

**Opposition to Variance of 10' setback from MHWL for swimming pools
May 12, 2026**

SUMMARY:

Based on the following, the current variance request, to encroach 3' into the 10' setback to construct a 11'3" X 12'6" pool, should be denied because strict compliance with the 10' set back requirement is feasible, applicant has not met the 5 conditions necessary for a variance, approval would signal selective enforcement, and it is important that citizens trust and rely on the government to implement rules, i. e., the 10' foot setback, that are well researched, necessary, and not arbitrary or capricious.

FACTS:

Setback requirement in KCB is 10 foot from the MHWL (or the landward edge of the seawall, as applicable).

Applicant requested a variance for relief to allow their placement of a pool to encroach into the setback by 3'. Applicant's proposed pool dimensions are 11'3" X 12'6."

This is the first time a variance from the 10' setback to install a pool has been requested in KCB.

REASON FOR VARIANCE REQUEST:

1. Good and sufficient cause

Applicant: Inability to construct a modestly sized pool limits the property's reasonable and competitive use; the subject property is constrained by limited lot depth, leaving "insufficient buildable area for a reasonably sized pool ..." These conditions are inherent to the platted lots and original home placement, not the result of any action by the owner.

2. Unnecessary hardships

Applicant: Increasing numbers of pools are being permitted within KCB, establishing a clear pattern of neighborhood character and market expectation. Without relief, the property is placed at a competitive disadvantage compared to similarly situated properties.

3. Would it create a threat to public health and safety? nuisance?

Applicant: Will not encroach into navigable waters. The requested relief represents the minimum variance necessary to allow a "modestly sized" code-compliant adequate circulation space for safe ingress and egress. The variance upholds the spirit and intent of the Land Development Regulations while addressing unique site hardship.

4. Unique physical circumstances that apply to this property but not others in the same zoning district?

Applicant: Strict application of the setback requirement effectively precludes construction of a "functional pool" thereby denying the property a right commonly enjoyed by similarly situated properties within the same zoning district. Creates a

disproportionate burden on this parcel due to its physical configuration and original building placement.

5. Confer upon the applicant any special privilege denied to other properties.

Applicant: No; rather it will allow the applicant to enjoy substantially the same residential amenities that neighboring property owners currently enjoy. The variance merely restores parity within the zoning district and is consistent with the City's comprehensive plan and land development regulations, in the public interest, will further the health, safety, welfare, and goals of the residents of the City of Marathon.

CONCERNS:

Applicant states there are unique characteristics of their lot which places a disproportionate burden due to its physical configuration and original building placement and as such, they are denied a property right commonly enjoyed by similarly situated properties (4). They have requested the minimum variance necessary (3) to construct a “modestly sized pool” (1, 3) which is necessary for the properties “reasonable and competitive use” (1). They are at a “competitive disadvantage” compared to similar properties (2). Granting this variance would not provide any special privilege denied to other properties and instead would allow applicant to enjoy substantially the same residential amenities that neighboring property owners currently enjoy (5).

- A. Applicants knew of the lot characteristics when they purchased their lot; conditions have not changed since their purchase and instead are inherent to the platted lots and original home placement (Reason for variance request #1, #4 above). Purchasers of real property, applicants, are deemed to have constructive notice of existing municipal ordinances affecting the use of property (Florida law).
- B. Applicant's lot characteristics are not unique. There are many lots similar to applicant's where the building is located close to the seawall, requiring narrower swimming pools in conformance with the 10' setback, in comparison to lots with houses placed farther from the seawall that install larger pools without violating the 10' setback. Exhibit 4 (pp. 6-9).
- C. Applicants are not denied a property right commonly enjoyed by similarly situated properties. Similarly situated properties comply with the 10' setback. There are no pools in KCB that encroach on the 10' setback. Exhibits 2-4 (pp. 4-9); City building official.
- D. A variance is not necessary to construct a “modestly sized pool” or necessary to construct a “functional pool.” (4) Pool dimensions of 6'10” and 8'12” are common for smaller pools and deemed functional. <https://www.angi.com/articles/swimming-pool-size-chart.htm>. Applicant's proposed pool size is 11'3” X 12'6.” Similarly situated properties have pools that are less than 11' wide (Exhibits 2-4; pp. 4-9); including applicant's neighbor (Exhibit 3, p. 5). Applicant could construct a functional pool that is 8' wide and would not require a variance. Exhibit 5 (p. 10).
- E. Applicants are not at a competitive disadvantage compared to similar lots. All similar lots with swimming pools in KCB adhere to the 10' setback. Exhibits 2, 4 (pp. 4, 6-9). Applicants have not shown that this variance is necessary for “reasonable and competitive” use.
- F. Granting this variance *would* confer upon the applicant a special privilege denied to other similarly situated properties, thereby providing a competitive advantage to applicants

compared to all other similarly situated lots with swimming pools, including applicant's neighbor since, if the variance is granted, applicants property would be the only swimming pool in KCB that is less than 10' from the seawall and would provide a larger pool than the comparative lots. Exhibits 3-4 (pp. 5-9).

A public governing body's decisions cannot be arbitrary or capricious; they must be grounded in law and provide an expectation by citizens that the laws (statutes) have a reasonable basis.

The 10' setback is not only a requirement in KCB, but also in the adjacent city of Marathon. The rationale for the 10' setback is a combination of many factors. Exhibit 1.

Importantly, many citizens have relied on the 10' setback as a legal requirement and complied. It is not prudent to change this setback requirement without significant justification. Lastly, another citizen mentioned the visual impact of allowing structures to encroach on the 10' setback. Our canals are like streets and, similar to our rules prohibiting leaving garbage cans on the street, the City has a responsibility to regulate the aesthetics; setback requirements provide a degree of regulation in this respect.