



## CITY OF TONTITOWN PLANNING OFFICE

201 E. Henri de Tonti Blvd.  
479-361-2700  
planning@tontitownar.gov

Meeting: **June 23, 2020**  
Project: **Goerke Variance**  
Planner: Renee Biby

### AGENDA ITEM

#### A

### VARIANCE REQUEST

702 Malbec Road  
Parcel #: 830-38967-000

**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 Goerke Variance Request is to allow a 5' setback variance for a swimming pool in the rear yard. The residence is approximately 2599 square feet, and the proposed swimming pool is 17x32. The house is Lot 6, Liberty Estates Subdivision 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' 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, additionally, a sign was placed on the property.

**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 Goerke 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.



# Variance

## Application & Checklist Tontitown Planning Commission

Public Hearing Required

Office Use Only:

Permit #: \_\_\_\_\_ Fee: \$ 125.00 P# 4976

Approved by: \_\_\_\_\_

Approved Date: \_\_\_\_\_

Please fill out this form completely, supplying all necessary information and documentation to support your request. Your application will not be placed on the Board of Adjustment agenda until the application is completed and required information is provided.

<b>Property Information</b>	Address <u>702 Malbec Rd</u>	<b>Project Description</b>	What Code Section are you requesting a variance from? <u>Set back</u>
	Parcel No. _____		Building Size (square feet):
	Zoning: _____		Existing _____ Proposed _____
	Lot-Block _____		Date existing structure was built _____
	Acreage _____		

<b>Owner</b>	Name <u>Erin + Byron Goerke</u>	Phone <u>585-727-7074</u>	<input checked="" type="checkbox"/> Select if this is the primary contact
	Address <u>702 Malbec Rd</u>	Fax _____	
	City, State, Zip <u>Springdale, AR 72762</u>	E-mail <u>egoerke3@gmail.com</u>	

<b>Representative</b>	Name <u>Erin Goerke</u>	Phone <u>585-727-7074</u>	<input type="checkbox"/> Select if this is the primary contact
	Address <u>702 Malbec Rd</u>	Fax _____	
	City, State, Zip <u>Springdale AR 72762</u>	E-mail <u>egoerke3@gmail.com</u>	

**Property Owner/ Authorized Agent:** I certify that the foregoing statements and answers herein made all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval. I understand that the City might not approve what I am applying for, or might set conditions on approval.

Signature Erin Goerke

Date 5/8/2020

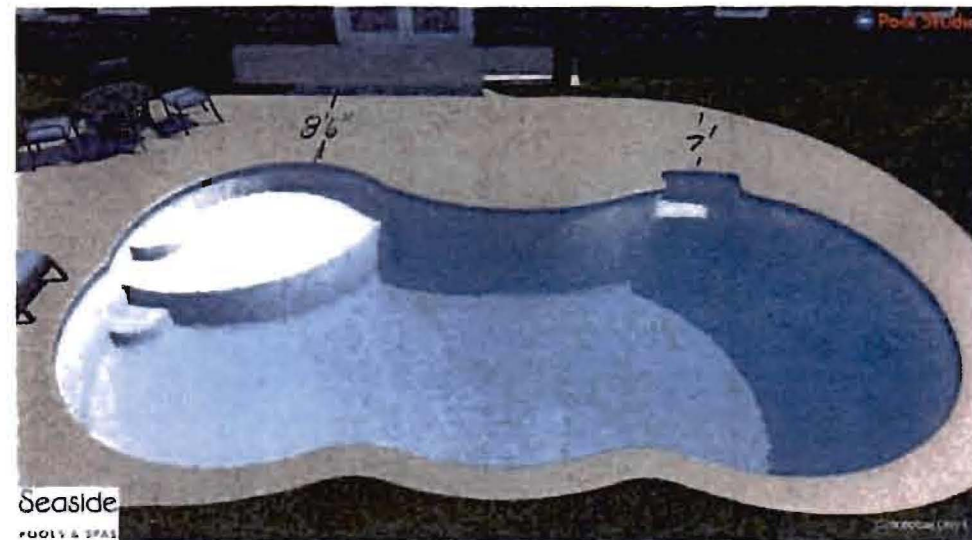
**Property Owner/ Authorized Agent:** I certify that I am the owner of the property this is the subject of this application and that I have read this application and consent to its filing. (If signed by the authorized agent, a letter from the property owner must be provided indicating that the agent is authorized to act on his/her behalf.)

Signature Erin Goerke

Date 5/8/2020

<b>Staff Use Only</b>	Date Application Submitted
	Date Accepted as Complete Accepted By





17' x 32' CUSTOM SHAPE

Conceptual Only



X \_\_\_\_\_  
Y \_\_\_\_\_

Erin & Byron Goerke  
702 Malbec Rd  
Springdale, AR  
17' x 32' Custom

5-2-2020



## NOTICE OF VARIANCE REQUEST-Goerke Variance Request

**Byron & Erin Goerke** have requested The Tontitown Board of Zoning Adjustments set a public hearing date to consider a variance request for the following property 702 Malbec Road

Section (s) to be varied:

**Chapter 153 Rear Setback Reduction** -applicant is requesting to add a pool in the existing backyard, the pool will require a reduction in setback from 25' to 20'.

The common description of the property is: 702 Malbec Road, Springdale, AR 72762

The legal description of the property is as follows: Lot 6 Liberty Estates Phase II, City of Tontitown, Arkansas

Proposed land use: Residential

Summary:

The Goerke Variance Request is to allow the addition of an inground swimming pool by reducing the setback in the rear from 25' to 20'.

The public hearing will be held:

**Tuesday, June 23, 2020 at 6:00 p.m.**

It will be held at 235 E. Henri de Tonti-New Tontitown City Hall, Council Chambers and potentially by Zoom and YouTube if necessitated by the COVID-19 pandemic.

This notification is in response to the requirement that all property owners within 200 feet of said property must be notified. If you wish to express any comments about the requested Variance, you may respond by the following methods:

1. Attend the public hearing and express your views via Online Platform, or in person, if the COVID-19 pandemic allows such.
2. Express your opinion in writing to The Board of Zoning Adjustment. You may mail this to: City of Tontitown Planning Department, P.O. Box 305, Tontitown, AR 72770. Email to [planning@tontitownar.gov](mailto:planning@tontitownar.gov)
3. Use the bottom of this form to express your opinion by checking the appropriate box. (This may also be delivered or mailed to the above address.)

For more information, you may call the Planning Department at (479) 361-2700.



VARIANCE REQUEST RESPONSE-Goerke Variance Request

- ( ) I/we have no objections to the rezoning.  
( ) I/we object to the rezoning because:

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Signature

Signature

OPTIONAL: email/phone number

This form can be mailed to:  
City of Tontitown Planning Department,  
P.O. Box 305,  
Tontitown, AR 72770.

Or emailed to:  
[planning@tontitownar.gov](mailto:planning@tontitownar.gov)

May 8, 2020

Erin & Byron Goerke  
702 Malbec Road  
Springdale, AR 72762

To Whom it may concern:

We are looking to install an in-ground pool in our back yard. During this process we found out that there is a 25 foot set back from our fence. This set back would put our pool extremely close to the house, which is concerning to us.

We are requesting a variance of 5 feet in order to locate the pool further away from the house and still allow ourselves to have some yard.

Thank you

*Erin and Byron Goerke*

Erin and Byron Goerke