



AGENDA

The Columbia Board of Zoning Appeals will meet on Monday, March 14th, 2022 at 9:00 a.m. in the Council Chambers on the basement level of City Hall, 700 N. Garden Street to consider the following:

1. Roll Call
2. 22-0047 - Request For Variance - 659 Josef Circle
A request from Firm Foundation Custom Homes, LLC for a variance from [SECTION 8.4.9.B](#) of the City of Columbia Zoning Ordinance which prohibits swimming pools in the street yard setback. The applicant seeks a variance after the fact to permit placement of an inground swimming pool at [659 JOSEF CIRCLE](#).

Documents:

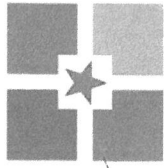
[22-0047_659 JOSEF CIR_APPLICATION.PDF](#)
[22-0047_659 JOSEF CIR_PLOT PLAN.PDF](#)
[22-0047_659 JOSEF CIR_FENCE AND UTILITY LOCATIONS.PDF](#)
[22-0047_JOSEEF CIRCLE VARIANCE_STAFF REPORT.PDF](#)
[22-0047_ATTACHMENT TO STAFF REPORT 1_GREYSTONE FINAL PLAT_MARKED.PDF](#)
[22-0047_ATTACHMENT TO STAFF REPORT 2_WARRANTY DEED 6_13_2017.PDF](#)

3. Adjorn
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Anyone requesting accommodations due to disabilities should contact the City's ADA Coordinator at 931-560-1570 prior to the meeting.

The [2022 meeting schedule](#) can be found on the City of Columbia Board of Zoning Appeals [webpage](#).

For other questions, please contact the [Department of Development Services](#) at 931-560-1560.



BOARD OF ZONING APPEALS: APPLICATION AND CHECKLIST

DEADLINE: 3RD MONDAY OF THE MONTH AT 4:00 PM

1. Applicants must complete this application, include required supporting materials, & pay the required fee (\$200.00-each request is considered separate & requires a separate fee) by the monthly submittal deadline. It shall be the responsibility of the applicant to become familiar with the regulations, policies, and procedures of the City of Columbia. Please contact the Columbia Development Services Department with any questions or to discuss any concerns during the BZA submittal & review process: Austin Brass, City Planner, abrass@columbiatn.com or (931) 560-1560.
2. Please provide the following information, depending on the request:

Ten (10) copies of each document and/or plan shall be submitted.

- a. Completed application.
 - b. **For a setback variance only:** The length of the boundaries of the lot measured to the nearest foot. Locations, square footages, and exterior dimensions, measured from outside wall to outside wall, of all existing and proposed buildings and structures. *A plot plan may satisfy this requirement.*
 - c. **For a sign variance only:** The measurements and total square footage of the permitted and requested signage. If a wall or gasoline pump sign, provide the linear footage of the front façade of the building for which the signage is proposed.
 - d. **For all variances requests:** Completion of the Requirements of Variance Sheet on this application or a Justification Letter addressing those seven (7) criteria.
 - e. **For a Conditional Use Permit only:** Complete of Description of requested Use or submit a separate Request Letter to the Board of Zoning Appeals. In either case, address each of the following:
 - i. Explain in detail the proposed use for the property, including long-term plans; and
 - ii. Explain how your proposal will be designed, located, and operated so that the public health, safety, and welfare will be protected; and
 - iii. Explain how your proposal will not adversely impact other properties in the area in which it is located (this includes addressing access and parking for the site, if applicable).
 - f. Submit applicable drawings, illustrations, and so forth, to accompany the request.
 - g. The appellant shall provide any additional information as determined by the Department of Development Services that will be necessary to fully complete a review by City Staff and/or by the Board of Zoning Appeals.
3. Submit the final request to the Department of Development Services according to the established Board Deadline and Meeting schedule. A representative must attend the BZA Meeting.

BOARD OF ZONING APPEALS APPLICATION					
COLUMBIA, TENNESSEE					
SUBDIVISION: Greystone			LOT: 30		
LOT ADDRESS: 659 Josef Circle					
ZONING: RS-10		LAND USE: Residential		LOT ACREAGE: 0.37 acres	
LOT SQUARE FOOTAGE: 16,295			BUILDING SQUARE FOOTAGE: 3225 sq feet		
ESTABLISHED/EXISTING SETBACKS: FRONT: 30 ft. SIDE: 10 ft. REAR: 30 ft.					
OTHER INFORMATION: per plat drive must enter from north off Josef					

TYPE OF REQUEST

COMPLETE APPLICABLE REQUEST FOR BOARD TO CONSIDER

APPEAL OF ADMINISTRATIVE DECISION					
Indicate the decision/interpretation under appeal, including the City Official with Title and Department, and the applicable section(s) of the <i>Zoning Ordinance</i> in question.					
APPEAL OF: Swimming Pools and Street yards					
ZONING ORDINANCE SECTION: Sections 8.4.9.A & 6.2.9					
CITY OFFICIAL WITH TITLE AND DEPARTMENT: Building & Planning Depts.					

APPEAL OF ADMINISTRATIVE DECISION

1. If requesting a **Setback Variance**, indicate below which yard the setback variance is located within and provide an exact measure of the distance of the new setback in feet.
2. If requesting a **Sign Variance**, indicate below which type of sign the variance is for and provide the permitted signage, in addition to the requested amount of signage.
3. If requesting a **Variance** of any other provision of the *Zoning Ordinance*, provide a detailed explanation below in "Other Variance Request."

SETBACK VARIANCE <i>Check applicable yard</i>	<input type="checkbox"/> FRONT YARD <input type="checkbox"/> SIDE YARD <input type="checkbox"/> REAR YARD	REQUESTED SETBACK (<i>ft</i>):
SIGN VARIANCE <i>Check applicable sign</i>	<input type="checkbox"/> FREESTANDING SIGN <input type="checkbox"/> WALL SIGN <input type="checkbox"/> GASOLINE PUMP SIGN <input type="checkbox"/> OTHER SIGN	PERMITTED SIGNAGE (<i>ft or ft²</i>):
		REQUESTED SIGNAGE (<i>ft or ft²</i>):
OTHER VARIANCE REQUEST	ZONING ORDINANCE SECTION: <p style="text-align: center;">8.4.9.A swimming pools</p> REASON FOR REQUEST: Due to configuration of lot: gas main line on the south yard, detention pond with berm on the east yard, home faces West, drive enters on north coupled with the restrained of the utility connections, There is only 1 suitable location for an in ground swimming pool.	

CONDITIONAL USE PERMIT

If requesting a **Conditional Use Permit**, indicate the requested use.

REQUESTED USE (*be detailed*):

DOES THE REQUESTED USE HAVE REQUIRED PARKING?

HOURS OF OPERATION:

*FOLD ALL SUBMITTALS LARGER THAN 8½"x11"

APPLICANT

NAME	Chad Whittenburg, Firm Foundation Custom Homes	PHONE	615-653-2086
ADDRESS	4915 Kedron Road, Columbia, TN 38401	EMAIL	build@ffcustomhomes.com

PROPERTY OWNER

NAME	Chad Whittenburg, Firm Foundation Custom Homes	PHONE	615-653-2086
ADDRESS	4915 Kedron Road, Columbia, TN	EMAIL	build@ffcustomhomes.com

In filling out this application, I attest that (1) I am familiar with the rules, regulations, and procedures of the City of Columbia & (2) all information contained herein is accurate & true to the best of my knowledge.

<p style="color: blue; font-family: cursive;">Firm Foundation Custom Homes Chad Whittenburg</p> <hr style="border: 0; border-top: 1px solid black;"/> <p>APPLICANT NAME</p>	<p style="color: blue; font-family: cursive;">Chad Whittenburg</p> <hr style="border: 0; border-top: 1px solid black;"/> <p>APPLICANT SIGNATURE</p>	<p style="color: blue; font-family: cursive;">2/25/22</p> <hr style="border: 0; border-top: 1px solid black;"/> <p>DATE</p>
<p style="color: blue; font-family: cursive;">Firm Foundation Custom Homes Chad Whittenburg</p> <hr style="border: 0; border-top: 1px solid black;"/> <p>PROPERTY OWNER NAME</p>	<p style="color: blue; font-family: cursive;">Chad Whittenburg</p> <hr style="border: 0; border-top: 1px solid black;"/> <p>PROPERTY OWNER SIGNATURE</p>	<p style="color: blue; font-family: cursive;">2/25/22</p> <hr style="border: 0; border-top: 1px solid black;"/> <p>DATE</p>

STAFF USE ONLY

DOCKET NO.		FEE PAID	
RECEIPT NO.		REQUESTED AGENDA	
DATE NOTICES SENT TO ADJACENT PROPERTY OWNERS			
DATE OF PUBLIC NOTICES IN DAILY HERALD			
BOARD ACTION			

REQUIREMENTS FOR A VARIANCE
Section 3.15.10 of the City of Columbia Zoning Ordinance

The Board of Zoning Appeals shall not grant a variance unless it makes a finding, based on the evidence presented, that all of the following seven criteria are sufficiency and fully satisfied.

*The BZA cannot, by law, consider financial or personal matters
in the justification of any of the seven criteria.*

Please demonstrate how your request satisfied each of the following:

(You may use this sheet or attach separate pages)

<p>1. That by reason of exceptional narrowness, shallowness, or shape of a particular piece of property at the time of enactment of this ordinance, or by reason of exceptional topographic conditions or other exceptional and extraordinary situation or condition of such piece of property, the strict application of any regulation contained within this ordinance would result in peculiar and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property.</p> <p>Due to restraints from utility easements, utility connections, required drive locations & setbacks this is the only suitable location for a swimming pool on the property.</p>
<p>2. That the variance is the minimum variance that will relieve such difficulties or hardship and thereby make possible the reasonable use of the land, building, or structure.</p> <p>Allowing the pool to reside on a "street yard" set back off street within the allowed setback will make possible for the owner to use said lot for intended uses and thereby relieve said hardship.</p>
<p>3. That the variance will not authorize activities in a zone district other than those permitted by this ordinance.</p> <p>This variance will NOT authorize any non permitted uses.</p>
<p>4. That financial returns alone shall not be considered as a basis for granting a variance.</p>

While the financial cost is significant it is NOT the reason for the request.

5. That the granting of the variance will not be detrimental to the public welfare, injurious to other property or improvements in the area in which the subject property is located, or a substantial impairment to the intent and purpose of the general provisions of this Zoning Ordinance.

We contend that this variance if allowed will better the property value and the value of those around the property. This variance is in no way is detrimental to public welfare.

6. That the proposed variance will not impair an adequate supply of light and air to the adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety.

This variance will NOT impair light or air to adjacent properties.
Nor will it congest any street, increase danger of fire, or endanger public safety.

7. That the alleged difficulty or hardship has not been knowingly and intentionally created by any person having an interest in the property after the effective date of this ordinance.

The hardship has NOT been intentionally created. However more due diligence could have been performed. This would have landed the request here regardless, just on an earlier date.





CITY OF COLUMBIA TENNESSEE
 BOARD OF ZONING APPEALS
 STAFF REPORT

CONTACT INFORMATION

Kevin C. McCarthy, AICP, Planning Associate II, kmccarthy@columbiatn.com 931-560-1531

DOCKET/CASE/APPLICATION NUMBER

21-0047

APPLICANT/ PROPERTY OWNER

Chad Whittenburg, Firm Foundation Homes LLC/ Firm Foundation Homes LLC

PUBLIC HEARING DATE

N/A

PROPERTY ADDRESS/LOCATION

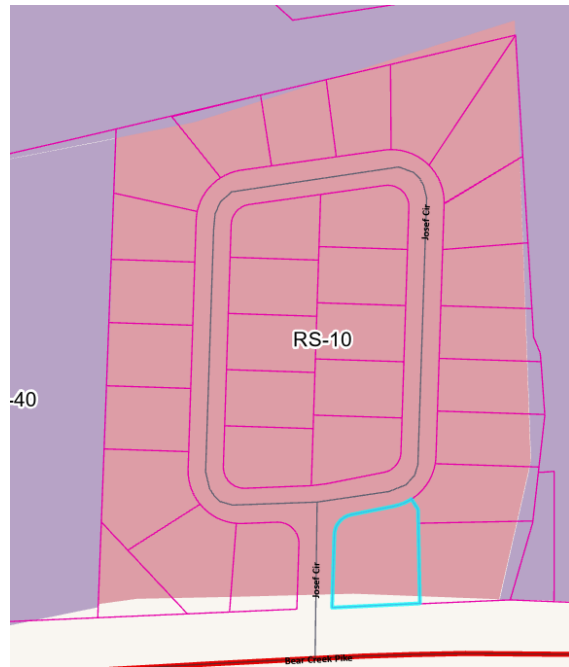
659 Josef Circle/ Greystone Subdivision

REQUEST: Variance from Minimum Setback (Pool in Street Yard Setback)

The applicant requests a variance from the strict application of the City of Columbia Zoning Ordinance. Specifically, the applicant has begun construction of an in-ground pool without a permit. The pool is located in a Street Yard, approximately 13 feet from the edge of a public right of way. The principal use is a newly constructed single-family residence on a newly platted-lot. The applicant is also the builder of the home and owner of the lot. The Ordinance prohibits pools in required Street Yards (Section 8.4.9), requires a 30 foot Street Yard setback (Section 6.3.8), and clearly defines a Street Yard (Section 6.2.9).

The applicant asks that the Board of Zoning Appeals determine from the evidence presented in the application that a hardship exists due to unusual lot conditions. The applicant further asks the Board to find that the requested variance is the minimum relief from the hardship and that all other criteria for granting a variance under Section 3.15.10 of the Ordinance have been met.

Staff recommends that the Board deny the applicant's request.



EXISTING ZONING	EXISTING LAND USE	SURROUNDING ZONING & LAND USE	SITE IMPROVEMENTS	Historic District
R-10 Single Family Residential	Single Family Residence (Under Construction)	RS-10/ Single-Family Residential	Single Family Home with Swimming Pool	N/A

DEVELOPEMNT STATUS & HISTORY:

- May 6, 2016, Planning Commission approved a Preliminary Plat for the Greystone Subdivision. The subject property was created as lot 30 with its current dimensions. The Preliminary Plat clearly depicts required minimum building setbacks which conform to the Ordinance (Section 6.3.8).
- On May 10, 2017, Planning Commission approved the Final Plat for the Greystone Subdivision. The subject property shows the same dimensions and buildable area as the Preliminary Plat.
- The Final Plat was recorded with the Maury County Register of Deeds on May 18, 2017 at Plat Book P21 Page 225.
- On June 13, 2017, the applicant purchased lot 30, along with 14 other lots from LPT, LLC. The Warranty Deed clearly references the recorded Final Plat.
- On June 15, 2021, the applicant applied for a building permit to construct a new residence on lot 30.
 - The **applicant's plot plan proposed a structure with a primary façade located 54 feet from Josef Circle** (western property line) where **the Ordinance only requires a 30 foot setback**. As a result of the applicant's design choice, the remaining side yard, the only place where a pool would be permitted, is of insufficient size to accommodate a 512 square foot pool.
 - The applicant did not indicate intent to add a pool at the time of application for a building permit. If the applicant had indicated its intent to add a swimming pool, staff would have provided direction on how to do so in conformance with the Ordinance.
- In February 2022, Building Official Neas observed **unpermitted active construction of a swimming pool** on the subject property and advised the applicant to apply for a permit.
- On February 16, 2022, the applicant applied for an after-the-fact permit to construct a pool on the subject site. Staff advised the applicant that the pool could not be located in the Street Yard and requested revisions to the plot plan submitted with the permit application.

REVIEW & ASSESSMENT:

3.15.10 REQUIREMENTS FOR VARIANCE

A. Standards:

The Board shall not grant a variance unless it makes findings based upon evidence presented to it as follows:

1. That by reason of exceptional narrowness, shallowness, or shape of a particular piece of property at the time of enactment of this ordinance, or by reason of exceptional topographic conditions or other exceptional and



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extraordinary situation or condition of such piece of property, the strict application of any regulation contained within this ordinance would result in peculiar and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property.

2. That the variance is the minimum variance that will relieve such difficulties or hardship and thereby make possible the reasonable use of the land, building, or structure.
3. That the variance will not authorize activities in a zone district other than those permitted by this ordinance.
4. That financial returns alone shall not be considered as a basis for granting a variance.
5. That the granting of the variance will not be detrimental to the public welfare, injurious to other property or improvements in the area in which the subject property is located, or a substantial impairment to the intent and purpose of the general provisions of this Zoning Ordinance.
6. That the proposed variance will not impair an adequate supply of light and air to the adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety.
7. That the alleged difficulty or hardship has not been knowingly and intentionally created by any person having an interest in the property after the effective date of this ordinance.

B. Staff has reviewed this variance request in relation to Section 3.15.10 and finds the following:

1. The applicant posits that the street yard is the only possible location for a swimming pool and strict application of Section 8.4.9.A of the Ordinance would result in practical difficulties or undue hardship because of the configuration of lot 30.

The shape of the lot does not prevent installing a swimming pool which conforms to the Ordinance. **It is the applicant's design choices, namely the location of the principal structure on the site, which constrain the location of the swimming pool.** If the applicant had considered the requirements of the Ordinance when choosing the position of the home on the lot, there would be no practical difficulties fitting the proposed pool in the side yard.

2. The applicant states that the requested variance – total disregard for Section 8.4.9.A – is the minimum variance that will relieve the hardship and make possible the reasonable use of the land.



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No variance would be necessary if the applicant had considered the Ordinance in the design of the principal structure, which was permitted last year and is currently under construction by the applicant. **Even under the current circumstances, a lesser variance may alleviate the claimed hardship.** For example, a reduction of the 10 foot side-yard swimming pool setback would increase the area for a swimming pool, albeit a smaller one than currently proposed by the applicant.

3. Staff concurs with the applicant that swimming pools are permitted accessory uses and the requested variance would not authorize activities in a zone district other than those permitted by the Ordinance.
4. It is physically possible to place a smaller swimming pool on the property either without a variance, or with a lesser variance. The physical limitations which do exist result from the applicant's design choices. The applicant has likely incurred significant financial costs as a result of initiating construction prior to applying for a permit.

The applicant has communicated to staff that a buyer has already contracted to purchase the property. If the Board does not grant a variance, and the applicant cannot deliver the swimming pool as agreed, the applicant may experience further financial costs. **Financial return appears to be the primary motivation for requesting the variance.** It remains possible to install a smaller swimming pool on the site without a variance or with a lesser variance.

5. The applicant states that the requested variance is not injurious to other properties and the public welfare. The applicant suggests that the variance will in fact improve the value of surrounding properties.

Lot 1 of the Greystone Subdivision, directly across the street from the subject site, has a mirror configuration with three Street Yards. Additionally, significant portions of lots 22 through 29 are subject to a stream buffer across their rear yards. With narrow side yards, the owners of these properties have very little opportunity to add accessory structures and uses.

Granting the requested variance would impair the intent and purpose of the general provisions of this Zoning Ordinance. Section 1.7 of the Ordinance states the intent to "protect and maintain the stability of residential" areas, and "to promote the orderly and beneficial development of such areas." The Greystone Final Plat was approved by the Planning Commission at a publically noticed meeting after undergoing technical review for conformance with the current Ordinance. This process protects

the interests of the public and provides predictability regarding the appearance and character of the new neighborhood (i.e. orderly and beneficial development). As stated above, the applicant was aware of the dimensions of the lot and the limitations imposed by the Ordinance at the time the lot was purchased.

Granting the requested variance would make it impossible to apply the residential development standards of the Ordinance to other lots in the subdivision in a non-arbitrary fashion. If lot 30 experiences a hardship which necessitates placing accessory uses in the Street Yard, the same must be true of lot 1. Certainly the physical and regulatory limitations placed upon lots 22 through 29 would require the City to permit accessory structures in the street yards. Over time, half the properties in the subdivision could have swimming pools, sheds, and other accessory uses visible from the street. Consequently the buyers of homes in the subdivision could not rely in the City's Zoning Ordinance to protect the quiet enjoyment of their investment. Across the City, as new subdivisions are platted and approved, the Ordinance could not provide prospective homebuyers and existing residents a predictable vision of what new single family neighborhoods will look like as they are built out.

6. The proposed variance will not impair an adequate supply of light and air to the adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety.
7. **The alleged hardship is the result of the applicant's design choices.** The applicant's difficulties have been compounded by initiating work on the swimming pool without a permit.

RECOMMENDATION:

Denial. Based on the applicant's statements, staff does not find that all seven of the criteria needed to grant a variance are satisfied. Staff sympathizes with the difficult situation that the applicant faces but must recommend denial.