# City of Oconomowoc
# Zoning Board of Appeals

**Thursday, August 20, 2020 @ 6:00 PM** **@ City Hall Council Chambers**

NOTICE: If a person with a disability requires that the meeting be accessible or that materials at the meeting be in an accessible format, call Diane Coenen, City Clerk, at least 48 hours prior to the meeting at 262-569-2186 to request adequate accommodations.

## Meeting Agenda

1. Call to order and confirmation of appropriate meeting notice.

2. Approve Meeting Minutes of July 20, 2020.

3. Re-consider / act on the application request of Jill Riley for a variance of 4.5' that would allow a pool to be located 5.5' from the north lot line and 5.5' from the existing house located at 1286 Lily Road. *(This item was postponed by the members of the Zoning Board on July 20, 2020.)*

    a) Zoning Administrator comments / presentation.
    b) Applicant comments / presentation.
    c) Citizen comments if recognized by the Zoning Board.
    d) Action by the Zoning Board on Variance Application request.

4. Adjourn.

Diane Coenen

Diane Coenen, City Clerk
City of Oconomowoc

Members of other city governmental bodies (board, commissions, committees, council, etc.) may attend the above-noticed meeting of the Zoning Board of Appeals in order to gather information. The only action to be taken at the above-noticed meeting will be action by the Zoning Board of Appeals.

All Zoning Board Members please notify the City Clerk's Office at 569-2186 if you are unable to attend.

**City of Oconomowoc**
**Zoning Board of Appeals Minutes – July 20, 2020**

The Deputy Clerk called the meeting to order at 6:00 pm and confirmed that appropriate notice was given.

**Members Present:** Mark Gempeler, Kyle Driscoll, Ken Brotheridge and Bob Morgan

**Staff Present:** Jason Gallo and Tina Wallace

**2. Nominate/act on Chairperson pro tem:** Motion by Morgan to nominate Board Member Kenneth Brotheridge as Chairperson pro-tem; second by Driscoll. Motion carried 4-0.

**3. Approve Minutes of June 3, 2020:** Motion by Gempeler to approve the June 3, 2020 minutes; second by Morgan. Motion carried 4-0.

**4. Reynen Public Hearing – 6:01 PM:** The purpose of the hearing is to hear public comment on application filed by Jill Riley for a variance at 1286 Lily Road, from Section 17.111(8) Swimming Pool Standards, Sub-section (b) that requires pools to be located a minimum of ten (10) feet from any lot line or building. The proposed pool would be 5.5' from the north lot line and 5.5' from the house. A variance of 4.5' is required to allow the pool to be located with the required setbacks from the property line and the house.

Brotheridge opened the public hearing at 6:01 pm and swore in the property owner, Jill Riley, Kevin Kurtz and Vickie Gertz and Jason Gallo, City Planner. Gallo gave a power point presentation on the applicant's variance request. He stated this is for an area variance. They are asking for a waiver of an ordinance from Section 17.111(8) Swimming Pool Standards for the property at 1286 Lily Rd. This is regarding installation of a permanent above- ground pool 24' round pool. The City requires a 10' setback from side property lines and 10' setback from house. The applicant would like to encroach 4.5' into those setbacks. The property is a corner lot. The rear and side yards are fenced with a 6' tall board-on-board fencing. The proposed pool with not be visible from the road. The pool will comply with the 10' required setback from the west lot line where the Utility easement exists. Gallo gave a brief history of the property. Planning received letters of support from the adjacent property owners to the west and northwest. Gallo stated in order for the Zoning Board of Appeals to grant a variance there is a three-part test. The applicant has the burden of proof to demonstrate that all three criteria defined in the state statute requirements are met: 1) is unique physical property limitations are existing; 2) no harm to public interests; and 3) unnecessary burden on the owner if it's not granted. Planning Staff finds the property contains unique physical property limitations, no harm to public interest and there is unnecessary burden placed on the applicant. Gallo concluded the Board has 5 alternatives to granting a variance: approve the request as submitted, deny request, approve the request in part, approve the request with conditions as determined, or postpone action. The Board should consider have they exhausted all other means; would a text amendment be a better solution and will granting this various set a precedent. The Board should consider the application, evidence during the public hearing, staff report, photos, letters and emails. Planning Staff recommends approval of the variance at 1286 Lily Rd with the following conditions: 1) Pool & accessories shall be outside of the 10' easement; 2) Owner shall pay for removal & new electric lines; 3) Applicant shall obtain a pool permit from the City; and 4) No pool filters or pumps within 20' of side lot lines.

Jill Riley stated she will comply with all the proposed 4 conditions. She handed out an email from the pool company, Patio Pleasures regarding pool inventory. She stated there are no pools available in southeastern Wisconsin other than the 24' she purchased. She is adding electric service to keep the pool heated during the October/November months. The equipment will be facing the east to Lily Rd or facing south towards to Heather Cir. She stated there is no other place on the property to put the pool. The pool will not be for social use but used as a therapy pool. She does not want to join a health club with the pandemic occurring and the therapy is required.

Kevin Kurtz, neighbor directly north, stated he is requesting denial due to several concerns he has. He handed out a packet of information containing an email from Patio Pleasures, a list of above ground pools available through Amazon and photos. His concerns are the location, breaching of the pool, the size, splashing, chemicals hurting his flowers and outdoor seating in his yard.

Vickie Gertz stated she is not in support of the pool. She is concerned about the maintenance and size of the pool.

In rebuttal, Riley stated she will maintain the pool. Her neighbor's seating location is their choice. She is not interested in purchasing a pool of reduced quality from Amazon. She wants a reputable company with a better warranty.

No additional public comments were received. The public hearing closed at 7:02 pm.

**5.** Consider/act on the application request of Jill Riley for a variance of 4.5' that would allow a pool to be located 5.5' from the north lot line and 5.5' from the existing house located at 1286 Lily Road.

The Commissioner's discussed the setbacks, different size pools available and postponing for the applicant to obtain more information. The Commission recognized the concerns expressed by the neighbors, but also see the potential need for the pool.

Motion by Driscoll to postpone action on the application for 30 days to give the applicant time to address the neighbor's concerns and questions of the Board; second by Gempeler. Motion carried 4-0.

Motion by Gempeler to adjourn the meeting of the Zoning Board of Appeals; second by Morgan. Motion carried 4-0. The meeting adjourned at 7:14 pm.

_____

Tina Wallace, Deputy City Clerk

# MEMORANDUM

TO: Zoning Board of Appeals Members

FROM: Jason Gallo, City Planner / Zoning Administrator JG

DATE: August 14, 2020

SUBJECT: **Riley Variance Request - 1286 Lily Road**

---

During the July 20, 2020 Zoning Board of Appeals meeting, the Riley pool setback variance request was postponed for 30 days. This was to allow the applicant time to address concerns of both the Board Members and the neighboring residents that were brought up during the meeting on July 20, 2020.

Since that meeting Jill Riley, applicant, has submitted additional information for consideration. This includes a response to the application questions, details regarding the specific pool specifications, and additional information regarding the pool warranty of this brand versus other less expensive pool types.

Planning Department staff will be available during meeting to provide a brief presentation that was shared 30 days ago (no new information will be given from City Staff). The applicant is asking for the opportunity to also present her updated information to the Board.

It is anticipated the Board will be acting on the variance to either approve, approve with conditions or deny the variance on August 20, 2020. Please plan on attending this meeting. If you cannot make it, we would like to know in advance to ensure we have a quorum for the meeting.

# Planning Department Staff Report

**City of Oconomowoc**

## *Jill Riley Pool Encroachment* *Zoning Board of Appeals –7/20/2020*

***Variance Request***

**Summary:** The applicant submitted a variance application, that would allow a swimming pool to be installed 5.5' from the north side property line and 5.5' from the existing house. A 4.5' variance is requested from the required 10' side yard setback and a 4.5' variance is request from the existing house.

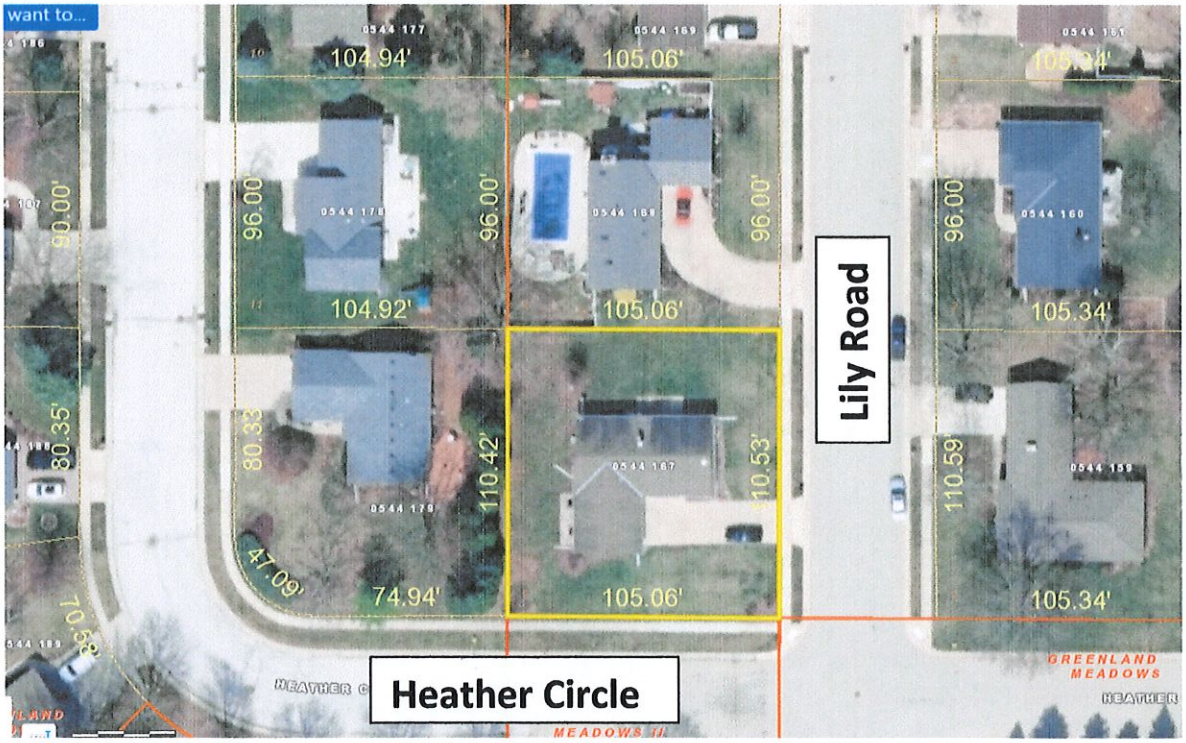
**Property Location:** 1286 Lily Road, tax key number OCOC 0544.168

**Property Owners:** Jill Riley
1286 Lily Road
Oconomowoc, WI 53066

**Applicant:** Jill Riley

---

**Existing Zoning:** SR; Suburban Residential District
**Existing Land Use:** Single-Family residential use

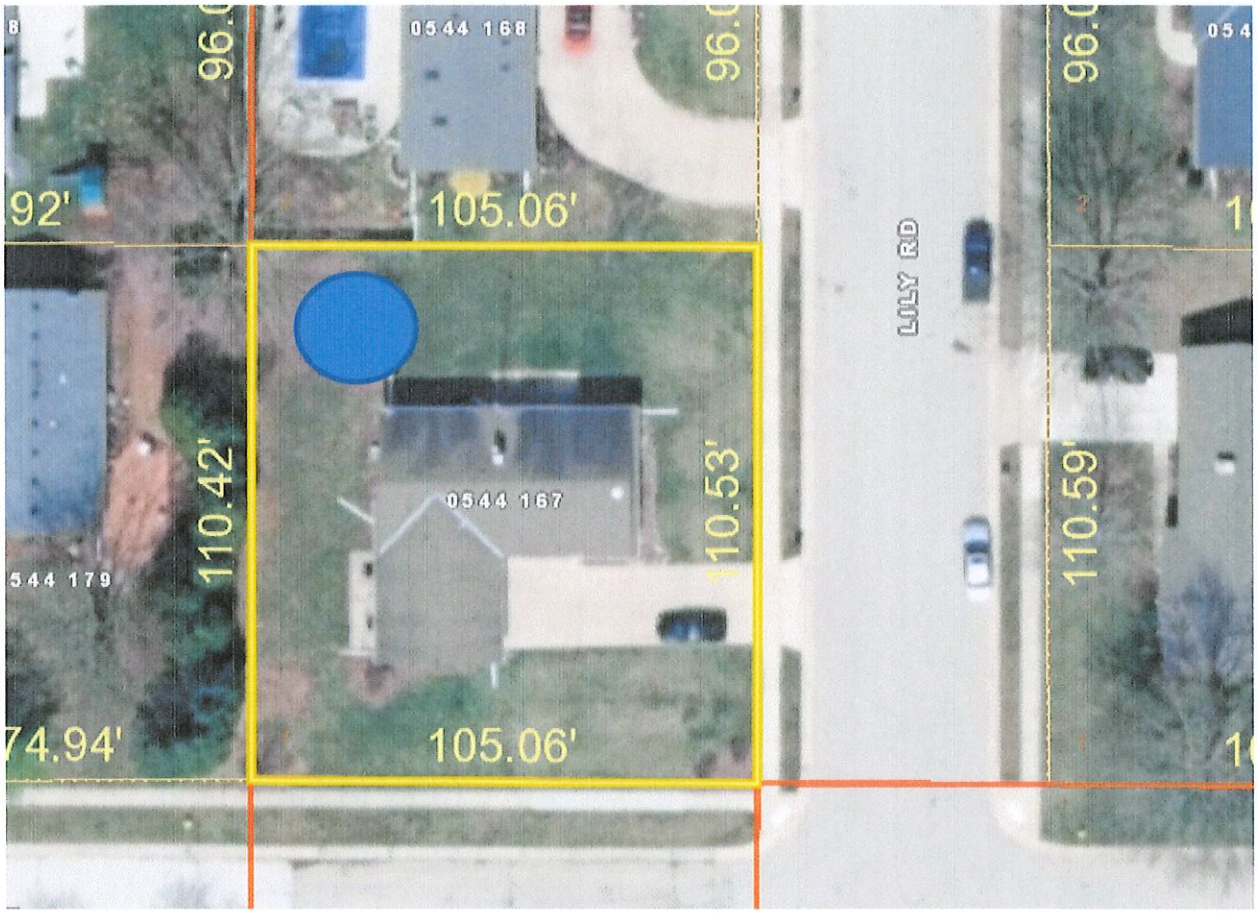



## General Location Map

## Request:

The request is to construct an above-ground 24' round pool within the required to the pool setbacks at 1286 Lily Road. Per the zoning code requirements, Section 17.111(8)(b) all swimming pools shall be at least ten feet from any lot line or building.

Below is an aerial photo of the property with the proposed location of the pool shown as a blue circle.




Based on this photo, it can be seen the that:

- the subject property is a corner lot,
- the neightboring property to the north has an in-gound pool,
- the pool will be pushed as far from either of the streets as possible,
- the pool will comply with the 10' required setback from the west lot line (Utility easement exisits)
- when placing the pool 10' from the west side, leaves 5.5' from the northern lot line and 5.5' from the house.

## Current Fencing:

The property rear and side yards are fenced with a 6' tall board-on-board fencing. The proposed pool will be completely within a 6' fenced area.

## Front Yard – Along Lily Road

## Side Yard – Along Heather Circle

**Rear Yard Fence – Looking to the North**

**Rear Yard – With Pool Layout (approximate)**

## Type of Variance:

The applicant is requesting an area variance, not a use variance. An area variance is intended to provide an increment of relief (normally small) from a dimensional restriction such as building height, width, area, setback, etc. To grant a variance, the Board of Zoning Appeals must determine if the request meets each of the three (3) statutory variance criteria (standards/tests) as provided below.

### 1 Unique Physical Property Limitations Standard:

The first test/standard deals with uniqueness to the property that other nearby properties may not have. The UW-Extension defines unique property limitations as follows: "Steep slopes or wetlands must prevent compliance with the ordinance. The circumstances of an applicant, such as a growing family, elderly parents, or a desire for a larger garage, are not legitimate factors in deciding variances."

Planning staff finds the property contains unique physical property limitations. Staff is going to bend the rules a bit and see if the Zoning Board of Appeals agrees. The property itself is not "unique", but the "situation" that the applicant finds herself is unique. There is currently a shortage of above ground swimming pools. Per her reputable swimming pool installer, this 24' round pool is the only size available. An email was submitted from Rene Huston, president of Patio Pleasures documenting this as unforeseen challenge in the swimming pool industry.

The reason for the shortage of pools is due to the COVID-19 pandemic that the Country is currently experiencing. Most public pools, indoor health clubs and public beaches are closed, and people are asked to shelter-in-place. In order to swim, one must have access to a private pool. Due to the massive shortage of pools, the current status of pools becomes a unique problem, as there has never been a shortage like this before. If the applicant was able to find a smaller pool that met the required setbacks, she would have rather complied with the pool ordinances.

### 2 No Harm to Public Interests Standard:

The UW-Extension defines no harm to public interest as follows: "A variance may not be granted which results in harm to public interests. Public interests can be determined from the general purposes of an ordinance as well as the purposes for a specific ordinance provision. Analyze short-term, long-term, and cumulative impacts of variance requests on the neighbors, community and statewide public interest."

Planning Staff finds the proposed variance does not harm the public interest. The applicant submitted letters of no objection from the property owners to the directly west and kitty-corner to the northwest. The neighbor impacted the most, to the north was not asked to sign the letter of non-objection. There is a 6' tall fence on both sides of the property line to the north (double fencing) and the north property already has an inground pool. The applicant is providing a 5.5' from the north property line and 5.5' from the house, splitting the setback distances while maintaining a required setback from the easement to the west. The pool will be located in a completely fenced yard.

Photo of the neighboring property to the north - 6' solid fence.

## Unnecessary Burden Standard:

3 Planning Staff finds an unnecessary burden is placed on the applicant if the variance were denied. In most cases this is the hardest test to meet. In this case, staff feels the applicant meets this standard with a sound answer. The applicant needs the pool to conduct her multiple types of therapy. Due to a severe car crash, the applicant is required to do therapy that can be done in water. There is limited access to her needed therapeutic treatments. Having the pool on her property would benefit her health and well-being. The primary use of the proposed pool is a therapy pool, not a social pool.

## Easements:

There is a utility easement along the west lot line that contains underground primary. The existing lines in this easement must remain. The applicant has agreed to keep the pool and any permanent pool accessories outside of the 10' easement. There are also electric lines running diagonal from the pedestal in the NW corner of the lot to the house. The owner has agreed to pay for the removal of the existing lines and laying of new lines along the west property line. A drawing was provided from the Electric Utility for what work would need to be done if the pool is allowed to be installed. Based on the two conditions to keep the pool out of the easement and pay for the relocation costs, the City Electric Utility has no objection to the proposed variance.

## Recent Property Improvements:

The applicant has pride in the ownership of her house. The site visit on July 6, 2020 revealed a new roof, exterior façade improvements, exterior painting and recently installed concrete patios. The applicant wants this to be her forever home.

## Alternatives:

When reviewing variances, the City Zoning Board of Appeals should look at all potential alternatives prior to acting on the variance.

1. Deny the request as submitted. Ask that any future pool conform to the 10' setback.
2. Approve the request with no conditions. Allow pool to be installed as submitted.
3. Approve the request with conditions. Require the pool to maintain 10' from west side and house, have applicant pay all electric relocation costs, require a pool permit, and have any filters or pumps 20' from property line.
4. Postpone the request to get more information.

---

## Staff Reasoning / Recommendation:

Staff feels the application meeting the standards for granting a variance. In this case, all three tests when joined together build the case for granting. The pool is needed for therapy purposes, there is a shortage of pools, the proposed pool size is all that is available, and there is existing double fencing to the neighbor's lot line. Once all three items are blended together, staff feels the medical condition with the uniqueness of the pool shortage becomes grounds for granting the variance.

1. The property meets the uniqueness and physical limitations by a pool shortage brought on by COVID-19 and shelter-at-place orders.
2. There is no harm to the public interest since the adjacent owners agree and there is double fencing to the property to the north.
3. The owner would have a burden without the variance as they would not be able to complete the required therapeutic treatments.

*Staff feels the proposed variance to allow the pool to encroach 4.5' into the side setback and house setback (maintaining 5.5') meets the* ***statutory*** *requirements for granting a variance.* Planning staff recommends **approval** of the variance request, per *Number 3 above – Approve with conditions.*

1. Pool and any permanent pool accessories shall be located outside of the 10' easement along the west property line.
2. The owner shall pay for the removal of the existing electric lines and the laying of new lines along the west property line.
3. Applicant shall apply for a pool permit.
4. No pool filters or pumps shall be within 20' of the side lot lines.

**Submitted by:** _____

Jason Gallo, AICP
City Planner/Zoning Administrator

RECEIVED
AUG 14 2020
CITY OF OCONOMOWOC
PLANNING DEPARTMENT

Riley Variance Request

1. There are extraordinary circumstances on the property. Although the property itself has a uniqueness being a corner lot, with a utility easement and very limited rear yard, the extraordinary circumstances is the pool shortage (for the first time in history) that the state and surrounding is experiencing due to the current world pandemic of Covid-19. *Please see attached updated information from the pool company. This absolutely does apply to the property, as it has applied to not only each and all of our everyday lives, but other properties, both personal and professional, restaurants, home service providers, gyms, hospitals, etc. and business' state and world wide. This wouldn't be setting a precedent, as this current situation is unique. Since our last meeting regarding this matter, things have increased in nature, with the addition of a state-wide mask mandate. In order to set a precedent, you would have to have the exact same situation.

2. No. There is no detriment to public interest. Two adjacent neighbors are okay with it and have signed off regarding. After great thought and consideration, I've agreed to address the remaining neighbor, Kevin Kurtz's, concerns. I have thought long and hard about his concerns with the pool being utilized in a fashion outside of therapeutic needs, with regards to it being a splash pool (which will not happen). In that regard, I've agreed to install plexiglass along my fence at Mr. Kurtz's lot line, where the pool encroaches the 10ft issue. This would preferably be 1ft in height, as the fence is already 6ft tall.

Additionally, I was able to find another family that has the same type of permanent structure durable pool in the exact same size of a 24ft round. They did a demonstration for us in their pool and video taped it, providing it to me for use with this situation. Please see the video provided for you. The two subjects in the video in the pool are both taller and stronger than I. They created and demonstrated a wave in their pool and also utilized flotation type devices to create a ruckus in the pool. Although this type of activity won't be going on in my pool, this video depicts a type of social splashing that was previously brought up and talked about. You will see that even with that type of interacting, the pool water still remained inside the pool and direct area.

3. No. There is no adverse impact to the neighborhood, as it will not be seen from the road. This will not be a social pool, but a therapy pool. I will have a professional company fill the pool with outside water brought in by truck. The water will be kept in the pool. The pool will be professionally maintained with regular inspections.

4. No. The factors were not created by me (the applicant). I did not build the house. It's a corner lot and has a limited area for pools. Yet, there are other pools in the neighborhood and next door to my property. The city required easement along the side lot line and the build-able area is very reduced for a pool. I was involved in a very serious car accident, that wasn't my fault and out of my control. I was very seriously adversely affected by that.

5. Yes. Pools are permitted use. Without a variance, I cannot get a pool in a size that fits. A great burden would be created, as the pool is needed for physical therapy, not social use. This isn't a want vs need situation, it's need.

6. No. No other variances have been requested on this property in the past.

What will you be doing this summer?
Superior materials and renowned durability,
The ***V7 Steel Series*** brings you the ultimate in steel pools. Take pride in owning a quality steel pool that is built for the long haul!
The entire steel structure is coated with a combination of protective finishes, ensuring maximum resistance to corrosion and providing optimum durability.

*Your above ground pool is designed to provide years of pleasure and safe family fun, so water safety practices should be strictly followed and enforced. Your pool contains shallow water, which makes diving or jumping unsafe. Diving or jumping into shallow water can lead to severe injury or death. Please observe the safety precautions that were provided to you when you purchased your above ground pool and conform to all local regulations.*

*© Copyright 2019*

MKG-75-1055

# Impress

What will you be doing this summer? Superior materials and renowned durability, The V7 Steel Series brings you the ultimate in steel pools. Take pride in owning a quality steel pool that is built for the long haul! The entire steel structure is coated with a combination of protective finishes, ensuring maximum resistance to corrosion and providing optimum durability.

| Round | 52" Height |
|---|---|
| 12' 15' 18' 21' 24' 27' 30' | |

| Oval | 52" Height |
|---|---|
| 12' x 23' 15' x 30' 18' x 33' | |

## Features

- 7-inch multi-ribbed steel top ledges
- Steel uprights with modern design & superior protection
- Two-toned ledge cover made from reinforced composite polypropylene resin
- Resin bottom plate with integrated foot cover for better fit
- Dorado wall pattern-a pleasing look with the sand frame
- Heavy corrugated wall with superior coatings
- Easy to assemble
- Yard extender system for oval pools
    - A series of practically invisible lateral supports placed in the ground, leaving more yard space.

## Color

- Sand

# Impress Warranty Info

**Adrianne DeSelle** <adrianne@patio-pleasures.net>
To: jriley2171@sbcglobal.net

Hi Jill,
Attached is the Impress warranty card. I'm very certain as a pool professional an Intex or similar brand will not be anywhere near th

Also, most Intex pools come with very small cartridge filters. Our pools are a high quality, energy efficient sand filter system. Far be

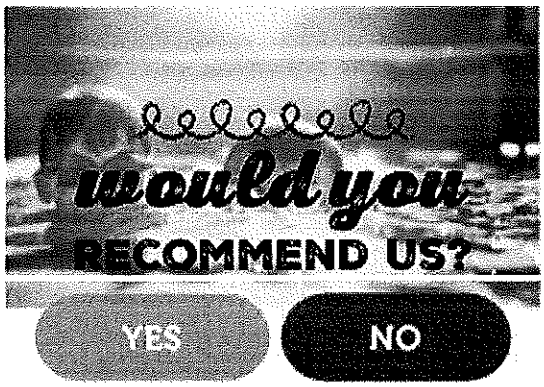
I realize your neighbors want you to have a smaller pool. However, rationalizing that the on-line Intex line or similar is the same qu

I hope this helps.

**Adrianne M. DeSelle** | VP of Marketing & Retail Operations
Sun Prairie: 608.825.6200 | Madison: 608.288.8220 | www.patio-pleasures.com [patio-pleasures.com]

***WE ARE BACK TO REGULAR BUSINESS HOURS:***
***Monday - Friday 9am - 6pm***
***Saturday 9am - 4pm***
***Sunday Closed***

***Curbside pick-up for water tests and chemicals available!***




[google.com] [patio-pleasures.com]

**1 File** 39.2kB

brisbane-coralseas-impress-sahara str.jpg
39kB