

To	Board of Adjustment
Hearing Date	May 13, 2021
Case Number	JBOA 21-438
Request(s)	Variances 1. To allow for a pool in the side yard 2. Relief from the minimum setback of ten feet from any side or rear lot lines
Location	736 W 110 th Place S
Applicant	Sean Rohrbacker

Staff Report

Preparer | Marcaé Hilton

Attachments

- CASE MAP
- SWIMMING POOL DOCUMENTS

Preparer

INCOG
Applicant

Background Information

STAFF COMMENTARY | This lot is located within Haddington Heights. The applicant was in the process of building a pool when they were informed by the City of Jenks a swimming pool is not allowed in the side yard. Staff met internally and concluded this was an extraordinary and peculiar situation pertaining to the rear yard in regard to shape and topography. Staff advised the applicant to seek a variance due to the shape of the lot.

PLANNING DATA

Intended Use	Swimming Pool as an accessory use to a residence
Zoning	PUD 95A RS-2 Single-family Residential
Comprehensive Plan	Medium Intensity Single-family
General Location	North of 111 th St. and West of Elm
Plat	Lot 8 Block 1 Haddington Heights Plat No. 6717

SUPPLEMENTAL INFORMATION | [Sec. 240. - Yards.](#)**240.1. Compliance with Yard Requirements.**

Except as otherwise provided, required yards shall be open and unobstructed from the ground to the sky. Yards provided for a building for the purpose of complying with the provisions of this zoning code shall not be considered the yard for any other building, and yards provided for a lot shall not be considered the yard of any other lot.

240.2. Permitted Yard Obstructions.

Obstructions are permitted in required yards as follows:

g. *Swimming pools, tennis court, patios, storm and other protective shelters shall be located in the rear yard and shall have a minimum setback of ten feet from any side or rear lot lines.* However, the Board of Adjustment may, upon application and after public hearing, permit the aforementioned accessory uses in the front yard of properties zoned RE (Residential Estates) and AG (Agriculture), provided: (1) the minimum front yard requirement is adhered to, and (2) a minimum setback of ten feet from any side lot line is met.

[Sec. 420. - Accessory uses permitted in residential districts.](#)**420.1. Accessory Uses Permitted.**

Accessory uses customarily incident to a principal use permitted in a residential district are permitted in such district. In addition, the following uses set forth in Table 2 are permitted as accessory uses.

Table 2. Accessory Uses Permitted in Residential Districts

	Uses	Districts
1.	Home Occupation - Intensive	(See Section 440) All R Districts ¹
2.	Home Occupation - Minor (See Section 420.2a.5)	All R Districts
3.	Amateur Radio Tower	All R Districts *
4.	Roomers and Boarders:	
5.	Shelters	All R Districts
6.	Signs:	All R Districts
7.	Swimming Pool	All R Districts
8.	Management Office and Private	
9.	Bed and Breakfast Inns - Limited*	
10.	Small Domestic Animals	All R Districts
¹ By special exception requiring Board of Adjustment approval.		

Sec. 16-5-3. - Powers of Zoning Board of Adjustment.

(A) The zoning board of adjustment shall have the following powers:

(1) Administrative review.

(2) Variances. To authorize upon appeal in specific cases such variances from the terms of this article as will not be contrary to the public interest where,

- ✓ owing to special conditions,
- ✓ a literal enforcement of the provisions of this article will, in any individual case, result in unnecessary hardship, so that the spirit of this article shall be observed,
- ✓ public safety and welfare secured,
- ✓ and substantial justice done.

Such variances may be granted in such individual case of unnecessary hardship upon a finding by the board of adjustment that:

(a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography;

This lot has extraordinary and exceptional conditions pertaining to the rear yard in regards to shape.

Shape | The lot is located at the end of a cul-de-sac/corner. Due to the unique shape of this lot and the design of the home, this large side yard area is used in the way a traditional rear yard would be used. The Utility Easement in the rear yard is 22.5 feet which is larger than a standard UE and has significantly reduced the amount of area allowable for a pool and decking.

- *Pie shaped lot*
- *House takes up full lot on south and east (up to the 22.5 ft easement)*
- *Pool is located 36.6 feet from rear property line*
 - *Pool is 8 feet from west property line at NW corner*
 - *Hot tub is 10 feet from west property line at SW corner*
 - *22.5 foot UE on south side of lot*
 - *Water Main in UE*
 - *Sewer Main in UE*
 - *Pool does not encroach the side yard 5 foot build line (BL)*
 - *Laydown work (concrete) does encroach the BL.*

Topography | NO specific issues

(b) The application of this article to this particular piece of property would create an unnecessary hardship; Designing and building a pool in the rear yard as defined by the Jenks Zoning Code would create an unnecessary hardship due to the easement and public utilities within the easement.

(c) Such conditions are peculiar to the particular piece of property involved; and

Yes, the conditions are peculiar to the particular property involved and not reflective of the entire neighborhood.

(d) Relief, if granted, would not cause substantial detriment to the public good, or impair the purposes and intent of the ordinance or the comprehensive plan.

Relief would not cause substantial detriment to the public good.

- The homeowner has a screening fence 6 feet tall that encloses the side yard in a way that promotes its continuity with the defined rear yard and provides visual separation from neighboring properties.*

Provided that the board in granting a variance shall prescribe appropriate conditions and safeguards, and shall require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions attached.

Staff Evaluation & Recommendation

Evaluation | Please see BOA action below

Sec. 1370. - Variances.

1370.1. General.

The Board of Adjustment, upon application, and after notice (when notice is required) and public hearing, and subject to the procedural and substantive standards hereinafter set forth, may grant such variance from the terms of this zoning code as will not cause substantial detriment to the public good or impair the spirit, purposes and intent of this zoning code, or the Comprehensive Plan, whereby reason of exceptional narrowness, shallowness, shape, topography, or other extraordinary or exceptional situation, condition, or circumstances peculiar to a particular property, the literal enforcement of the code will result in unnecessary hardship. The Board shall not vary any jurisdictional requirement, such as notice.

1370.2. Application.

A request for a variance shall be initiated by the filing of an application with the City Clerk and shall be set for public hearing by the Secretary in accordance with the rules established by the Board.

1370.3. Board of Adjustment Action.

The Board shall hold the public hearing and, upon the concurring vote of three members, may grant a variance after finding:

- a. That by the reasons of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure, or building involved, the literal enforcement of the terms of the code would result in unnecessary hardship.
- b. That such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district.
- c. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit and intent of the code, or the comprehensive plan.

Provided that the Board in granting a variance shall prescribe appropriate conditions and safeguards, and may require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions attached.

1370.4. Time Limitation on Variances.

A variance which has not been utilized within one year from the date of the order granting the variance shall thereafter be void. For the purpose of this provision, utilization shall mean actual use or the issuance of a building permit, when applicable, provided construction is diligently carried to completion.

Staff Comments | Staff has no conditions for approval

Recommendation | Grant the Variance to allow for a pool in the side yard and within 8 feet of the side yard.



Figure 1: Zoning Map with Aerial View

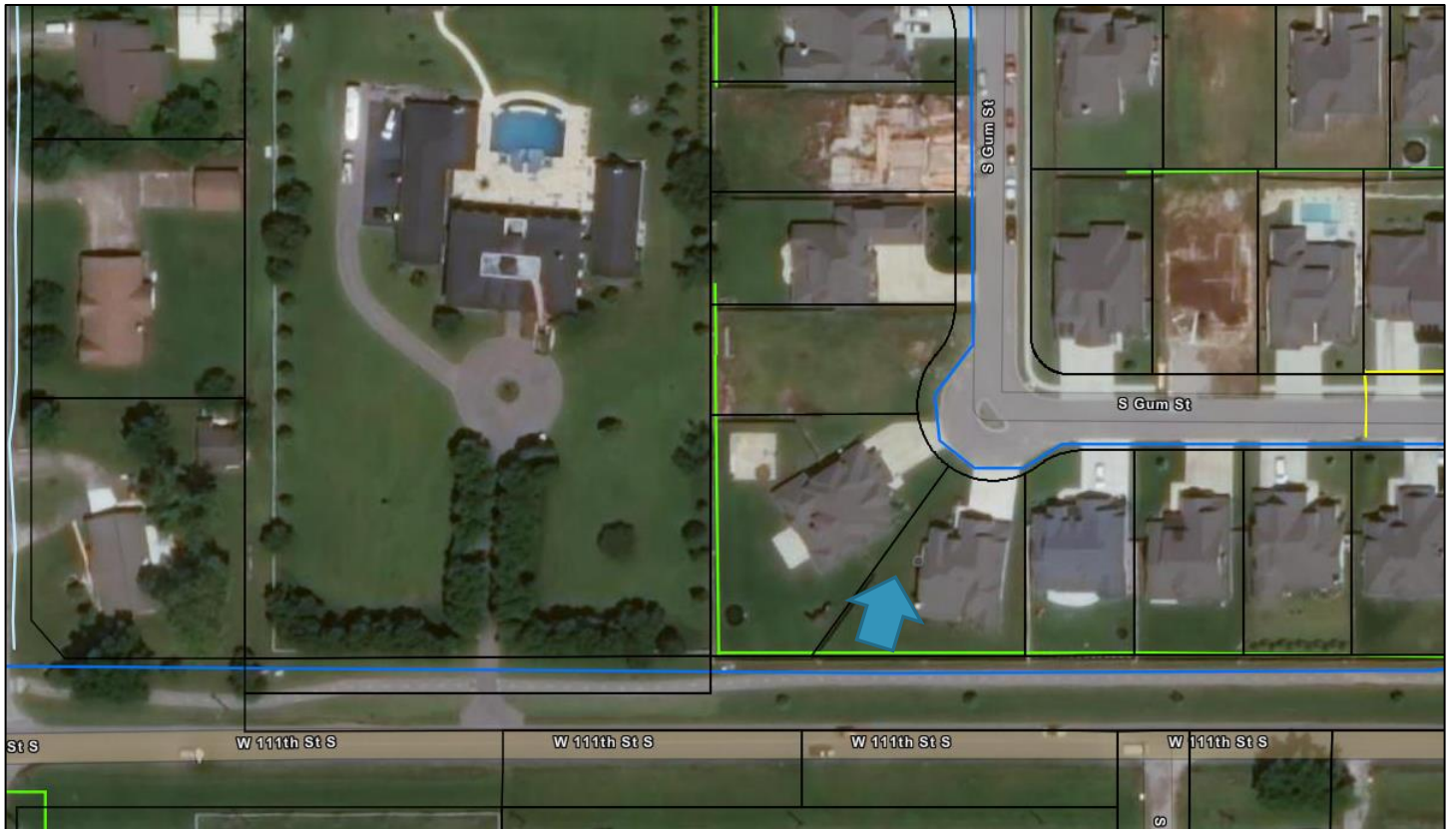


Figure 2: google earth view

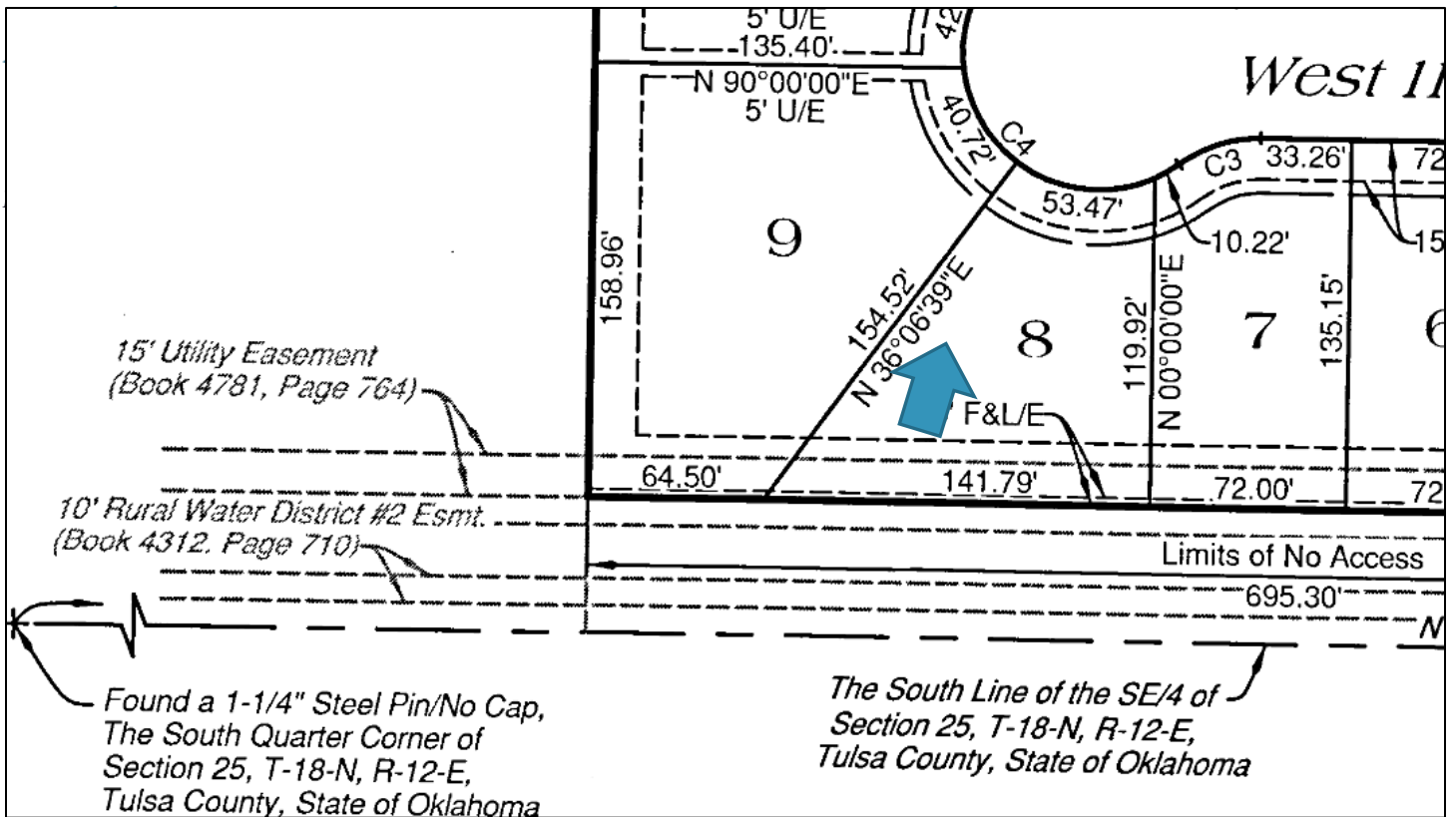




Figure 4: Google Earth view of back yard and shared screening



Figure 5: Google Earth from internal Street 110th