

MINUTES OF THE MAY 18, 2021 BOARD OF ZONING APPEALS MEETING

I. Opening of Meeting

The Clayton Board of Zoning Appeals meeting convened at 7:00 PM on Tuesday, May 18, 2021 virtually on the Zoom platform.

II. Members in Attendance

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

III. Meeting Procedure and Oath

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

Chairman McGuinness welcomed new Board Member, Barbara Buyers

IV. Minutes of the Previous Meetings

Mr. McGuinness presented the minutes of the December 23, 2020 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 December 23, 2020 hearing made by Ms. Weeks, second by Ms. Hunter. Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-abstain, Ms. Hunter-yes, and Ms. Buyers-abstain. Motion passed 3-0.

V. New Business

Mr. McGuinness asked if everyone acknowledges receipt and understands the Rules of Procedure of the City of Clayton Board of Zoning Appeals. All members indicated yes.

Mr. McGuinness stated we need to appoint a President for 2021 and asked for nominations. Mr. Goit made a motion to re-appoint Mr. McGuinness as President for 2021, motion was second by Ms. Weeks. Voting: Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-yes, Ms. Hunter-yes, and Ms. Buyers-yes. Motion passed 5-0.

Mr. McGuinness stated we also need to appoint a Vice-President for 2021 and asked for nominations. Mr. McGuinness made a motion to re-appoint Ms. Weeks as Vice-President for 2021, motion was second by Ms. Hunter. Voting: Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-yes, Ms. Hunter-yes, and Ms. Buyers-yes. Motion passed 5-0.

Mr. McGuinness stated we then need to appoint a Commission Secretary. Ms. Hunter made a motion to appoint Barbara Seim as Board Secretary, motion was second by Mr. Goit. Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-yes, Ms. Hunter-yes, and Ms. Buyers-yes. Motion passed 5-0.

Mr. McGuinness asked for approval of the 2021 Board of Zoning Appeals meeting schedule that was included in their packets. Motion by Ms. Weeks to approve the 2021 Board of Zoning Appeals meeting schedule as proposed, motion was second by Mr. Goit. Voting: Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-yes, Ms. Hunter-yes, and Ms. Buyers-yes. Motion passed 5-0.

Mr. McGuinness introduced Case VAR21-01. 7520 Rose Tree Lane, Tim and Dorine Williams. This is a request for a swimming pool fence Variance for the property at 7520 Rose Tree Lane, Parcel ID M60 25424 0002. The applicant is installing an in-ground pool and an automatic pool cover in lieu of a 5' fence as required by Section 1187.12(c)(2). The request was made by Tim and Dorine Williams, property owners.

Mr. Dorman advised staff received a Variance application from Tim and Dorine Williams, owners of the property at 7520 Rose Tree Lane. The applicants are requesting a variance to allow an automatic pool cover in lieu of the minimum height of five foot fence required to be installed around the pool area or rear yard to prevent uncontrolled access to the pool per Section 1187.12 (c)(2). The parcel has an area of 1.89 acres and is situated north of Westbrook Road and west of Crestway Drive. Dorman showed an aerial map of the area, a close-up image of the subject property, and then a plot plan showing the location of the proposed pool. We issued a Zoning Certificate for the proposed in-ground pool on April 22, 2021 with the condition that the Williams install a minimum 5' tall fence around the pool area or rear yard to control access to the pool. The Variance request is unique in Clayton, but there are other communities that have started to allow automatic pool covers including Englewood, Vandalia, Kettering, and Oakwood. In Beavercreek, the height of the required fence can be lowered to 42" if an automatic pool cover is also installed. Due to the unique nature of the request, I am hesitant to offer a recommendation to the Board on this request, but if the Board is inclined to approve the request, we suggest that a policy be adopted by the Board ensuring that certain minimum criteria be met in order for the Board to entertain a variance allowing an automatic pool cover in lieu of the required fencing, including:

- Lot on which an automatic cover is proposed shall have an area of at least 1 acre;
- Evidence is provided that automatic pool cover can be securely fastened in place and can sustain a person weighing at least 250 pounds; 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.

The above policy/conditions can then be used as guidance and/or conditions of any variance approval that the Board issues.

McGuinness asked Dorman if we are setting a precedence if we do allow the pool cover. We are not a board that makes changes to the zoning code, we enforce the code as it is written and given to us. What is the follow through with Council to make sure that it is property vetted and included.

Mr. Dorman advised the current code states a 5' fence is required around the backyard or pool area. This is a request for a Variance, asking for relief from that in lieu of an automatic pool cover. I think that is something you could approve without it being in the code. Since it is not in the code is it something you could review on a case-by-case basis.

Mr. McGuinness stated I do have issues with the fence, there are many safety issues built into the fence requirements. I'm concerned with snow weight on the cover and could it hold the weight. Also, having a large pit during construction and having to use a safety fence during construction. I worry about us setting a precedence.

Ms. Hunter asked about the city's new zoning code which for this issue appears to be the same as in the old code, was this change thought of during the re-write?

Mr. Dorman stated the zoning code re-write was started in 2019 and I started in August of 2020. This issue did not come up.

Mr. Goit advised you did not provide a recommendation, but instead gave three conditions. What is your basis for these conditions?

Mr. Dorman stated they are not in our current code, but I did research on other communities and used their guidelines. These recommendations are just a starting point for the Board to consider.

Applicant:

Mr. McGuinness asked Mr. and Mrs. Williams if they had anything to add. Ms. Williams stated a fence would take away from the sight lines of her property. An automatic pool cover has been shown to be safer than a fence, it seals the pool. The cover makes the pool less visible to intruders and wildlife. We have racoons, crayfish, and deer among other critters, so the cover would keep them out of the pool. The cover can be closed in seconds and will support the weight of several adults. It is also a winter and solar cover for the pool. We are on two acres and the pool will be in the backyard which is surrounded by trees on three sides.

Dave Kramer of Knickerbocker Pools stated his company would be installing the automatic pool cover. It is a horizontal barrier to the pool and far exceeds a fence. The cover can be closed in 30-45 seconds depending on the size of the pool and can hold up to 485 pounds per square foot, and there are no issues with snow loads. The water within the pool is the structure for the cover to sit on. Fence code requires we isolate the pool

from the neighboring area but 80-85% of accidents are from within the home. I've been installing these covers since 1995 and we have had no deaths or injuries with an autocover. During a power outage, the cover can be manually closed.

Ms. Hunter asked if an autocover becomes defective, will your company fix it and how long would it take to respond.

Mr. Kramer advised they install 35-45 covers a year and we have an in-house technician. We typically respond within 24-48 hours, and the covers can be manually closed.

Mr. Goit asked about the manual closure, could a couple like the Williams be able to manually close the cover.

Mr. Kramer stated that two adults can close the cover without issue.

Mr. Goit asked Mrs. Williams I understand you wanting to keep animals out of the pool with an autocover, open sight lines and maintenance around the pool, but have you looked at doing both a fence and an autocover.

Mrs. Williams stated they do not want the expense of both an autocover and a fence, and I believe autocover looks nicer and is safer.

Mr. McGuinness asked for a motion to open the meeting for public comment. Motion by Mr. Goit to open the meeting for public comment, motion was second by Ms. Weeks. Voting: Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-yes, Ms. Hunter-yes, and Ms. Buyers-yes. Motion passed 5-0.

Proponent/Opponent:

Mr. McGuinness asked if anyone wished to speak in favor of this request.

Teresa Combs stated she is a neighbor across the street from the Williams. I was just interested in the case and have no problem with the Williams installing the autocover. I have a pond myself and have young grandchildren and appreciate their concern with safety. I do want to ask Mr. Kramer, when installing pools what are the percentage of people installing autocovers versus fences.

Mr. Kramer stated about 60% of the pools they are installing are getting the autocovers, and about 60-70% are meeting the fence code.

Kenny Henning gave examples of friends who currently have autocovers on their pools and have experienced no issues.

Mr. McGuinness asked if there was anyone who wished to speak in opposition of this request. Hearing no Opponents Mr. McGuinness 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. Hunter. Voting: Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-yes, Ms. Hunter-yes, and Ms. Buyers-yes. Motion passed 5-0.

Findings of Facts:

Mr. McGuinness read the findings of facts and after discussion of each the board found that all were satisfied; however, they determined that two specific conditions were needed for this Variance.


Ms. Weeks made a motion to approve the fence variance for the property at 7520 Rose Tree Lane with the conditions that the selected automatic pool cover meets or exceeds the safety standards outline in ASTM-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. Motion second by Mr. Goit. Vote: Mr. McGuinness-yes, Ms. Weeks-yes, Mr. Goit-yes, Ms. Hunter-yes, and Ms. Buyers-yes. Motion passed 5-0.

VI. Next Meeting

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, Mr. Goit moved to adjourn the meeting and Ms. Weeks seconded the motion. All approved. Meeting adjourned at 8:29 PM.



Mr. Robert McGuinness, *Chair*
18 JUNE 2021

Date



Ms. Barbara Seim, *Secretary*
June 18, 2021

Date