

TO: Zoning Board of Appeals

FROM: Drew Rackow AICP, Planner

DATE: July 16, 2021

SUBJECT: PUBLIC HEARING: Variances for a Pool (Hot Tub)

1. A Pool located in an Interior Side Yard
2. Interior Side Setback of 8' Instead of the Required 10'

R1H- Single Family Residence District
600 Lathem Street – Tyler and Rebecca Berggren, applicants

Background and Information Provided by the Applicant: A public hearing is scheduled for the July 21st Zoning Board of Appeals/Plan Commission meeting to consider a variance to allow a hot tub on a property located at 600 Lathem Street. The Zoning Code classifies hot tubs as a swimming pool and regulates them under Site Regulations (Section 4.107.A) of the Zoning Code. There are two variances to be considered, first to allow a hot tub in the provided side yard rather than the rear yard and second to allow a hot tub to be located approximately 8 feet (7 feet for the pad) from the interior side property line, rather than the 10 feet required by the Zoning Code. The applicants and property owners Tyler and Rebecca Berggren are seeking to place the hot tub in their effective rear yard along with proposed patio and fence improvements. The property is zoned R1-H, Single Family Residential High-Density District. According to Batavia Township records, the residence was constructed in 1920.

In the application material, Mr. Berggren notes his wife's need for a hot tub for rehabilitation needs. The application materials note their property is a narrow interior corner side lot with limited area (the lot is approximately 6,854 square feet). The home is oriented with the front entry and the garage facing College Street, resulting in the area east of the house being used as the rear yard. For zoning compliance, the narrower street frontage establishes the front and corner setback areas that results in the east part of the property being the interior side setback area. Existing improvements preclude the hot tub being located in the rear setback (yard). The location of the hot tub would otherwise be located in the rear yard, which is defined as between the principal structure and the rear lot line and is superseded by the corner side yard. The proposed location provides the most privacy and easiest access from the residence.

The Building Code places additional requirements on the placement of hot tubs (pools). If a pool is located less than 5 feet from a window, the window glass must be tempered. Additionally, a hot tub must be located 5 feet from the electrical connection.

Staff Analysis: Staff recognizes that the existing site improvements and Zoning Code's establishment of particular setbacks limit areas to locate a hot tub. As a conforming R1-H corner lot, the narrow dimension limits locations a hot tub could be placed. Additionally, existing improvements such as the garage and driveway occupy much of this area, outside of the 10-foot pool setback. The proposed placement of the hot tub, while being in the interior side setback area, is viewed by the owners as being in their rear yard. One of the intentions of the Zoning Code requirement is to limit the visibility of a pool on a property, providing greater privacy and reducing potential neighborhood impacts of a pool, hence the Code's allowance for pools in the rear setback area. Placement of the hot tub in a conforming location would ultimately make it more visible to the neighborhood and it would be further from the

residence. A six-foot privacy fence is provided along the shared property line, and the applicants have provided a letter of acceptance of the adjoining neighbor. For these reasons, staff is supportive of a variance request to place the hot tub in the interior setback area.

Staff has worked with the applicant in reviewing potential alternative locations to avoid a setback variance request. However, the narrow dimensions of the side yard in conjunction with building code requirements limit the feasibility of alternate, conforming setback locations. The hot tub must be located at least 5 feet from the electrical shut-off and be within visual range of it. While the hot tub could be moved further to the north and closer to the house, it would result in the need to replace windows to add tempered glass and may limit access for repair and servicing of the hot tub, as it would need to be located within 2 feet of the residence to otherwise achieve the 10-foot setback required by the Zoning Code. While a pool is not a structure, the Building Code does typically require a 3-foot separation from a residence to other structures.

Staff believes there would be little, if any, negative impact to surrounding properties, particularly to the adjoining neighbor. Staff believes the provided 8-foot setback will provide nearly the same benefit as the required setback for the purposes of a hot tub. Two nearby properties also contain pools, which for the small lot sizes, are not otherwise unique in the neighborhood. Staff feels that the overall request is reasonable, and is the least amount of a variance necessary to accomplish the requested improvement.

Review of Findings

The ZBA is to consider the information submitted by the applicants and provided by staff, together with the information given at the public hearing. Staff has listed each finding below and a draft of a potential ZBA response to each. The ZBA shall consider these findings and its responses when making its recommendation to the City Council.

Finding A: There are unique circumstances applicable to the property, including its size, shape, topography, location or surroundings, strict application of the Zoning Code would create an unnecessary hardship or other practical difficulty, as distinguished from a mere inconvenience, and deprive the property owner of property rights enjoyed by other property owners in the same zoning district.

There is a practical difficulty in locating a hot tub on the property and meet all required setbacks. The structure is oriented opposite of the provided setbacks, reducing the overall area for a hot tub to be located. Existing improvements, such as the driveway and garage limit areas within the rear yard to locate a hot tub. The narrow location of the interior side yard, along with building code requirements for safety purposes further limits space to locate a hot tub. **Staff feels this Finding has been met.**

Finding B: Such unique circumstances were not created by the applicant.

The existing platting and arrangement of the structures on property was not created by the applicant. **Staff feels this Finding has been met.**

Finding C: The variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

Corner properties could seek variances if they as similarly situated properties that could not locate a pool in their rear yard. Neighboring properties in the R1H District have the same opportunity for their owners to request a variance. The requested variance is not a grant of a special privilege. **Staff feels this Finding has been met.**

Finding D: The variance will not alter the essential character of the locality.

Typical of most neighborhoods in Batavia, several properties near the subject property have pools in their rear yard. The proposed hot tub is not outside the essential character of other residential properties. **Staff feels this Finding has been met.**

Staff Recommendation: Staff recommends the ZBA open, conduct, and close the public hearing after those wishing to speak have spoken and the ZBA has enough information to discuss the Findings. After completing discussion on the required findings and considering all the information presented at the public hearing, the ZBA must reach a determination on each finding and adopt those findings. Staff notes that its opinion on each finding is based on the information available prior to the hearing; new information can be presented at the hearing.

Staff recommends the ZBA recommend City Council approval of a variance to Zoning Code Section 4.107.A.1.a to allow a pool (hot tub) on the property located at 600 Lathem Street located in the interior side yard rather than the rear yard and from 4.107.A.1.b to have an interior side setback of approximately 8 feet rather than the required ten (10) feet in general conformity with the attached site plan and other information submitted in support of the variance.

Attachment: Applicant's Variance Application Material

- c Mayor and City Council
Department Heads
Tyler and Rebecca Berggren, applicants