in public streets, or
 3. Increase the public danger of fire and safety, or
 4. Diminish or impair established property value within the surrounding area, or
 5. In any other respect impair the public health, safety, comfort, morals and welfare of the City of Olivette.
- D. Every variance granted or denied by the Board shall be accompanied by a written finding of fact, based on sworn testimony and evidence, and conclusions of law specifying the reason for granting or denying such variance.

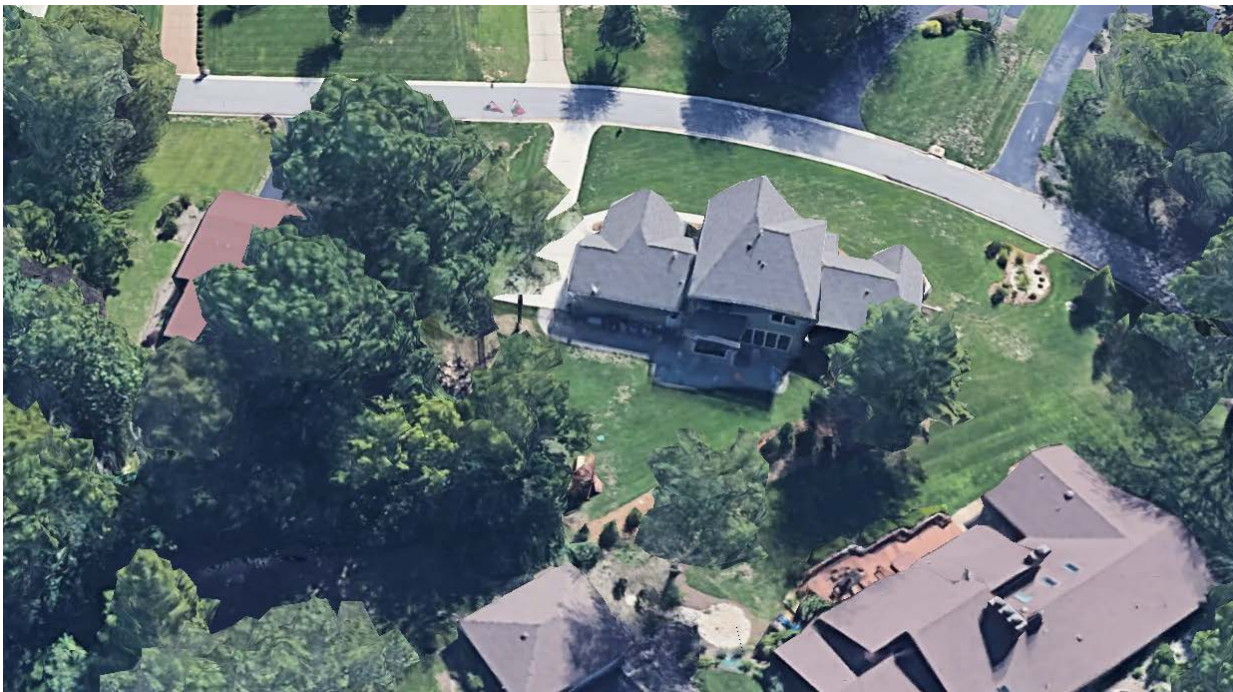
LOCATION MAP



AERIAL



PROPERTY AERIAL



Setbacks

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From: [Carlos Trejo](#)
To: [Leonid Shmuylovich](#); [Bob Wilhelm](#); ross@poynterlandscape.com
Subject: RE: Hi from Leo at 9 Blackpool
Date: Friday, November 19, 2021 8:09:00 AM

Leonid,

As per our phone conversation this morning, and the email below with attachments, this email serves as written notice that the proposed pool is being denied.

The property in question is 9 Blackpool Lane. Said property is zoned SR Single Family Residential. A building permit has been submitted to construct a deck and pool, along with other various rear yard improvements.

For the pool, the required side yard setback is 23.4 ft, as noted in the PDF survey submitted. The southwest corner of the pool consist of a side yard setback of only 12 ft from the south property line.

Section 400.260.B Yard and Setback Requirements in the SR District and Section 400.1592.B.6 Permitted Accessory Structures in Residentially Zoned Districts establish the required setbacks. A common setback for property in the SR District is 12%. An ideal lot in the SR District is 100 ft wide, 150 ft deep, and 15,000 sf. Your lot, 9 Blackpool exceeds the 3 dimensions noted, but is irregular in configuration. Given that the side yard setback is determined as 12% of the lot width, and that your lot is cone shaped with an elongated front yard, the calculated width for 9 Blackpool Lane (at 12%) is 23.4%. That is nearly double the setback for lots in the SR District, and 1 and half times more than would be applied to your neighbor to the north.

The Code unfortunately does not provide staff any authority to consider the deviation and application of the setback. Therefore, at this time a building permit cannot be issued for the pool at its current location. You have two choices if you wish to continue to consider the pool:

1. Seek an alternative location compliant with the 23.4 ft. setback, or
2. Petition the Zoning Board of Appeals for relief from the setback application.

Please let me know how you wish to proceed.

Thanks,
Carlos

Carlos Trejo, AICP
Director

Planning and Community Development
City of Olivette
1140 Dielman Road
Olivette, MO 63132

(314) 993-0444 office
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ctrejo@olivettemo.com
www.olivettemo.com

From: Leonid Shmuylovich <leoshmu@gmail.com>
Sent: Thursday, November 18, 2021 9:25 AM
To: Carlos Trejo <ctrejo@olivettemo.com>; Bob Wilhelm <bob@poynterlandscape.com>;
ross@poynterlandscape.com
Subject: Hi from Leo at 9 Blackpool

Hi Carlos,

Thank you so much for talking with us this morning about the pool plans. Attached is a PDF document where I took the plans and add 2 things. First is a red rectangle along the side property line that is 12 ft wide. You can see that the edge of the dug out pool is outside of that 12 ft line, indicating the distance from pool edge to property line is more than 12 ft. There is also a blue circle with a 12 ft radius centered at the edge of the pool, again showing that the 12ft circle does not go beyond the edge of the property line.

Please let us know if you need anything else before sending us the denial letter tomorrow. I know Ross and Bob will be getting the variance application ready and sending once they get your letter tomorrow.

Thank you also for scheduling the hearing for December 9th. As you said, the shape of our yard is awkward, making the setback effectively double what it would be if the lot were a more standard shape.

We very much appreciate your help in expediting this process!

Best,
Leo

CAUTION: The e-mail below is from an external source. Please exercise caution before opening attachments, clicking links, or following guidance.

BOARD OF ADJUSTMENT

APPEAL PETITION FOR AN AREA VARIANCE

PARTIES OF INTEREST

Petitioner

Name: ROSS RICHARDSON
Company (if applicable): POYNTER LANDSCAPE
Address/City/State/Zip Code: 15815 JEDBERG LANE BALLWIN, MO 63021
E-mail: ROSS @ POYNTERLANDSCAPE.COM
Phone: 314-753-4200 Fax: _____
Describe interest in property (i.e. owner, contractor, etc.): CONTRACTOR

Name of the legal owner of property:

ILANA ROSMAN AND LEONID SHMUYLOVICH

Is the property under ownership of trust or other legal corporation Yes No
If so, what is the name of trust/legal corporation: _____

Name of agent: _____
Title of agent: _____

Current mailing address of owner (include address, street, city, state, and zip code):

Address: 9 BLACKPOOL LANE
City: OLIVETTE State: MO Zip Code: 63132

PROPERTY DESCRIPTION

Mailing Address: 9 BLACKPOOL LANE OLIVETTE, MO 63132
Saint Louis County Locator Number: 17M310510
Subdivision Name: HEATHER HILL FIRST ADDITION
Lot Number/Block Number: 48

PROPERTY ZONING AND REQUIRED LOT DIMENSIONS AND REGULATIONS

Current land use zoning classification: SR SINGLE FAMILY RESIDENTIAL
Required Setbacks of zoning district:

Front Yard: 40' Side Yards: 23.47' Rear Yards: 32'

Lot Area: 23,084 S.F.

Maximum building height: 35 Feet

Maximum permitted site coverage: 5,000 S.F.

Maximum permitted residential floor area ratio: 6,000 S.F.

APPEAL REQUEST

Describe the nature of the appeal being sought and the construction that is being proposed:

THIS APPEAL IS FOR THE GRANTING OF A VARIANCE TO
ALLOW A NEW INGROUND POOL AND POOL DECK TO BE
CONSTRUCTED OVER THE DEFINED BUILDING SETBACKS
FOR THE SIDE AND REAR OF THE PROPERTY

SUBMISSION REQUIREMENTS

Is this appeal regarding a determination by the Building Official: Yes: X No: _____

If yes, provide on a separate sheet note the following:

1. specific Code section(s) being appealed,
2. the alleged error(s) regarding the interpretation of said section(s), and
3. the rationale in the interpretation in which the Code should be applied.

Is this appeal regarding an area variance: Yes: X No: _____

For area variance request regarding the building or enlargement of a structure when specific enforcement of the zoning ordinance would prohibit such construction, provide on a separate sheet supporting evidence that the property grounds contain:

- Unique condition(s) relating to the width, depth or shape of the lot, or
- Unique topography conditions, or
- Other exceptional circumstance not created by an owner or applicant, and
- Evidence the strict application of the Zoning Ordinance would deprive the owner of reasonable use of the property

Note what other alternatives were pursued, attach supporting evidence.

THE LIMITING CONDITION OF SETBACKS FOR THE PROPERTY
ARE RESTRICTIVE TO POINT THAT ANY POOL LAYOUT WOULD
REQUIRE A VARIANCE OR BE PROHIBITIVE CLOSE TO THE
HOUSE OR NEW DECK. (SITE PLAN ATTACHED WITH SUBMITTAL.)

In addition to the submission requirements, the attached Procedures and Checklist note necessary fees, ownership data, plans, and digital/electronic media necessary for review.

The Board may, in conformity with the provisions of the law, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the Building Official.

The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Building Official or to decide in favor of the applicant on any matter upon which it is required to pass under this Chapter or to effect any variance.

November 18, 2021

City of Olivette
Dept of Planning & Community Development
Olivette, MO 63132

RE: 9 Blackpool Lane
Board of Adjustments appeal for variance

Per Section 400.1640 of the City of Olivette Zoning Regulations, we are asking for the Board of Adjustments to consider the granting of a variance for area at 9 Blackpool Lane in the city of Olivette, Missouri.

At issue is the Zoning Compliance of Section 400.260 regarding the minimum side and rear yard building setback. This property is situated between St Alfred Rd and Stacy Dr on Blackpool Lane. The lot has a frontage of approximately 245 feet but only a rear property line of just over 30 feet. The resulting angled side property lines create an extremely limiting envelope of a useable back yard for the implementation of accessory structures (i.e. deck, kitchen, fireplace, pool, pool deck).

In order to achieve a reasonable / useable decking area around the pool and still maintain adequate circulation from the driveway and the planned deck off the back of the house, the logical design placement infringed on the setbacks at both the side and rear property lines.

The planned design for the pool layout will require a variance to allow for the side yard setback to be reduced to 12 feet from the property line – instead of the current 23.47 feet on the North side of the property and 22 feet off the rear property line – instead of the current 32 feet on the West side. The Southwest side yard also currently at 23.47 feet, will require an adjustment to 20 feet unless the 12-foot reduction on the North side becomes the new side yard setback for the property in general.

Thank You



Ross Richardson , ASLA, PLA

Landscape Architect

Poynter Landscape Architecture and Construction