

**November 7, 2017 Board of Adjustment
Staff Recommendation**

PETITIONER: Carlos Gerhardt (Property Owner)

LOCATION: 7441 SW 1st Street

ZONING: Multiple Dwelling R-3 District

INTRODUCTION

The subject property of this variance request is a single family home located on the north side of SW 1st Street, west of Rock Island Road. The property is 265 feet deep and connects with the C14 Canal Greenway at the rear. An FPL easement extends 180 feet into the property from the rear lot line and contains major overhead power lines. The easement also contains underground fiber-optic cables, which are located near the existing patio and easement boundary. The existing house structure is setback from the easement boundary by approximately 12 feet at its closest point, per the survey provided. The petitioner claims this setback is unusually small compared to neighboring properties, and prevents the construction of a pool which does not encroach into the easement. The petitioner has provided a conceptual site plan that locates the pool within the FPL easement beyond the underground cables. The petitioner has provided a signed easement agreement from FPL dated October 18th, 2017, signed by Shannon Harris.

HEARING NO.: BA-16-2017

SECTION OF CODE: Section 3.14(3)

Code prohibits the placement of a pool or pool enclosure within any utility easement. The petitioner is requesting permission to install an underground swimming pool and deck within an FPL utility easement.

The Zoning Code prohibits the installation of swimming pools within utility easements to provide unencumbered access to service or improve equipment owned by the utility. This prohibition serves as a protection for both the property owner and those served by the utility. Although FPL has signed an easement agreement with the petitioner, said easement agreement reserves the right of the utility (FPL) to demolish or remove the swimming pool, and holds the land owners responsible for such costs/damages. The petitioner has been made aware of this potential loss, and the petitioner is on record at multiple City Commission meetings accepting the risk.

Temporary structures, such as fences, pavement or sheds, may be placed within a utility easement if a signed easement agreement has been provided by all of the applicable utility companies. A pool is not temporary in nature, and Section 3.14(3) establishes the need for a variance over an easement agreement. Staff has found no history of pool easement variances within the area, and few instances of pool easement variances citywide. Most of the pool related variances were granted prior to 1990, and the conditions were typically for small-scale encroachments, such as 5 feet or less.

Staff finds that the FPL easement severely limits the useable space within the backyard for uses afforded to other single family properties within the city. The presence of existing fiber-optic cables near the southern boundary edge of the easement prevents partial encroachment for a pool structure. The signed easement agreement represents an approval from FPL to install a pool located entirely within the easement. To prevent the City from being party to a potential suit by a future homeowner

for issuing a building permit inside an easement, staff recommends approval of this request subject to the petitioner/property owner executing an agreement indemnifying the City and recording the agreement in public records prior to the issuance of the building permit. Said agreement should also bind the heirs and successors of this property to the same terms.

Staff recommends approval of this variance request subject to the condition that the property owner execute an indemnification agreement with the City and record the agreement in the public records of Broward County prior to the issuance of the City's building permit.

RECOMMENDATION: APPROVE

APPROVE WITH
CONDITIONS

DENY


Acting Director of Economic Development

10/31/17
Date