



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, May 20, 2026
DATE: April 27, 2026

DISTRICT 4

(26V00023) Eric and Marza Penny request a variance of Chapter 62, Article VI, Brevard County Code as follows; Section 62-2126(a) to allow 2 ft. from the required 5 ft. rear setback for a pool screen enclosure in a PUD (Planned Unit Development) zoning classification. This request represents the applicants' request to build a screen enclosure for their swimming pool which is under construction. The applicants state property has a uniquely curved rear property line and irregular lot geometry that differs from most lots within the subdivision. The applicants also state, because of this curvature, the standard 5-foot setback forces the structural post of the proposed two-story screen enclosure to be located directly in front of the home's bay window and main entry. This request equates to a 40% deviation to what the code allows. There is one variance to the swimming pool screen enclosure rear setback requirement in the immediate area. There is no code enforcement action pending with the Brevard County Planning and Development Department. If the Board wishes to approve this variance, it may wish to limit its approval to the location as depicted on the survey provided by the applicant with a revision date of 3/24/2026.

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: The subject property has a uniquely curved rear property line and irregular lot geometry that differs from most lots within the subdivision. Because of this curvature, the standard 5-foot setback forces the structural post of the proposed two-story screen enclosure to be located directly in front of the home's bay window and main entry. This configuration is not typical of other lots in the zoning district and creates a unique physical constraint on the placement of the enclosure.

Staff response: The parcel is located on a cul-de-sac and is a pie shaped parcel which has a curved rear property line. The swimming pool along with the pool deck could have been designed to not have the pool screen enclosure to encroach into the rear setback requirement.

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

Applicant response: The hardship is not the result of any action taken by the applicant. The curved rear lot line and resulting geometry of the property existed prior to the purchase of the property and is a condition inherent to the subdivision layout. The requested variance is necessary due to the physical configuration of the property rather than any voluntary action by the applicant.

Staff response: The parcel is located on a cul-de-sac and is a pie shaped parcel which has a curved rear property line. The swimming pool along with the pool deck could have been designed to not have the pool screen enclosure to encroach into the rear setback requirement.

(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 variance will not confer any special privilege on the applicant that is denied to other properties. Other lots in the zoning district with standard lot geometry can construct similar screen enclosures without obstruction. The variance simply allows the applicant to place the enclosure in a reasonable location given the unusual shape of the rear property line.

Staff response: The parcel is located on a cul-de-sac and is a pie shaped parcel which has a curved rear property line. The parcel abuts a retention pond to the rear of the parcel where the variance is requested. The swimming pool along with the pool deck could have been designed to not have the pool screen enclosure to encroach into the 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: Strict enforcement of the 5-foot setback would place a structural column directly in front of the home's two-story bay window and entry area due to the curvature of the rear property line. This would obstruct the primary view corridor from the home toward the lake and golf course and create an impractical and unreasonable configuration for the enclosure structure. The condition is caused by the unique geometry of the lot rather than the proposed improvement.

Staff response: The swimming pool along with the pool deck could have been designed to not have the pool screen enclosure to encroach into the rear setback requirement.

(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 of two feet is the minimum adjustment necessary to accommodate the structural alignment of the proposed screen enclosure and avoid the placement of a structural post in front of the bay window and entry. The request is limited in scope and does not exceed what is necessary to reasonably construct the enclosure.

Staff response: The requested variance is the minimum variance required for the proposed pool screen enclosure.

(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 variance will be in harmony with the intent of the zoning regulations and will not be detrimental to the surrounding area. The proposed enclosure is consistent with other residential improvements within the community and will not impact neighboring properties, public safety, or the character of the neighborhood.

Staff response: The parcel is located on a cul-de-sac and is a pie shaped parcel which has a curved rear property line. The parcel abuts a retention pond to the rear of the parcel where the variance is requested.