



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT

STAFF REPORT

DATE: December 18, 2019

TO: Hearing Officer

SUBJECT: Variance #11913

LOCATION: 1501 South Marengo Avenue

APPLICANT: Patrick Szurpicki

ZONING DESIGNATION: RS-4-HD (Single-Family Residential, 0-4 units per acre, Hillside Overlay District)

GENERAL PLAN DESIGNATION: Low Density Residential

CASE PLANNER: Kent Lin

STAFF RECOMMENDATION: Adopt the Environmental Determination and Specific Findings in Attachment A to **approve** Variance #11913 with the conditions in Attachment B.

PROJECT PROPOSAL: Variance: To allow construction of an accessory structure (swimming pool) within the side yard, where an accessory structure is required to be located behind the rear wall plane of the primary structure in the Hillside Overlay District.

ENVIRONMENTAL DETERMINATION: This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15303, Class 3, (New Construction or Conversion of Small Structures) and there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. Section 15303 exempts construction of small structures from environmental review, including accessory structure (swimming pool).

BACKGROUND:

Site characteristics: The subject site is an irregular-shaped parcel measuring 102,822 square-feet in lot area. The site is located on the west of Marengo Avenue, north of the Marengo Avenue/Los Robles Avenue intersection. The property is developed with an existing 4,785 square-foot, single-family residence and a 600 square-foot detached two-car garage located at the side (north) of the site. The site has a slight and gradual downward slope from Marengo Avenue west to the rear property line. The average slope of the property is 9.5 percent.

Adjacent Uses: North – Single-Family Residential
South – Single-Family Residential
East – Single-Family Residential
West – Single-Family Residential

Adjacent Zoning: North – RS-4 (Single-Family Residential, 0-4 units per acre)
South – City of San Marino
East – RS-4-HD (Single-Family Residential, 0-4 units per acre, Hillside Overlay District)
West – City of South Pasadena

Previous zoning cases on this property: Minor Conditional Use Permit #6726: To allow the construction of a 600 square-foot detached garage with an overall height of 19'-2", where the maximum permitted is 15 feet, and with a top plate height of 10'-10", where the maximum permitted is nine feet. A Minor Conditional Use Permit is required to allow the modification of the maximum allowable overall height and top plate height of an accessory structure in order to achieve a design that is architecturally compatible with the main structure. Approved with conditions on May 1, 2019.

Private Tree Removal Permit PLN2018-00499: To allow the removal of five protected trees from subject site. Approved on September 20, 2018.

PROJECT DESCRIPTION:

The applicant, Patrick Szurpicki on behalf of John Wang and Winnie Wang, has submitted a Variance to allow for the construction of a new accessory structure (swimming pool) to not be located behind the rear wall plane of the primary residential structure, as required for properties situated within the Hillside Overlay District (HD). Section 17.29.060.C.3 of the Zoning Code states that accessory structures, except for detached garages, must be located behind the rear wall plane of the primary structure. A Variance is required to deviate from the above requirement by allowing the new accessory structure (swimming pool) to be located on the side of the primary residential structure. The subject property is located within the RS-4-HD (Residential Single-Family, Hillside Overlay District) zoning district.

ANALYSIS:

The existing 4,785 square-foot single-family residence is situated toward the rear of the site and is set back approximately 133 feet from the front property line. The existing 600 square-foot detached two-car garage is located at the north side of the existing home and is set back approximately 145 feet from the front property line and 62 feet from the side (north) property line. The subject site has a slight and gradual downward slope from Marengo Avenue west to the rear property line. The average slope of the property is 9.5 percent. The rear portion of the lot (approximately 50 feet) does have a significant slope downwards of 50 percent or greater.

The new accessory structure (swimming pool) would be located on the north side of the existing primary residential structure, approximately 184 feet from the front (east) property line, 53 feet from the side (north) property line, 206 feet from the rear (west) property line, and would be eight feet from the residence at the nearest point. Although the new pool would be set back further from the front property line than the house, it would not be located behind the house. The project also consists of the demolition and backfill of the existing pool located at the rear of the site.

Walls and fences are subject to the development standards provided in Section 17.40.180 (Walls and Fences) of the Zoning Code, which states that a wall or fence within the RS zoning district located behind the front building wall of the primary residence may have a maximum height of six feet. The project would also include the installation of a new five-foot high fence in compliance with the pool safety barrier requirement of the Building Code. The new five-foot high fence would be in compliance with the height limit requirement of the Zoning Code.

Variance: To allow construction of an accessory structure (swimming pool) within the side yard of an existing single-family residence, where an accessory structure is required to be located behind the rear wall plane of the primary structure

A Variance application is a request to deviate from specific development standard of the Zoning Code. A Variance can only be granted when one of the five findings can be made in the affirmative. These findings include any special circumstance(s) applicable to the subject property, the strict application of the Zoning Ordinance denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts, or creates an unnecessary and non-self-created hardship or unreasonable regulation which makes it impractical to require compliance with the applicable development standards of the Zoning Code. These findings relate to the project's compliance with the Zoning Code and General Plan, whether exceptional or extraordinary circumstances exist, whether the application is necessary for the preservation and enjoyment of property rights, and to ensure no detriment or injury to surrounding properties.

Pursuant to Section 17.29.060(C) of the Zoning Code, accessory structures, except for detached garages, must be located behind the rear wall plane(s) of the primary structure. The proposed project consists of the construction of a new accessory structure (swimming pool) to be located along the side of the subject property. As noted earlier, the new pool would be located further from the front property line than the house, but would not be located entirely behind the house. Therefore, the applicant must obtain the approval of a Variance in order to deviate from the accessory structure location requirement.

The subject property is an irregular shaped lot with a slight and gradual downward slope to the west (rear). The average slope of the property is 9.5 percent. As determined by the slope analysis

map provided by the applicant and site visit conducted by staff, the rear of the lot has a descending slope 50 percent or greater.

Within this downward sloping area is an existing pool located behind the house, whose location is currently in compliance with the location requirement described above. However, as indicated in a letter dated October 15, 2019, prepared by Baich Structural Engineering, cracks in the concrete slab of the existing pool structure were observed. The cracks to the existing pool structure is indicative of soil displacement and settlement at the low end of the hill slope. Soil and dirt erosion around the existing pool area was also observed, which further contributes to the slope instability of the existing pool structure.

Due to the slope instability and soil erosion observed in the rear yard and, Baich Structural Engineering recommends that the existing pool not be repaired or reconstruct the pool at its existing location. As such, the existing swimming pool is failing structurally and has effectively been deemed unsafe. A demolition permit (DEM2018-00090) has been issued by the City to allow the existing pool to be demolished and backfilled. As a result, the only feasible location of a new swimming pool would be to the side of site, where it is primarily flat and is a geologically more stable location.

In analyzing the proposed site for the new pool, it is noted that there are exceptional conditions applicable to the site that do not apply generally to sites in the same zoning district in that there is an existing 25 foot wide drainage easement located along a portion of the rear yard where no structure can be constructed over the easement. This limits the placement of the new swimming pool to the side of the property, where the topographical condition is flat and geologically more stable than the rear yard.

Staff finds that granting the requested Variance would not be detrimental or injurious to property or improvements in the vicinity of the development site, and to the public health, safety, and general welfare. The addition of a swimming pool will not alter the existing character of the neighborhood, as the proposed accessory structure (swimming pool) will not be visible from the street due to its generous setbacks and new landscaping proposed along the front and side property lines, reducing potential visibility from adjacent residential properties or the street.

It is not anticipated that the activities associated with the swimming pool would create adverse impacts to adjoining properties. In addition, by placing the new swimming pool at the side of the property, the new swimming pool location functions as the rear of the existing residence due to the floor plan and orientation of the existing residential structure. As such, staff recommends approval of the Variance request.

The approval of this Variance request would allow the applicant to construct a new swimming pool to the side of the single-family residence. With the exception of the requested Variance, the proposed swimming pool complies with all other applicable development standards including pool safety barrier fencing requirement.

Tree Protection Ordinance and Preliminary Landscape Plan

On September 20, 2018, the applicant obtained a Private Tree Removal Permit to allow the removal of five protected trees from the subject site. Five non-protected trees were to be removed as well. On April 22, 2019, a Tree Protection Plan was prepared by certified arborist William R. McKinley identifying how existing will be protected during the construction of the proposed pool. No protected trees are proposed to be removed as part of this project. New landscaping is also

proposed around the new swimming pool area to provide privacy for its occupants and screening from public view. As a condition of approval, the applicant or successor in interest shall submit a Landscape Plan and Tree Protection Plan in compliance with Chapter 17.44 (Landscaping) of the Zoning Code prior to the issuance of the building permit for the new swimming pool.

ENVIRONMENTAL REVIEW:

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15303, Class 3, (New Construction or Conversion of Small Structures) and there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. Section 15303 exempts construction of small structures from environmental review, including accessory structure (swimming pool).

GENERAL PLAN CONSISTENCY:

As indicated in the Land Use Element of the General Plan, the subject site is designated as LDR (Low Density Residential). The existing use of the site will remain as a single-family dwelling and the existing character of the residential use will remain unchanged as a result of the project. The new accessory structure (swimming pool) to be located on the side yard of the residential property would be consistent with General Plan Policy 21.3 (Residential Neighborhoods – Neighborhood Character), which encourages development to maintain elements of residential street that unify and enhance the character of the neighborhood. The new swimming pool would not be visible from the street with the existing detached garage and existing and new landscaping reducing potential visibility. In addition, the new swimming pool would be setback 184 feet from Marengo Avenue, thus maintaining the character of the streetscape and same visual appearance as the existing single-family homes along Marengo Avenue. The project will comply with all the applicable development standards of the Zoning Code except for the Variance requested to allow the accessory structure (swimming pool) within the side yard of the existing single-family residence.

REVIEW BY OTHER DEPARTMENTS:

The proposed project was reviewed by the Department of Public Works, Department of Transportation, Fire Department, Building and Safety Division, and Design and Historic Preservation Section. The Public Works provided comments that are included as recommended conditions of approval in Attachment B. The Building and Safety Division, Fire Department, Department of Transportation and Design and Historic Preservation Section had no comments at this time and would review the project through the building permit plan check process.

CONCLUSION:

Staff concludes that the findings necessary for approving the Variance to allow the construction of an accessory structure (swimming pool), within the side yard can be made. With the exception of the accessory structure location requirement analyzed above, the proposed new swimming pool complies all other applicable development standards of the Zoning Code. Therefore, staff recommends approval of the Variance, subject to the findings in Attachment A and recommended conditions of approval in Attachment B.

Attachments:

- Attachment A: Variance Findings
- Attachment B: Recommended Conditions of Approval

ATTACHMENT A
SPECIFIC FINDINGS FOR VARIANCE #11913

To allow construction of an accessory structure (swimming pool) within the side yard of an existing single-family residence, where an accessory structure is required to be located behind the rear wall plane of the primary structure

1. *There are exceptional or extraordinary circumstances or conditions applicable to the development site that do not apply generally to sites in the same zoning district.* Structural cracks in the concrete slab of the existing pool were observed by a structural engineer as documented in a letter from Baich Structural Engineering. The cracks to the existing pool structure are indicative of soil displacement and settlement at the low end of the hill slope. Soil and dirt erosion around the existing pool area was also observed, which further contributes to slope instability. Due to the slope instability and unique topographical and soil conditions of the rear yard and existing pool structure, it is not feasible to repair the existing pool or to reconstruct the pool at its existing location. In addition, there is a 25-foot wide drainage easement located along a portion of the rear yard where no structure can be constructed over the easement. This limits the placement of the new swimming pool to the side of the property, where the topographical condition is generally flat and geologically more stable than the rear yard. Therefore, constructing an accessory structure that complies with the development standards, specifically structure placement, poses unusual circumstances that a typical single-family residential property does not encounter. The proposed swimming pool, within the side yard, will allow the applicant to enjoy accessory uses and structures that single-family residential properties are typically afforded.
2. *Granting the application is necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.* The subject site does not maintain a useable rear yard for recreational purposes, such as a swimming pool, due to its steep topographical condition, slope instability, and soil erosion observed in the rear yard. Constructing a new accessory structure (swimming pool) that complies with the development standards, specifically structure placement, poses unusual circumstances that a typical single-family residential property does not encounter. The proposed swimming pool location, within the side yard, will allow the applicant to enjoy accessory uses and structures that single-family residential properties are typically afforded. As such, staff finds that granting of the Variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.
3. *Granting the application will not be detrimental or injurious to property or improvements in the vicinity of the project site, or to the public health, safety, or general welfare.* The project will be required to obtain building permit in compliance with the building code to ensure that the construction of the accessory structure (swimming pool) in the side yard will be safe and not injurious to property or its occupants. Conditions of approval will ensure that the project remains compatible with the surrounding area in that it would maintain the required setbacks and will comply with all other development standards applicable to an accessory structure (swimming pool).
4. *Granting the application is consistent with the General Plan and the purposes of Title 17 of the Municipal Code and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zone district.* The subject site is designated as Low Density Residential in the General Plan Land Use Element. The use of the site will remain a single-family residence; therefore, the character of the single-family

neighborhood will be maintained. The proposed accessory structure (swimming pool), within the side yard of a single-family residence will be consistent with the adopted General Plan policies, including Policy 21.3 (Residential Neighborhoods – Neighborhood Character), which encourages development to maintain elements of residential street that unify and enhance the character of the neighborhood. The addition of a swimming pool will not alter the existing character of the neighborhood, as the new landscaping along the front and side property lines, as well as the existing two-car detached garage, will screen the pool from public right-of-way views, reducing potential visibility from adjacent residential properties. In addition, the new swimming pool will be setback 184 feet from the front property line while maintaining the character of the streetscape and same visual appearance as the existing homes along Marengo Avenue. The project will comply with all the applicable development standards of the Zoning Code except for the Variance requested to allow the accessory structure (swimming pool) within the side yard of the existing single-family residence.

5. *Cost to the applicant of strict compliance with a regulation is not the primary reason for the granting of the Variance.* The cost to the applicant of complying with the City's development standards has not been considered as the main factor throughout the review of this application.

ATTACHMENT B
CONDITIONS OF APPROVAL FOR VARIANCE #11913

The applicant or the successor in interest shall comply with the following conditions:

General

1. The site plan, floor plan, elevations, landscape plans, and building sections submitted for building permits shall substantially conform to plans stamped "Approved at Hearing, December 18, 2019," except as modified herein.
2. The right granted under this application must be enacted within 24 months from the effective date of approval. It shall expire and become void, unless an extension of time is approved in compliance with Zoning Code Section 17.64.040.C (Time Limits and Extensions – Extensions of Time).
3. The approval of this application authorizes the construction of an accessory structure (swimming pool) to be located within the side yard of an existing single-family residence, where an accessory structure is required to be located behind the rear wall plane of the primary structure
4. The applicant or successor in interest shall meet the applicable code requirements of all other City Departments.
5. The final decision letter and conditions of approval shall be incorporated in the submitted building plans as part of the building plan check process.
6. The proposed project, Activity Number **PLN2019-00453** is subject to the Inspection Program by the City. A Final Zoning Inspection is required for your project prior to the issuance of a Certificate of Occupancy or approval of the Final Building Inspection. Contact Kent Lin, Current Planning Section, at (626) 744-6817 or klin@cityofpasadena.net to schedule an inspection appointment time.

Planning Division

7. The applicant or successor in interest shall comply with all requirements of Municipal Code Chapter 9.36 (Noise Restrictions). Specifically, all construction activities shall adhere to Municipal Code Section 9.36.070 (Construction Projects) and Section 9.36.080 (Construction Equipment).
8. The project shall comply with the Municipal Code Chapter 8.52 (City Trees and Tree Protection Ordinance). A tree protection and retention plan shall be submitted to the Zoning Administrator for approval prior to the issuance of any building or grading permits. Any proposal to remove a protected tree requires approval of a Tree Removal Application prior to the issuance of building permits.
9. Any above-ground mechanical equipment shall be located at least five feet from all property lines and shall comply with the screening requirements of Section 17.40.150 (Screening) of the Zoning Code. Mechanical equipment shall be placed on a rooftop only if the equipment is not visible from off the site.

10. At no time shall construction activities, including, but not limited to, construction materials, vehicles and equipment, obstruct access to vehicular driveways of adjacent properties.
11. The applicant or successor in interest shall submit a Landscape Plan and Tree Protection Plan in compliance with Chapter 17.44 (Landscaping) of the Zoning Code prior to the issuance of the building permit for the new swimming pool.

Public Works Department

12. The easement for public street purposes (E-7989) along the Marengo Avenue frontage of the subject property has been legally executed and recorded with the Los Angeles County Recorder's Office. The submitted plans shall reflect the approved/recorded easement accordingly.
13. No private improvements may be placed within the public right-of-way, including, but not limited to, soldier beams, tie-backs, utility conduits, backflow preventers, transformers, fire sprinkler valve, decorative sidewalk and applicable parade post holes on Colorado Boulevard per Standard Drawing S-419. Private improvements may only be placed in the public right-of-way by submitting a license agreement, which must be approved by the City. The license agreement application for any private improvement within the public right-of-way shall be submitted to the Department of Public Works for review and shall be approved by the City before any permits are granted.
14. There is an existing drainage easement traversing the rear of the subject property. The drainage easement and all drainage facilities shall be shown on all of the construction drawings. No structure shall be built within the drainage easement.
15. The applicant shall protect all existing public facilities and maintain the right of way in good clean condition during the construction. If any damage is proven to be caused by the subject development, the applicant is responsible for replacing and/or repairing the facilities to the satisfaction of the City, prior to the issuance of Certificate of Occupancy.
16. In preparation for the New Year Rose Parade and Rose Bowl Game, the Department of Public Works will suspend all works within the public right-of-way during the holiday season in accordance to PMC 12.24.100 and City Policy.

In general, all public streets, sidewalks and parkways shall be free and clear of excavations and other construction related activities during the period of November through January of the following year. Specific dates will vary on an annual basis. Accordingly, contractors will be required to shut down construction operations which would impede traffic and pedestrian movements during these periods unless otherwise authorized by the City Engineer. Any existing excavations shall be backfilled, compacted and temporarily repaved before the beginning of the moratorium period.

The Holiday Moratorium Map, showing the appropriate shutdown period, and corresponding areas in the City, is available at the Department of Public Works Permit Counter (window #6), 175 N. Garfield Avenue, Pasadena, CA 91109, or at the following link: <https://www.cityofpasadena.net/public-works/engineering-and-construction/engineering/>.

17. All costs associated with these conditions shall be the applicant's responsibility.

Unless otherwise noted in this memo, all costs are based on the General Fee Schedule that is in effect at the time these conditions are met. A processing fee will be charged against all deposits. A Public Works permit is required for all construction and occupancies in the public right-of-way. If construction vehicles and equipment are parked off-site in the public right of way, the permit fee for street and sidewalk occupancy will be based on the area and duration corresponding to the current City's General Fee Schedule. For more information, please contact Yannie Wu at 626-744-3762.

In addition to the above conditions, the requirements of the following ordinances may apply to the proposed project:

- Sidewalk Ordinance - Chapter 12.04 of the Pasadena Municipal Code (PMC)
In accordance with Section 12.04.035, entitled "Abandoned Driveways" of the PMC, the applicant shall close any unused drive approach with standard concrete curb, gutter and sidewalk. In addition, the applicant shall repair any existing or newly damaged curb, gutter and sidewalk along the subject frontage prior to the issuance of a Certificate of Occupancy in accordance with Section 12.04.031, entitled "Inspection required for Permit Clearance" of the PMC.
- City Trees and Tree Protection Ordinance - Chapter 8.52 of the PMC
The ordinance provides for the protection of specific types of trees on private property as well as all trees on public property. No street trees in the public right-of-way shall be removed without the support of the Urban Forestry Advisory Committee. No trees shall be damaged by the proposed construction, if a City tree is damaged, the applicant may be liable for the assessed value of the tree. Refer to <https://www.cityofpasadena.net/public-works/parks-and-natural-resources/urban-forestry/> for guidelines and requirements for tree protection.
- Construction and Demolition Waste Ordinance, Chapter 8.62 of the PMC
The applicant shall submit the following plan and form which can be obtained from the Permit Center's webpage at: <https://www.cityofpasadena.net/public-works/recycling-resources/construction-demolition-recycling/construction-and-demolition-debris-recycling/> and the Recycling Coordinator, (626) 744-7175, for approval prior to the request for a permit:
 - a. C & D Recycling & Waste Assessment Plan – Submit plan prior to issuance of the permit. A list of Construction and Demolition Recyclers is included on the waste management application plan form and it can also be obtained from the Recycling Coordinator.
 - b. Summary Report with documentation must be submitted prior to final inspection.

A security performance deposit of three percent of the total valuation of the project or \$30,000, whichever is less, is due prior to permit issuance. For Demolition Only projects, the security deposit is \$1 per square foot or \$30,000, whichever is less. This deposit is fully refundable upon compliance with Chapter 8.62 of the PMC. A non-refundable Administrative Review fee is also due prior to permit issuance and the amount is based upon the type of project.