



## Planning and Development Department

2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

## Inter-Office Memo

TO: Board of Adjustment Members  
FROM: Paul Body, Senior Planner  
Thru: Trina Gilliam, Planning & Zoning Manager  
SUBJECT: Variance Staff Comments for Wednesday, March 18, 2026  
DATE: February 27, 2026

### DISTRICT 4

**(26V00006) Kirk and Corina Fallbacher** (Timothy R. Sapp) request a variance of Chapter 62, Article VI, Brevard County Code as follows; 1.) Section 62-2123(a) to allow 1.5 ft. from the required 5 ft. setback for a pool screen enclosure in a PUD (Planned Unit Development) zoning classification. This request represents the applicants' request to build an expansion to the existing swimming pool screen enclosure. The applicants state that the configuration of the lot and the location of the existing site layout limits the expansion of the swimming pool screen enclosure. This request equates to a 30% deviation of what the code allows. There are no variances to the swimming pool screen enclosure setback requirement in the immediate area. There is no code enforcement action pending with Brevard County Planning and Development Department. If the Board approves this variance, it may want to limit its approval as depicted on the survey provided by the applicant with a revision date of 1/15/2026.

Is the request due to a Code Enforcement action? **No**

Prerequisites to granting of variance:

A variance may be granted when it will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary and undue hardship. The term "undue hardship" has a specific legal definition in this context and essentially means that without the requested variance, the applicant will have no reasonable use of the subject property under existing development regulations. Personal medical reasons shall not be considered as grounds for establishing undue hardship sufficient to qualify an applicant for a variance. Economic reasons may be considered only in instances where a landowner cannot yield a reasonable use and/or reasonable return under the existing land development regulations. You have the right to consult a private attorney for assistance.

In order to authorize any variance from the terms of this chapter, the Board of Adjustment shall find all of the following factors to exist:

(1) That special conditions and circumstances exist which are not applicable to other lands, structures or buildings in the applicable zoning classification:

Applicant response: Special conditions and circumstances exist that are specific to the subject property due to the location and configuration of existing, legally established improvements. A portion of the residence and a substantial portion of the existing swimming pool are located within the required building setback, which significantly restricts the remaining buildable area available for expansion. While other properties within the zoning district may also contain approved variances, the particular placement of improvements on this lot creates site-specific constraints that are not uniformly applicable to all properties within the same zoning classification. The requested variance arises from the existing site layout rather than a general condition of the zoning district.

Staff response: **The existing single-family residence was granted an Administrative Waiver of 2 feet from the 20 feet rear setback requirement per Zoning resolution AA-2258 on May 11, 2006. Swimming pools and swimming pool screen enclosures have a reduced minimum rear setback requirement of 5 feet as compared to the 20 feet rear setback required for the single-family residence. The existing swimming pool and pool screen enclosure both meet the 5 feet rear setback requirements when built.**

(2) That the special conditions and circumstances do not result from the actions of the applicant:

Applicant response: The special conditions and circumstances do not result from the actions of the applicant. The existing residence and swimming pool were legally established improvements whose location and configuration pre-date the proposed expansion and create the current site constraints. The applicant did not create these conditions, and the request for a variance is necessitated by the pre-existing placement of improvements on the lot rather than any action taken by the applicant. The special conditions and circumstance existed prior to the applicant's ownership of the property and are a result of previously approved development, not actions taken by the applicant.

Staff response: **The existing single-family residence was granted an Administrative Waiver of 2 feet from the 20 feet rear setback requirement per Zoning resolution AA-2258 on May 11, 2006. Swimming pools and swimming pool screen enclosures have a reduced minimum rear setback requirement of 5 feet as compared to the 20 feet rear setback required for the single-family residence. The existing swimming pool and pool screen enclosure both meet the 5 feet rear set back requirements when built.**

(3) That granting the variance requested will not confer on the applicant any special privilege that is denied by the provisions of this chapter to other lands, buildings or structures in the identical zoning classification:

Applicant response: Granting the requested variance will not confer any special privilege on the applicant that is denied to other lands, buildings, or structures within the same zoning classification. The variance would allow reasonable use of the property consistent with existing residential development patterns in the neighbor and would place the subject property in substantial conformity with similarly situated properties that have been developed under comparable conditions. Approval would not establish a precedent beyond similarly constrained properties within the zoning district.

Staff response: **There are no variances to the swimming pool screen enclosure setback requirement in the immediate area. A proposed screen enclosure addition could be designed to meet the 5 feet rear setback requirement.**

(4) That literal enforcement of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the identical zoning classification under the provisions of this chapter and will constitute unnecessary and undue hardship on the applicant:

Applicant response: Literal enforcement of the zoning provisions would deprive the applicant of rights commonly enjoyed by other properties within the same zoning classification by reasonably limiting the use of an existing swimming pool and screen enclosure. Due to the placement of legally established improvements within the required setback, strict compliance would prevent reasonable expansion of the enclosure and impose an unnecessary and undue hardship related to the physical constraints of the property rather than the personal circumstances of the applicant. The hardship results from the unique configuration of the lot and existing improvements and not from any desire to intensify use beyond what is typical for the zoning district.

Staff response: **The property has an existing swimming pool and pool screen enclosure that meets the 5 feet rear setback requirement. The parcel's rear property line is curved and may limit expanding the pool screen enclosure.**

(5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure:

Applicant response: The requested variance represents the minimum relief necessary to allow reasonable use of the property. The proposed expansion is limited to the existing pool screen enclosure area and is designed to accommodate the constraints created by the placement of the existing residence and swimming pool. No additional encroachment beyond what is required to reasonably utilize the existing improvements is proposed. Alternative designs that

would fully comply with the setback requirements are not feasible due to the existing site constraints.

Staff response: **The property has an existing swimming pool and pool screen enclosure that meets the 5 feet rear setback requirement. The parcel's rear property line is curved and may limit expanding the pool screen enclosure. A proposed screen enclosure addition could be designed to meet the 5 feet rear setback requirement.**

(6) That the granting of the variance will be in harmony with the general intent and purpose of this chapter and that such use variance will not be injurious to the area involved or otherwise detrimental to the public welfare:

Applicant response: Granting the requested variance will be in harmony with the general intent and purpose of the zoning regulations by allowing reasonable use of an existing residential property while maintaining the established character of the neighbor. The proposed expansion of the pool screen enclosure will not increase density, intensity of use, or alter permitted uses, and will not adversely affect neighboring properties. Approval of the variance will not be injurious to the area involved nor detrimental to the public health, safety, or welfare. The improvement is consistent with similar residential development patterns within the surrounding areas.

Staff response: **The property has an existing swimming pool and pool screen enclosure that meets the 5 feet rear setback requirement. The affected abutting parcel to the rear of the property is "Tract K" reserved for Golf Course and Drainage and will not be used for residential development.**