



## MINUTES OF THE OCTOBER 19, 2021 BOARD OF ZONING APPEALS MEETING

### I. Opening of Meeting

Chairman McGuinness opened the Clayton Board of Zoning Appeals meeting that convened at 7:00 PM on Tuesday, October 19, 2021.

### II. Members in Attendance

Mr. Robert McGuinness, Ms. Jennifer Weeks, Mr. Zach Goit, and Ms. Barbara Buyers  
Mr. Seth Dorman, City Planner/Zoning Administrator

### III. Meeting Procedure and Oath

Chairman McGuinness explained the meeting procedures and administered the Oath to members of the public who wish to speak on an agenda item this evening.

### IV. Minutes of the Previous Meetings

Mr. McGuinness presented the minutes of the September 21, 2021, Board of Zoning Appeals meeting, asking if there were any comments or changes. Hearing none, Mr. McGuinness asked for a motion. Motion to approve the minutes of the September 21, 2021 was made by Ms. Weeks, second by Mr. Goit. Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-yes, and Ms. Buyers-yes. Motion passed 4-0.

### V. New Business

Mr. McGuinness introduced **Case VAR21-06**. A request for an accessory structure variance at 5292 Rahway Court. The applicant is proposing to construct a 20' x 34' detached garage with a height of 18', which requires a variance for maximum height. John Stolfo, property owner.

Mr. Dorman, City Planner, advised staff received this variance to build a 680 square foot detached garage with a height of 18' which requires the variance for height as the maximum height allowed is 15'. Dorman showed a number of aerial images of the property and the proposed location of the garage. Dorman stated that staff recommends approval of the proposed detached garage as it meets the required setbacks for an accessory structure and given the topography of the site the additional height should not be too imposing on the south neighbor.

Mr. McGuinness asked the board members if they had any questions for Mr. Dorman.

Mr. Goit stated within our packets we have a letter of support from a neighbor, is he the south neighbor?

Mr. Dorman, yes, he is the south neighbor.

Ms. Weeks asked this is a two-story home.



Mr. Dorman stated yes, it is.

Mr. McGuinness asked the applicant, Mr. Stolfo, if he had anything to add.

Mr. Stolfo stated I recently purchased a RV and after checking into the cost of storing it over the winter I decided to purchase this building to store my RV and some classic cars that are currently parked in my attached garage. My day-to-day cars are parked in the driveway.

Mr. McGuinness then asked the board if they had any questions for Mr. Stolfo.

Mr. McGuinness asked how far back is the house from the street?

Mr. Stolfo stated approximately 100', possibly more.

Ms. Weeks asked how tall is your house.

Mr. Stolfo stated higher than 18', probably 20-25'.

Mr. Goit stated the letter of support we received was from the neighbor most impacted by this proposed garage, have you spoken to your other neighbors?

Mr. Stolfo stated I did speak with my neighbors in the cul-de-sac and they had no problem.

Mr. Goit asked if you've already purchased the garage.

Mr. Stolfo stated he has put down a deposit and the purchase is contingent with this variance passing.

Hearing no further questions Mr. McGuinness asked for a motion to open the floor for public comment. Ms. Weeks made a motion to open the floor for public comment, motion was second by Mr. Goit. Voting: Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-yes, and Ms. Buyers-yes. Motion passed 4-0.

Mr. McGuinness asked if there was anyone who wished to speak in support or opposition of this request.

No comments were heard.

Mr. McGuinness asked Mr. Dorman if he received any comments from neighbors.

Mr. Dorman stated letters were sent to all residents within 300 feet and received no objections.

Mr. McGuinness hearing no further comments asked for a motion to close the public hearing portion of this request. Motion by Mr. Goit to close the meeting for public comment, motion was second by Ms. Weeks. Voting: Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-yes, and Ms. Buyers-yes. Motion passed 4-0.

**Findings of Facts:**

Mr. McGuinness read the findings of facts and after discussion found that all were satisfied with the variance request.



Ms. Weeks made a motion to approve the variance, motion second by Mr. Goit. Vote: Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-yes, and Ms. Buyers-yes. Motion passed 4-0.

Mr. McGuinness introduced **Case VAR21-07**. A request for a swimming pool fence Variance for the property at 7631 Wastler Road. The applicant has installed an in-ground pool and an automatic pool cover, which they are requesting in lieu of the required 5' fence and lockable gate around the pool. Alan and Shana Evans, property owners.

Mr. Dorman, City Planner, advised the applicant has installed an in-ground pool with an automatic pool cover and is requesting a variance to allow the automatic pool cover in lieu of the required minimum height 5 foot tall fence and lockable gate to prevent uncontrolled access to the pool. The applicant's property is nearly nine acres and is located on Wastler Road west of Kimmel Road. Dorman shows aerial photos of the property and the location of the pool. A zoning certificate was issued on May 11, 2020 for a 20' x 40' in ground pool enclosed with a 5' tall fence and locking gate. The pool is in with an automatic pool cover, and the applicant was getting ready to install the fence but indicated that they would prefer not to block the view of the rear yard. The applicant installed the pool cover to seal the pool and to keep wildlife out. The applicant has indicated that pool covers are proven to be safe and supports the weight of several adults. Also, by not having a fence helps to make the pool less visible to an intruder or passerby. As such, the applicant argues that the automatic pool cover meets the spirit and intent of the fence requirement. Therefore, staff recommends approval of the automatic pool cover in lieu of the required minimum height of five feet with lockable gate given the there is evidence that automatic pool covers are a sufficient alternative to gated fencing to prevent uncontrolled access to a pool. This property is located on a relatively secluded and partially wooded nine acre lot, so the pool cover will help to prevent uncontrolled access from not only humans but wildlife as well. Lastly, this pool is located approximately 415' north of Wastler Road and 1,075 feet west of Kimmel Road and given the separation from the public right-of-way and without the visual cue of a fence, the casual passerby may never know this pool exists.

Mr. McGuinness asked the board members if they had any questions for Mr. Dorman.

Mr. McGuinness asked Mr. Dorman since this is something that seems to be ongoing are we going to look into amending the code.

Mr. Dorman stated that is something I would support and this is something we are going to going to face more and more, and the board is generally comfortable with the idea of the automatic pool cover in providing sufficient safety. I would support looking into that.

Ms. Weeks asked if this pool cover had the same safety standards outlined in ASTM-F1346.

Mr. Dorman stated yes, based on the information I was provided.

Mr. McGuinness asked the applicant, Mr. Evans, if he had anything to add.

Mr. Evans stated the pool cover is through Coverstar and the safety features are outlined in his application. Multiple states and local jurisdictions have approved this cover.

Mr. McGuinness then asked the board if they had any questions for Mr. Evans.

Mr. Goit stated the homes in your area are spread out, have you talked with your neighbors about the pool especially those with small children.

Mr. Evans stated the only small kids are my grandchildren who live on an adjoining property we own on Kimmel Road. The cover of the pool is only opened when we are outside in the pool, and there is a digit keypad with a passcode.

Mr. Goit stated I see where a number of your neighbors have ponds or small lakes, do any of them have fences around them?

Mr. Evans stated no.

Mr. Goit asked what type of fence had you planned to install? Privacy fence or a bar type fence.

Mr. Evans stated it was aluminum bar type.

Mr. Goit stated where you installed the pool no one can see the pool, it is literally outside your back door, correct.

Mr. Evans stated yes, and no one should be back there.

Mr. Goit stated so even if you installed the fence, no one would know the pool was back there.

Mr. Evans stated people who live in a subdivision install a privacy fence to block their neighbors, I don't have that issue and a fence would only block the view.

Hearing no further questions Mr. McGuinness advised we normally open the floor for public comment at this point, however there were no visitors other than the Evans to speak.

Mr. McGuinness asked Mr. Dorman if he received any comments from neighbors.

Mr. Dorman stated first within your packets there is information from Coverstar that they meet the ASTM-F1346-91 standards. The only other response I received was from our board member Ms. Hunter, her property is within 300 feet of this one and if she were here tonight, she would have had to recuse herself, but she had no objections to the pool cover.

**Findings of Facts:**

Mr. McGuinness read the findings of facts and after discussion of each the board found that all were satisfied with this variance request.

Ms. Weeks advised that we should incorporate the conditions we recently passed on a similar request dealing with pool covers in lieu of fences. The conditions are that the selected automatic pool cover meets or exceeds the safety standards outline in ASTM-



Board of Zoning Appeals  
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F1346, and the automatic pool cover must be securely fastened in place at all times when the swimming pool is not in actual use for swimming or bathing purposes.

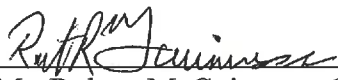
Mr. Goit made a motion to approve the variance contingent on the two conditions Ms. Weeks just referenced, motion second by Ms. Weeks. Vote: Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-yes, and Ms. Buyers-yes. Motion passed 4-0.


**VI. Next Meeting**

Mr. Dorman stated we have no upcoming cases pending at this time.

**VII. End of Meeting**

There being no other business to come before the Board, Ms. Weeks moved to adjourn the meeting and Mr. Goit seconded the motion. All approved. Meeting adjourned at \_\_\_\_\_ PM.

  
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Mr. Robert McGuinness, *Chair*  
*4 Dec 2021*  
\_\_\_\_\_  
Date

  
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Ms. Barbara Seim, *Secretary*  
*October 19, 2021*  
\_\_\_\_\_  
Date