



# *Town of Fort Myers Beach*

## COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

**TYPE OF CASE:** Variances (VAR) to build a pool in the front yard at 215 Nature View Court.

**CASE NUMBER:** VAR16-0003

**LPA HEARING DATE:** July 19, 2016

**LPA HEARING TIME:** 9:00 AM

**STAFF RECOMMENDATION:** **APPROVE with conditions**

### **I. APPLICATION SUMMARY**

Applicant/Agent: Wilfredo Rodriguez/Fran Chambers

Request: The applicant is seeking three variances (VAR) to develop a swimming pool in the front yard at 215 Nature View Court. The first is from LDC section 34-1174(b) which provides that no accessory use, building or structure shall be located closer to a street right-of-way line or street easement than the principal building to allow the development of a pool, as depicted on the site plan, in the front yard. The second is from LDC section 34-1744 which states that any fence or wall located in a front yard shall not exceed 42 inches in height to allow a 48 inch high fence in the front yard. The third requested variance is from LDC section 34-3131 which requires that on corner lots no obstruction will be planted or erected within the visibility triangle to allow the improvements as depicted on the proposed site plan.

Subject property: See attached Exhibit A

Physical Address: 215 Nature View Court

STRAP #: 19-46-24-W3-01700.0170

FLU: Mixed Residential

Zoning: RC (Residential Conservation)

Current use(s): Two Family dwelling unit

Adjacent zoning and land uses:

- North: RC (Residential Conservation) (single family residence, then Matanzas Pass Preserve), Mixed Residential FLUM then Recreation FLUM
- South: Nature View Ct, then RC (Residential Conservation), Mixed Residential FLUM (single family and two family residences located along Nature View Court)
- East: RC (Residential Conservation)(single family and two family residences located along Nature View Court) Mixed Residential FLUM
- West: Bay Road, then IN (Institutional - Fort Myers Beach Elementary School), Recreation FLUM

**II. BACKGROUND AND ANALYSIS**

Background:

Wilfredo Rodriguez has applied for 3 variances to achieve a swimming pool in the front yard of 215 Nature View Court. The subject property contains a two family dwelling unit. The applicant provides the following concerning why variances are needed:

*Due to the irregular shape of my lot, I am unable to build a pool in my backyard or side yard. The only viable option is to build one in the front yard...This will allow me the typical residential accessory; a pool for personal use.*

The subject site is approximately a quarter acre lot (0.25 acres) of uplands with a width of 120 feet and 135 feet of depth. The lot has a trapezoidal shape. The site is located in the RC zoning district in the Mixed Residential future land use category across Bay Road from the Fort Myers Beach Elementary School.

The subject site is lot 17 in Borton's Subdivision (Plat Book 30, Pages 102 & 103) (See Exhibit A). The applicant has created a site plan (see Exhibit B) that depicts the location of the proposed pool, pool equipment, fence, and landscaping.

Analysis:

The applicant has requested 3 variances to build a pool in the front yard. This request is a result of a provision of the LDC that regulates the placement of accessory uses, buildings and structures. Land Development Code (LDC) Section 34-1174(b) provides that no accessory use, building, or structure may be located closer to a street right of way line or street easement than the principal building except for specific exceptions that do not include a swimming pool. The application includes the following:

*Variance is requested from 34-1174(b) in order to build a pool in my front yard.*

*Variance is requested from 34-1744(b)(1) in order to build a 48 in high fence around the pool.*

*Variance is requested from 34-3131 Vehicle Visibility at Intersection.*

The specific variances sought are discussed below in more detail.

#### Requested Variances:

The first requested variance is from Land Development Code section 34-1174(b) which prohibits accessory uses, buildings, or structures from being located closer to the street right of way line or street easement than the principal building to allow the proposed pool in the front yard.

The second requested variance is from section 34-1744 which states that any fence or wall located in a front yard shall not exceed 42 inches in height to permit a 48 inch high fence around the pool.

The third requested variance is from section 34-3131 which provides that no obstruction shall be planted or erected which materially obstructs traffic visibility within the visibility triangle to permit the improvements as depicted on the site plan.

#### Hardship

Explaining the hardship (what is unique about the property) that justifies relief from the regulations, the applicant provides the following discussion:

*My house has a very large lot for being on Fort Myers Beach, but it's a very irregular pie shape lot. The house sits at the rear of the lot. There is NO backyard and very little sideyard. The only viable space to build the pool is in the front yard which is huge. Without this variance, my wife, kids, friends, and guests will not have a pool to enjoy.*

Staff concurs that a pool will not fit in either side yards or the back yard. There also is an existing elevated deck in the backyard. The Florida Building Code requires that the swimming pool include a barrier (fence) that is at least 48 inches above grade. The LDC has a provision, contained in 34-1744(b)(1), that limits fence heights to 42 inches. This section is reproduced below:

*(1) Front yards. Any fence of wall located in a front yard (between a street right-of-way or easement and the minimum required street setback or build-to line) shall not exceed 42 inches in height, except as provided in subsection 34-1744(b)(4) below. This division does not excuse any fence wall from compliance with any lesser height required to meet vehicle visibility requirements (see § 34-3131) at traffic access points.*

If the variance is approved that permits the pool being located closer to the street right of way line or street easement than the principal building, the Florida Building Code requires that the pool be enclosed by a fence with a minimum height of 48 inches. This would

require a variance from LDC section 34-1744(b)(1) that limits fence heights to 42 inches in front yards.

The applicant is also requesting a variance from section 34-3131 which provides that no obstruction shall be planted or erected which materially obstructs traffic visibility within the visibility triangle to permit the improvements as depicted on the site plan. This section of the code limits improvements in the vehicle visibility triangle for a corner lot. The code places a triangle at the corner of Nature View Court and Bay Road. The triangle has a width of 10 feet at the intersection. The base of the triangle is then measured out to 150 feet. The other side of the triangle is then measured from the 150 foot point back to the far point created by the 10 foot width at the intersection. The code provides that “no structures (except along Old San Carlos Boulevard) or plantings shall be permitted between two feet and six feet above the average grade of each street within this triangular space.” The applicant is seeking a variance to permit the improvements contained on the site plan. These improvements include proposed landscaping, the fence, and portions of the pool and spa.

The site plan includes a 6 foot setback to the property line. The applicant points out that his “property starts 30 ft back from edge of pavement. Therefore there is no loss of visibility.” Staff concurs that the proposed site plan will not result in loss of visibility due to the actual location of pavement of both streets. Staff notes that traffic utilizing this intersection is minimal, traffic for the preserve and the schools bus drop-off ramp for the elementary school as well as the homes along Nature View Court.

Town staff provided the application to staff of The School District of Lee County for their review as an affected neighbor. In addition, Town staff discussed the application with District staff on one occasion. District staff provided a review letter dated June 30, 2016 (see Exhibit C). District staff provided that the subject site is located in the South Choice Zone, S4 and that the project should have no impact on classroom needs based on the request “is for a variance to place a pool in the front of a dwelling.” The District had no other comments.

Project Comprehensive Plan Consistency:

The subject site is classified by the Town’s comprehensive plan as “Mixed Residential.” The category descriptor policy is reproduced below:

***Policy 4-B-4 “MIXED RESIDENTIAL”:*** *designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map’s “platted overlay” indicates a maximum density of 10 units per acre for legally existing dwelling units). Commercial activities are limited to lower-impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and*

*the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%.*

The subject lot is located in Borton's subdivision in a neighborhood that contains single family and two family dwelling units. The lot is part of the residential use portion of this future land use category.

The requested variances will achieve a typical residential accessory use, a swimming pool. The applicant has proposed to provide landscaping around the pool to help assure compatibility with the residential units located across the street. The proposed use is not a commercial use that is intruding into a residential neighborhood, but rather a typical residential accessory use and is thereby consistent with Policy 4-A-3 and Policy 4-C-3.

Staff finds that the request is consistent with the Town's comprehensive plan.

**Findings and Conclusions for Variances:**

Using the five decision making factors described in LDC Section 34-87(3), Staff recommends the following findings and conclusions:

- a. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy;*

The applicant has provided the following discussion:

*The exceptional or extraordinary condition that applies to this property is that due to the irregular pie shape lot and the positioning of my house, the property does not have a backyard or sideyard to build a pool. The only place where a pool can be built is the front yard. Granting this variance will have NO impact on public safety.*

Staff generally concurs with the applicants reasoning. The site is a relatively small irregular shaped property located at the intersection of Nature View Court and Bay Road. The proposed site plan and proposed landscaping adequately buffer the proposed pool. The actual pavement of both of these roadway facilities are setback 30 and 25 feet respectively from the subject lot. Given these setbacks off site, there will be plenty of visibility at the intersection.

- b. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*

The applicant has provided a narrative that addresses this finding:

*The exceptional or extraordinary condition justifying the variance are NOT the result of the applicant taken after the adoption of the regulation in question.*

Staff agrees that the circumstances of the lot and the requirements of the code and comprehensive plan are not the result of actions of the applicant after the adoption of the regulations. The Lee County Property Appraiser data indicates that the two family structure was built in 1980, long before the Town's Land Development Code was created.

- c. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

The applicant has provided a narrative that addresses this finding:

*Granting of this variance will relieve me of the unreasonable burden caused by the application of the regulation in question and will allow me the typical residential accessory, a pool for personal use.*

The variances are the minimum variances needed that will relieve the application of an unreasonable burden caused by the application of the specific regulations. The front yard is the only area of the lot that can accommodate a swimming pool.

- d. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

The applicant has provided a narrative that addresses this finding:

*Granting of this variance would NOT be in any way injurious to the neighborhood or otherwise detrimental to the public welfare. On the contrary, it will add visible beauty to the neighborhood. The pool would be fenced to the proper pool safety regulations required by the city, county, and state(sic) It will also have lush (Florida Native) landscaping approved by the city as a buffer around the fence. The pool area will have a resort-style look/feel to it.*

Staff agrees that the proposed swimming pool, as conditioned, will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- e. That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

The applicant has provided a narrative that addresses this finding:

*The conditions or circumstances associated with this specific property for which the variance is sought are NOT of so general in nature as to make it more reasonable to amend the regulation in question.*

The applicant has pointed out, however, that pools have been developed in front yards at specific locations on Fort Myers Beach in the past. The revised application includes a list of 8 examples.

Staff agrees that the conditions and circumstances of the variance request sought are not general or recurrent in nature and do not make it more reasonable nor practical to amend the regulation in question.

### **III. RECOMMENDATION**

Staff recommends **APPROVAL** of the requested variances subject to conditions to develop a swimming pool in the front yard of 215 Nature View Court, including the required findings and conclusions for granting a variance under LDC Section 34-87. Staff recommends that approval of the special exception be subject to the following conditions:

#### **CONDITIONS OF APPROVAL:**

1. *The pool will be developed generally consistent with the site plan submitted as part of the variance request (VAR16-0003). Approval of these variances does not exempt the subject property from any other provisions of the LDC.*
2. *The property must apply for, be reviewed, and approved for a pool permit prior to any development in the front yard. The pool permit must address stormwater retention/detention, location of pool equipment, and landscaping.*
3. *The proposed fence must be setback a minimum of 6 feet from the Bay Road and Nature View Court rights of way.*
4. *A landscape buffer area will be established on the outside of the proposed fence. This buffer will include Florida Native species. Native shrubs will be installed on one foot centers in front of the proposed pool.*
5. *No cage may be erected over the pool.*

### **IV. CONCLUSION**

Approval of the requested variances are consistent with the Comprehensive Plan. Approval of the requested variances will relieve the burden caused by application of LDC sections discussed above to the subject property. Approval of the request will allow the development of a swimming pool in the front yard of the subject property. Staff recommends **APPROVAL** of the requested variances as conditioned.

#### **Exhibits:**

- A - Legal Description
- B - Site Plan
- C - School District Review Letter