



## CITY OF TONTITOWN PLANNING OFFICE

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Meeting: **May 12, 2020**  
Project: **Gilmore Variance**  
Planner: Renee Biby

### AGENDA ITEM

#### A

#### VARIANCE REQUEST

753 Malbec Road  
Parcel #: 830-38981-000

**SUMMARY:** Request for a 5' rear setback variance for a swimming pool.

**CURRENT ZONING:** R-3-Residential, minimum 9600 sq.ft. lot size

**PROPOSED USE:** Single-family residential

**CITY WARD:** 1-Arthur Penzo and Larry Ardemagni

**INFRASTRUCTURE SERVICE AREAS (not a guarantee of service availability):**

**Water:** Tontitown

**Sewer:** Tontitown

**Road Access:** Malbec Road

**Electric:** Ozarks Electric

**Cable:** Cox Communications

**Phone:** ATT

**Natural Gas:** Black Hills Energy

**School District:** Springdale

#### PROJECT SYNOPSIS:

The Gilmore Variance Request is to allow a 5' setback variance for a swimming pool in the rear yard. The residence is approximately 3,095 square feet, and the proposed swimming pool is 16x35. The house is Lot 20 of Napa Phase II, and the home owner has received approval from the POA if the City approves the Variance. Swimming pools are allowed in R-3 zoning.

The Lot Size is 80'x141.27 with the rear setback being 25', there is an existing 20' utility easement in the rear as well. The applicant wishes to add a swimming pool to the rear of the home that will encroach the setback to the utility easement. However, will not intrude upon that easement.

#### 153.262 POWERS AND DUTIES. (as relating to variance requests)

(B) To authorize upon appeal, in specific cases, such variance from the terms of this zoning chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations would result in unnecessary hardship that would deprive the owner of any reasonable use of the land or building involved. A variance from the terms of these zoning regulations, shall not be granted by the Board of Zoning Adjustment unless and until:

(1) **The applicant demonstrates 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 district; that literal interpretation of the provisions of these regulations would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of these regulations; that special conditions and circumstances do not result from the actions of the applicant; and that granting the variance requested will not confer on the applicant any special privilege that is denied by the zoning regulations to other lands, structures, or buildings in the same district.

*STAFF ANALYSIS: The situation of the house upon this lot limits the homeowner's ability to add a swimming pool amenity without a small variance in setback requirements. The adjacent property owners have consented that the allowance of a Variance for this particular use would not confer special privilege to one home owner over another.*

**(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.**

*STAFF ANALYSIS: The existing use is residential.*

**(3) The Board of Zoning Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of land, building, or structure.**

*STAFF ANALYSIS: The variance that staff is recommending is to allow a 5' setback decrease, which seems minimal. No other structures shall be permitted within the setback variance allowed for the swimming pool. If the pool is ever destroyed or removed, all future structures must adhere to the setbacks. As the recreational use of a pool is minor, staff does not feel the impact will be any more significant than that of non-permanent recreational items that could exist today.*

**(4) The Board of Zoning Adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of these zoning regulations, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.**

*STAFF ANALYSIS: A small decrease in setback for an inground pool with no buildings will not be detrimental to public welfare.*

**(5) In granting any variance, the Board of Zoning Adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of these regulations.**

*STAFF ANALYSIS: As stated above, the variance that staff is recommending is to allow an inground swimming pool within 5' of the required 25' rear setback. If the pool is ever destroyed or removed, all future structures must adhere to the 25' setback requirement.*

**(6) Under no circumstances shall the Board of Zoning Adjustment grant a variance to allow a use not permissible under the terms of these zoning regulations in the district involved, or any use expressly, or by implication, prohibited by the terms of these regulations in said district.**

*STAFF ANALYSIS: Swimming pools are allowed by right in R-3.*

**TECHNICAL INFORMATION:**

**Utilities:**

**Water:** Tontitown Water – The Napa Phase II subdivision is on Tontitown Water

**Electric:** Ozarks Electric: OECC submitted some very minor comments. Easements must be shown on existing lines, and any relocation or damage to existing lines will be the developer’s responsibility.

**Sewer:** This residence is on Tontitown Sewer.

**Cable:** Cox Communications-No concerns were submitted for the requested variance.

**Phone:** AT&T-No concerns were submitted for the requested variance.

**Natural Gas:** Black Hills Energy-No concerns were submitted for the requested variance.

**Streets:**

This property accesses Malbec Road. No additional drives are being proposed.

**Fire:**

No concerns were submitted for the requested variance.

**Police:**

The Police Chief has no concerns for the requested variance.

*STAFF ANALYSIS:* The impact of this variance request will be minimal to the surrounding area, existing utilities, and streets and fire.

**NEIGHBOR COMMENTS:** All neighboring properties within 200 feet of the property boundary were notified by certified mail of this project. Staff has received one “in favor” comment.

**STAFF RECOMMENDATION:** Staff finds the requested variance is minor and will not be a detriment to the health, safety, or welfare of the City or the adjoining property owners.

Therefore, staff recommends approval of the Gilmore Variance Request to allow for a pool to encroach into the rear setback by no more than 5’.

**CONDITIONS RECOMMENDED FOR APPROVAL:**

1. If the encroaching structure is ever destroyed, removed, or relocated, all future structures must adhere to the setbacks and size restrictions of the zoning at the time.

## Narrative

Garrett & Hannah Gilmore

753 Malbec Rd.

Tontitown, AR 72762

Given the current circumstances a pool would not be accessible due to the setback restrictions. Assuming the additional 5ft is granted a pool would be available to be built. Installing a pool would dramatically increase the length of years we live within the Tontitown Area. Therefore, enabling us to become long-term citizens becoming more involved within the community and providing a longer stream of tax revenue for the city. This pool would not be a nuisance to our neighbors nor would it be a detriment to the health, safety or welfare of others. No special privilege would be bestowed upon our family for installing this pool – as another household has installed a pool last year. Given their circumstances I know they also had to apply for a variance as well. With others receiving permission I would feel as if we wouldn't receive any additional special privilege.

# Plot Plan

Scale: 1' = 20'







