

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

Chairman Brotheridge called the meeting to order at 6:00 pm and confirmed that appropriate notice was given.

Members Present: Chairman Ken Brotheridge, Mark Gempeler and Bob Morgan

Members Excused: Kyle Driscoll

Staff Present: Jason Gallo and Tina Wallace

2. Approve Minutes of July 20, 2020: Motion by Gempeler to approve the July 20, 2020 minutes; second by Morgan. Motion carried 3-0.

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*):

Gallo reported this variance request was heard back on July 20, 2020. Gallo gave a brief power point presentation on the applicant's variance request. He stated this is for an area variance. 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 will not be visible from the road. There was discussion at the last meeting on how much room is allowed and is this the only spot on the lot the pool could be located. Pools are allowed only on the side and rear yard. 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 but the neighbor to the north did not sign it. He is here tonight with concerns. 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 is very appreciative of the Members for postponement of this issue for further review. She played a video of a family demonstrating the splash impacts from the same size pool. The proposed pool is an above-ground pool and is steel with a protective finish to resist corrosion. She has been on a call list for smaller above-ground pools, but nothing is available. She has paid for the removal of the electric lines and laying of the new lines. This job has been completed. She would be willing to install plexi-glass on the existing fence to reduce water from going onto the neighbors property.

Chairman Brotheridge stated this meeting has not been noticed as a public hearing. There is a neighbor here asking to speak to the Board. The Chair would entertain a motion to allow comments from the public regarding this item. Motion by Gempeler to approve public comment as long as the discussion is limited to knew matters brought up today; second by Brotheridge. Motion carried 2-1. Morgan vote no.

Kevin Kurtz, neighbor directly to the north, stated he is trying to find a solution for his family and Ms. Riley. He stated at the previous meeting he presented many pool options that were available and several that would not require the Zoning Boards involvement. He addressed the plexiglass shield, video and pool shortage. This would not prevent water from coming under the fence and it discolors over time. Also, fences cannot be more than 6 ft. high. The video that was shown can be made any point you want to make. It does not show anyone jumping in or using squirt toys. The pool shortage is temporary. His solution is to have the Board grant a variance request that abuts the house only and not the fence then the smaller pools would work. Then the 10 ft. setback would be maintained. He would gladly sign the letter of support in support of the variance request from the house only as long as the 10 ft. setback from the fence would be maintained.

The Commissioner's discussed the setbacks and locations, different size pools available, the use of plexiglass, breaching of the pool and sharing of information between neighbors. The Commission recognized the concerns expressed by the neighbor, but also see the potential need for the pool. Gempeler stated when he made the motion to postpone, he thought he made it clear that the parties were to share information so the Board wouldn't be put in the position where someone was taken by surprise.

Motion by Gempeler to approve 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 with the following four conditions 1) Pool & accessories shall be located outside of the 10' easement along the west property line; 2) The owner shall pay for removal of the existing electric lines and the laying of new lines along the west property line; 3) Applicant shall obtain a pool permit from the City; and 4) No pool filters or pumps within 20' of side lot lines and to incorporate the staff report and the request meets the three part test for granting a variance:

- 1) With the corner lot there is no other place to locate a 24' pool and that is the only size available due to the shortage.
- 2) Will not harm public being a high-quality pool and has an existing fence.
- 3) Burden will be created since the pool is needed for therapy.

; second by Brotheridge. Motion carried 2-1. Morgan voted no.

Motion by Morgan to adjourn the meeting of the Zoning Board of Appeals; second by Gempeler. Motion carried 3-0. The meeting adjourned at 7:03 pm.

Tina Wallace, Deputy City Clerk