

# **CITY OF SMYRNA COMMUNITY DEVELOPMENT MEMORANDUM**

---

To: License and Variance Board

From: Ken Suddreth, Community Development Director  
Joey Staubes, AICP, Planner II

Date: March 16, 2017

**RE: VARIANCE CASE V17-017**  
**417 Downfield Way – Allow encroachment into sewer easement at rear of home**

---

## **BACKGROUND**

The applicant is requesting a variance to build a pool deck within a sanitary sewer easement at 417 Downfield Way. The applicant is building a pool in the rear yard with a portion of the deck extending into the easement. Regulations regarding easement obstructions are located in Sec. 90-33.

---

## **ANALYSIS**

The subject parcel is located at the cul-de-sac of Downfield Way in the Park Place Subdivision (See Figure 1). The subject parcel and adjacent parcels to the north, south, and west are zoned RAD and are occupied with single family detached homes. The property to the east is zoned R-15 and is occupied by a city park.

The applicant is proposing an in-ground pool in the rear yard of 417 Downfield Way. A sanitary sewer easement exists on the right side of the property in the rear yard (Figure 6). Approximately 150 sq. ft. of pavers are proposed to run over the easement, as the shape of the lot and placement of the existing home limit how the pool can be positioned. Sec. 90-33 of the Code of Ordinances states:

It shall be unlawful for any group or individual to obstruct or restrict drainage on recorded easements by the installation of any fence or any permanent structure. Where fences or any permanent structures exist on any city easement and it becomes necessary to remove the items from the easements, the expense of the reconstruction and reinstallation of such items shall be the responsibility of the property owners.

The applicant has acknowledged the existence of the easement and has offered to submit a letter accepting full responsibility for repair and replacement costs should access to the sanitary sewer line be required. The pool is currently under construction, however during construction the design of the pool was revised, bringing not just the pavers but the edge of the pool up next to the easement (Figure 6). Both designs of the pool contain approximately 150 sq. ft. of pavers within the easement, however the revised design contains a larger pool (40' x 18', 688 sq. ft.) than the original pool design (42' x 14', 600 sq. ft.) The revised pool design brings the pool wall

## VARIANCE CASE V17-017

March 22, 2017

Page 2 of 7

much closer to the easement line, due to the increase in pool size. The original pool design left approximately 7 feet of separation between the pool wall and easement line, while the revised design is less than one foot from the easement line. Staff would caution against approval of the variance as depending on the depth of the sewer line, excavation may be required that ultimately ruptures the pool wall by equipment or by the excavation of fill supporting the pool wall. Thus, as the pool was re-designed, damage may occur that requires far more than the removal of pavers, but the pool as well. Staff acknowledges that the original site plan (Figure 7) was permitted with pavers in the easement, however, the original plan design left much more distance from the easement to the pool edge than the revised design.

Community Development and City Engineer have reviewed the request and believe that when access to the easement is needed, the machinery required to access the sewer line, and the depth at which the sewer line is located may disrupt more than the superficial layer of pavers. Should the Board decide to approve the request, staff recommends that the applicant be required to waive any indemnity rights to repair and replacement costs of the pool and the pavers. .

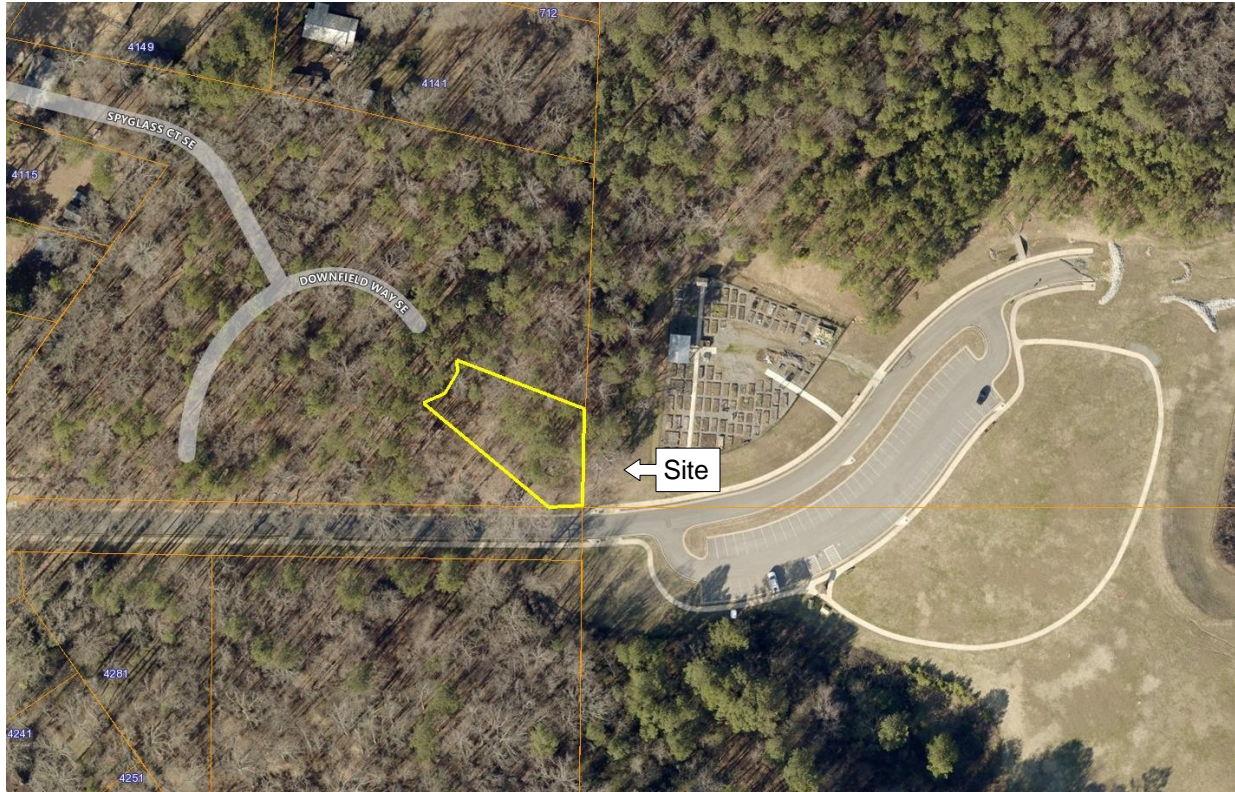
---

### STAFF COMMENTS

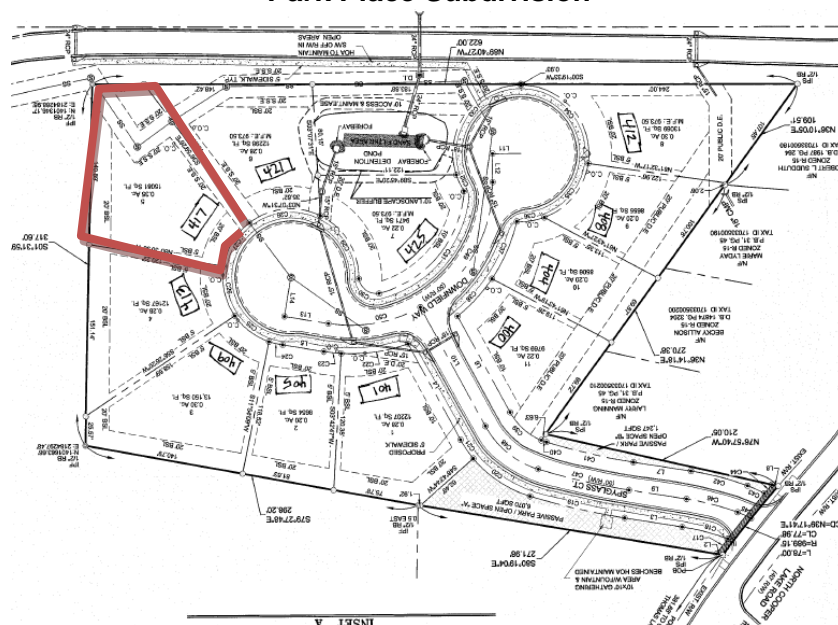
The applicant is requesting to build a pool and deck with pavers in the sanitary sewer easement. Section 90-33 restricts permanent structures within an easement. According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the property; and (4) Whether the variance proposed is the minimum variance needed. Community Development has reviewed the request against the variance review standards and found it to be in compliance with four (4) of the four (4) standards. At the time of this report, Community Development has not received any phone calls regarding the variance request. After a review of the standards above, Community Development believes that the encroachment will not adversely affect surrounding residents; therefore, staff recommends **denial** of the requested variance. Should the Board recommend approval, staff recommends the following conditions:

1. Approval is conditioned upon substantial compliance with the site plan submitted with the variance application.
2. The City of Smyrna shall not be responsible for any repairs or replacement to the pool and deck in the rear yard damaged through maintenance of sewer line.
3. The applicant provides a letter acknowledging condition 2 that shall be provided to subsequent owners of the property.

**Figure – 1**  
**Subject Property**



**Figure – 2**  
**Park Place Subdivision**





**Figure – 3**  
**Subject Property**



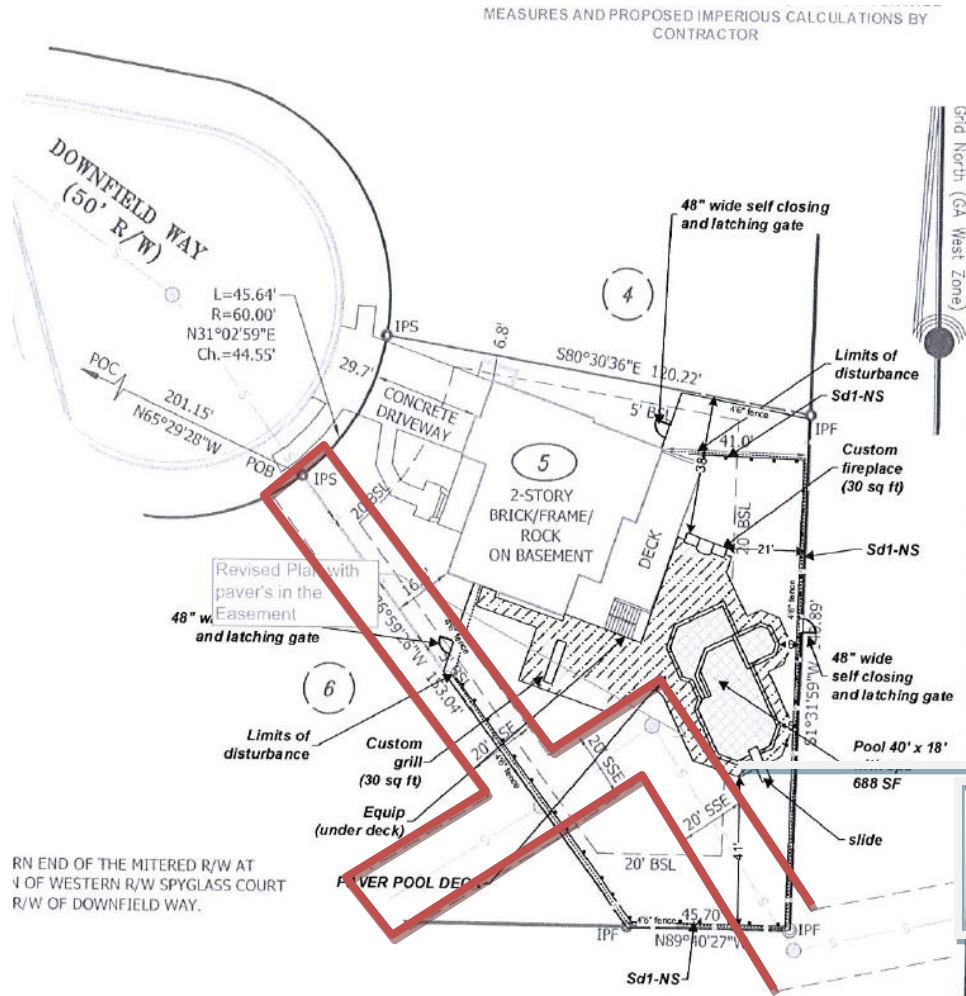
**Figure – 4**  
**Subject Property Rear Yard**



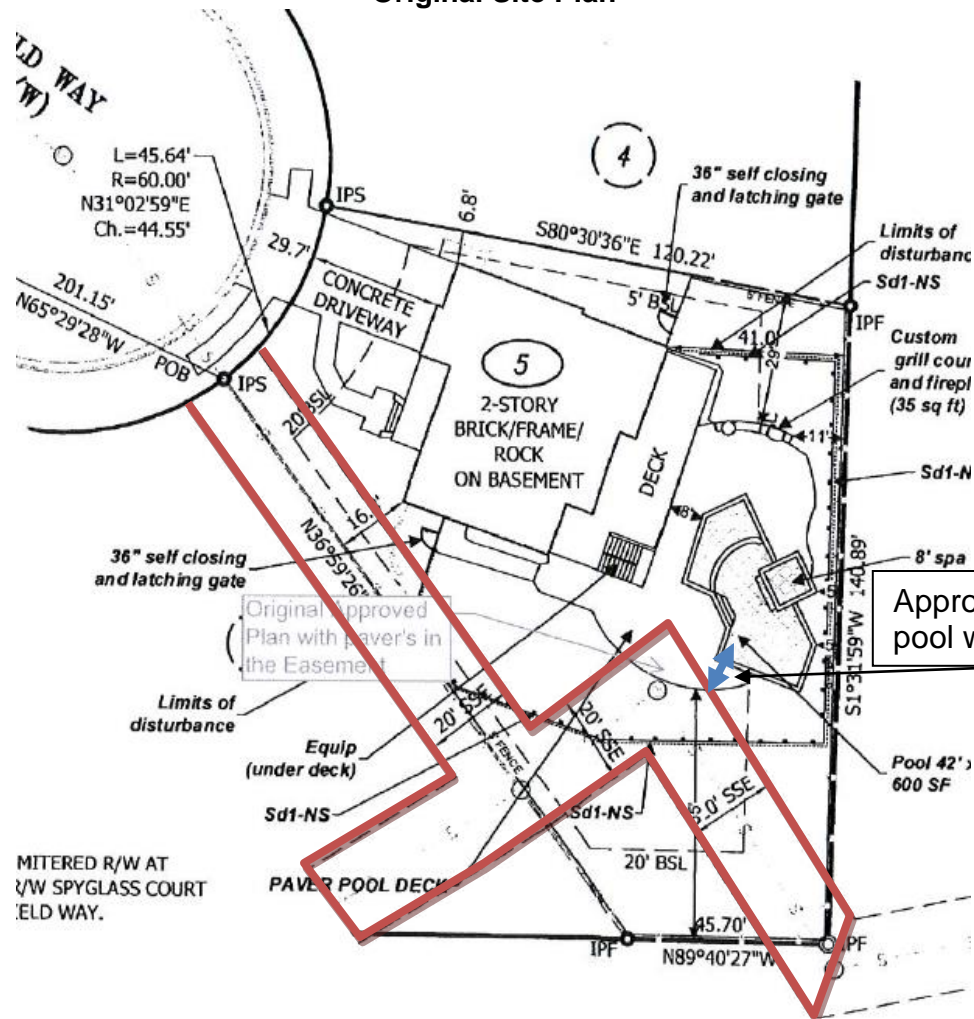
**Figure – 5**  
**Adjacent Property**



**Figure – 6**  
**Variance Site Plan**



**Figure – 7**  
**Original Site Plan**



Approximately 7 feet from  
pool wall to easement line