



City of Gahanna

200 South Hamilton Road
Gahanna, Ohio 43230

Meeting Minutes Board of Zoning and Building Appeals

*Lorne Eisen, Chair
Paul D. Bryson, Vice Chair
Ross Beckmann
Mike Burmeister
Obie Stillwell*

Jeremy A. VanMeter, Clerk of Council

Tuesday, August 13, 2024

6:30 PM

City Hall, Council Chambers

A. CALL TO ORDER: Pledge of Allegiance & Roll Call

The Board of Zoning and Building Appeals met in Regular Session on Tuesday, August 13, 2024, in Council Chambers. Chair Lorne Eisen called the meeting to order at 6:35 p.m. At the invitation of Chair Eisen, a Scouts Troop led members in the Pledge of Allegiance. The agenda was published on August 9, 2024.

Present 4 - Ross Beckmann, Paul Bryson, Michael Burmeister, and Lorne Eisen

Absent 1 - Obie Stillwell

B. ADDITIONS OR CORRECTIONS TO THE AGENDA:

None.

C. APPROVAL OF MINUTES:

[2024-0146](#)

Board of Zoning and Building Appeals Minutes 1.18.2024

A motion was made by Burmeister, seconded by Beckmann, that the Minutes be Approved. The motion carried by the following vote:

Yes: 4 - Beckmann, Bryson, Burmeister and Eisen

Absent: 1 - Stillwell

D. ADMINISTERING THE OATH:

City Attorney Priya Tamilarasan administered the Oath to all parties providing testimony during the meeting.

E. APPEALS - PUBLIC HEARINGS:

Sheetz Lincoln Circle - WITHDRAWN 7.22.2024 - No Hearing

[BZA-0001-2024](#) To consider an appeal of Planning Commission's denial of CU-0002-2024 a Conditional Use Application for property located at 230 Granville St., DR-0006-2024 a Design Review Application, and FDP-0005-2025 a Final Development Plan; Parcel ID: 025-004250; Current Zoning CC; Sheetz Lincoln Circle; D.W. Route, applicant.

Chair Eisen noted the Appeal BZA-0001-2024 had been withdrawn by the applicant/appellant.

LeVeck Variance

[BZA-0002-2024](#) To consider an appeal of Planning Commission's denial of V-0012-2024, a variance application to vary Chapter 1171.03(i) swimming pool fencing requirements of the Codified Ordinances of the City of Gahanna; for property located at 1129 Brookhouse Ln., Parcel ID 025-009482; Current Zoning ER-2; Robert LeVeck, applicant.

Chair Eisen opened the public hearing for the LeVeck variance, BZA-0002-2024, to consider an appeal of the Planning Commission's denial of variance application V-0012-2024. The application pertained to varying Chapter 1171.03(i), swimming pool fencing requirements, of the City of Gahanna's codified ordinances for property located at 1129 Brookhouse Lane, Parcel ID 025-009482, with current zoning of ER-2, Mr. Robert LeVeck, the applicant.

Chair Eisen outlined the procedure for the hearing. The appellant, including any interested parties, would have 25 minutes to speak, followed by the appellee's 25 minutes. The appellant would then be allowed a five-minute rebuttal, with the appellee given five minutes for further action.

Chair Eisen confirmed with Clerk VanMeter that all required paperwork had been filed, fees paid, and the record was complete.

Chair Eisen reminded board members they could ask questions during presentations or wait until the designated question period following the presentations. With no further preliminary matters, Chair Eisen invited the appellant to begin their presentation, allowing 25 minutes as outlined in the rules of procedure.

Mr. Stillwell arrived at 6:41 p.m. and joined the Board for the proceedings.

Mr. Robert LeVeck, appellant, began by describing the layout of his neighborhood, emphasizing the significant lot sizes, including his own three-acre property, which is the smallest on the street. He explained that the distance between homes is substantial. He argued that, according to the Ohio Building Code section 3409.4, a safety cover complying with ASTM F1346 could substitute for a physical pool fence. He noted that the manufacturer of his safety cover, Coverstar, meets these standards.

Chair Eisen asked Mr. LeVeck to speak louder to ensure the audience could hear his comments clearly. When asked if he had anything further to add, Mr. LeVeck indicated he did not.

Chair Eisen confirmed that Mr. LeVeck's initial application to the Planning Commission had been filed on April 30, 2024, per the record. He addressed Mr. LeVeck's reference to the Ohio Building Code. Chair Eisen clarified that the 2017 Ohio Building Code, which permitted pool covers as a substitute for fencing under section 3109.4, had been superseded on March 1, 2024, by the 2024 International Building Code. The current code no longer includes language permitting or prohibiting the substitution of pool covers for fencing. Consequently, Mr. LeVeck's statement that the state code allows pool covers in place of fencing was deemed incorrect. Chair Eisen emphasized that the absence of such language neither explicitly permits nor prohibits this substitution.

Mr. LeVeck acknowledged this clarification. Chair Eisen opened the floor to board members for questions or comments. He noted they would have further opportunities for commentary after a motion was offered.

Mr. Bryson inquired about the operation of a pool cover system mentioned before the Planning Commission. He asked if there was an application that allowed the cover to be closed remotely.

Mr. LeVeck clarified that while the app alerts the user, it does not control the opening or closing of the cover. Instead, the system is operated through a keypad. The user must input a code and physically hold the keypad to open or close the cover. The process requires the user's presence throughout the operation; otherwise, the cover will not function.

Mr. Bryson acknowledged that this answered his follow-up question, confirming the app only alerts the user. He expressed his thanks, stating that his questions had been addressed.

Mr. Burmeister asked whether the product met the ASTM F1346 standard requirements, which include specific guidelines for edge perimeter deflection and safety controls, such as preventing objects like a sphere of a certain size from passing through. He also inquired about the operating safety controls, specifically a spring-loaded contact switch. Mr. LeVeck confirmed that the product complies with the standard but explained that the system uses a keypad for manual operation rather than being controlled through a phone.

Mr. Burmeister acknowledged the response and indicated his questions were answered.

Chair Eisen raised a question previously discussed at the Planning Commission regarding a fail-safe mechanism to detect if someone was in the pool as the cover was closing. At that time, the answer was unknown, and Mr. LeVeck had agreed to investigate. Chair Eisen asked if there had been any updates on the matter.

Mr. LeVeck reported that there is no fail-safe mechanism to detect a person in the pool. He emphasized that the individual holding the close button must monitor the pool to ensure no one is inside before initiating the closure.

Chair Eisen confirmed the absence of a safety device, such as a sensor, and reiterated that it is the responsibility of the operator to remain vigilant during the process.

Mr. Bryson added that if someone were noticed in the pool, the operator could release the button to stop the cover from closing. He clarified that the system requires continuous pressure on the button to operate and does not function like a garage door opener, where a single press initiates automatic movement.

Mr. LeVeck confirmed this description as accurate.

With no further questions for Mr. LeVeck, Chair Eisen invited Mr. Roth to present as the appellee.

Mr. Matthew Roth, Assistant City Attorney, presented arguments on behalf of the Planning Commission regarding a variance request related to pool safety requirements. He explained that City's code mandates fences around pools as a safety measure. While variances can be granted for various codes, a variance allowing no safety device around a pool would never be considered. This case arose from a request to use a mechanized pool cover as an alternative to a fence. During the Planning Commission meeting, where one member was absent, the vote ended in a 3-3 tie. Mr. Roth provided details about the application, noting that the property in question features a house built into a slope. The pool is planned to be located off a walkout basement patio, with an elevated terrace on the first floor. The applicant stated that fencing the pool would require tying the fence into the house, resulting in an impractical and unsightly design. Mr. Roth highlighted two factors considered by the Planning Commission when evaluating the variance: (1) whether the character of the neighborhood would be substantially altered or if adjoining property owners would suffer a detriment, and (2) whether the spirit and intent of the zoning requirement would be upheld, and substantial justice would be served. The Planning Commission received a letter from a neighbor expressing concerns about safety, particularly for the neighbor's 20 grandchildren who play in a backyard approximately 60 feet from the proposed pool. This concern influenced member Tamarkin's decision, as he cited the potential risk to children. Members Tamarkin and Mako expressed concerns about critical safety issues associated with pools, emphasizing the need for constant supervision if a pool cover were used instead of a fence. Conversely, member Suriano voted in favor of the variance, considering the larger lot sizes in the area, which reduce the proximity of neighboring properties. Despite these considerations, the Planning Commission deadlocked with a 3-3 vote. Mr. Roth concluded that the Planning Commission followed the code in their deliberations and reached a tie vote on the variance request.

Chair Eisen asked if there were any questions for Mr. Roth.

Mr. Burmeister inquired whether the Planning Commission had discussed alternative approaches, such as a modified fence or graded landscaping. Mr. Roth responded that there was no substantial discussion about alternatives. The applicant had stated that installing a fence would require tying it uphill to the house, and most questions focused on the mechanized pool cover. He noted that another pool on the cul-de-sac is fenced, but the topography of that property may differ. He also mentioned that the applicant was inspired by a neighbor's mechanized pool cover, though that property is located in the township, where City codes do not apply.

Mr. Bryson asked about the interplay between the City's zoning code and the Ohio Building Code, which no longer mandates a requirement. He questioned whether this discrepancy should influence the Board's decision. Mr. Roth explained that while the Ohio Building Code provides flexibility for alternative safety devices, the City's code clearly requires a fence. He noted that it is within the Board's purview to grant a variance allowing an alternative safety device, such as a mechanized pool cover, but reiterated the importance of adhering to City code.

Mr. Stillwell inquired about the rationale behind not installing a fence around the pool, asking whether the decision was influenced more by practicality or cost. Mr. Roth deferred the question to Mr. LeVeck, who explained that aesthetics and practicality were the main considerations. He detailed that due to the retaining walls and the elevation change, a fence would need to extend around the pool patio, up to the ends of the house, and uphill, which presented challenges in maintaining a visually appealing design. Additionally, he noted that the Homeowners Association (HOA) prohibits metal, vinyl, and chain-link fencing, leaving wood as the only option.

Mr. Stillwell then asked about the age of the pool, to which Mr. LeVeck clarified that the pool installation was currently in progress. Chair Eisen asked if the pool was currently protected by the cover, and Mr. LeVeck confirmed it was. Mr. Stillwell further asked if the fencing requirement was in place when the pool was approved. Mr. LeVeck confirmed that it was.

Chair Eisen asked if the City of Gahanna had taken any permitting or inspection actions indicating non-compliance with City ordinances. Mr. LeVeck stated that the project was not yet finished. Chair Eisen then referenced Google Earth imagery showing a neighboring pool with a fence and asked for confirmation that the fence complied with city code and maintained aesthetic standards. Mr. LeVeck affirmed that the neighboring pool had a fence and explained that the absence of a walkout basement made it easier to install. He also noted that the neighbors had added shrubbery to enhance the aesthetics of the fence.

Mr. Burmeister mentioned having observed the neighborhood, noting that the neighbor's fence was not visible from the street due to the hill. He asked if Mr.

LeVeck had engaged a landscape architect or pool contractor during the design phase and whether fencing options were considered. Mr. LeVeck confirmed that multiple landscape architects were involved, but their work focused on retaining wall solutions rather than fencing.

Mr. Burmeister asked if any alternative fence designs, such as retaining wall-integrated fencing, had been explored. Mr. LeVeck stated that fencing was not specifically addressed during the design process. He expressed uncertainty about HOA rules regarding fencing, noting that metal fences were prohibited and speculating that wood fences might be acceptable. However, he raised concerns about installing a fence around the entire property and its potential impact on neighbors.

Mr. Roth provided clarification regarding the City's code on pool fencing, stating that it requires a 4-foot fence around pools but does not strictly regulate the materials or the spacing of fence rungs. He noted that the HOA in this case has stricter rules regarding fencing materials than the City does.

Chair Eisen acknowledged this distinction and referred to the stated preference of Mr. LeVeck for the aesthetic of not having a fence. He asked whether the basis for the variance request was purely aesthetic or if other considerations were involved. Mr. LeVeck confirmed that the request was entirely based on aesthetics, with the safety cover proposed as an alternative to the fence.

Mr. Stillwell asked Mr. LeVeck what made him feel confident that the pool cover alone was sufficient for safety, particularly given the potential for children in the neighborhood to access the pool. Mr. LeVeck explained that his own young children posed the greatest risk and noted that even fences often have gates that can be opened, depending on their design. He questioned whether most pool fences include locks or other safety mechanisms, as he has commonly seen latches that are accessible.

Mr. Stillwell and Mr. Burmeister added that building codes typically require self-closing and self-latching gates with mechanisms placed at a height that is out of reach for toddlers. Mr. LeVeck acknowledged understanding this requirement.

Mr. Beckmann raised a question about HOA regulations, noting that the neighboring pool with a fence appeared to have a metal fence, which the HOA reportedly does not allow. Mr. LeVeck confirmed this observation and speculated that the neighboring homeowner likely obtained HOA approval for the fence with landscaping, noting that such decisions are likely handled on a case-by-case basis.

Mr. Burmeister asked about the pool cover's safety standards, noting it had been stated that it was ASTM-compliant and asking if it was tied to a backup generator. Mr. LeVeck confirmed that a generator was in the process of being installed and connected to a dedicated circuit. Mr. Burmeister also inquired about the durability of the pool cover in the presence of animals, such as

deer, which are common in the area. Mr. LeVeck could not provide specific details about the cover's resistance to animal hooves.

Mr. Stillwell posed a hypothetical question about whether Mr. LeVeck would have proceeded with the pool installation if the City had required a fence before construction. Mr. LeVeck stated that he would still have installed the pool but acknowledged that this was a challenging question. He stated that he had not always started projects with proper permitting in the past.

Chair Eisen addressed the status of the pool, noting that it was not currently meeting City code requirements. He referenced a question raised during the Planning Commission meeting about the functionality of the pool cover in the event of a power outage. At that meeting, Mr. LeVeck had stated that the property had a whole-house generator. Chair Eisen clarified that the pool cover was not yet connected to generator-provided power, which was inconsistent with statements made during the Planning Commission meeting. Mr. LeVeck confirmed this and added that the cover could not be opened or closed without power.

Chair Eisen asked if the pool was currently in use, to which Mr. LeVeck responded affirmatively.

Chair Eisen then closed the discussion with Mr. LeVeck and invited any final remarks from Mr. Roth, who declined to make a closing statement.

Disposition of Appeal

Chair Eisen transitioned the meeting to the decision-making phase, explaining the process for disposing of the appeal. He outlined three options for the board's motion: (1) finding in favor of the appellee or appellant, (2) finding in favor with modifications, or (3) remanding the matter with instructions to a city official, employee, or body, such as the Planning Commission. He also explained that following the motion and second, each board member would have the opportunity to make final comments before the roll call vote.

Chair Eisen emphasized the importance of clarity in the motion language, suggesting that the initial motion be phrased positively to avoid confusion, such as double negatives. He stated this approach was his personal preference and invited comments or questions from the board. There were none.

Chair Eisen then called for a motion regarding the disposition of the appeal. He himself made the motion to approve Appeal BZA-0002-2024. Mr. Stillwell seconded the motion.

Discussion on motion to approve the appeal BZA-0002-2024, finding in favor of the appellant:

Chair Eisen initiated the discussion, allowing each board member to share their personal thoughts on the appeal before moving to roll call. At the direction of the Chair, the Clerk randomly called on each member for their

comments.

Mr. Burmeister expressed concerns about the lack of alternative approaches presented by the applicant to achieve compliance with the code. He noted that the Ohio state code had changed, removing prior flexibility. He also pointed out that third-party safety devices, such as weight detection systems, could provide supplemental safety measures, but no such items had been included in the consideration, which was a significant concern for him.

Mr. Stillwell shared his apprehension regarding the potential for human error, emphasizing the risk of leaving the pool cover open unintentionally, which could result in a safety hazard for children. While he did not question the applicant's character or intentions, he found the possibility of oversight troubling.

Mr. Beckmann stated that he did not have much to add beyond what had already been discussed. He acknowledged that the variance request was primarily driven by aesthetic preferences, noting that the applicant admitted he would have installed a fence if it had been required from the outset. He also mentioned considering the Planning Commission's commentary about the pool being an "attractive nuisance."

Mr. Bryson reflected on the potential impact of the variance on the neighborhood, concluding that it would not alter the character of the community. He emphasized that replacing one safety device with another would not result in a community detriment. Comparing the proposed safety cover to traditional fencing, he noted that both options have potential vulnerabilities. He expressed that fences, like the cover, can be left unsecured, and small children could bypass them in certain scenarios. He acknowledged that the safety cover might provide better protection in some cases and aligned with the zoning code's intent to prioritize safety. He also noted changes in his perspective since the Planning Commission meeting, including staff feedback at the time, which did not oppose the variance. However, he expressed concern about the shift in the situation, particularly the perception that the applicant might be seeking forgiveness rather than permission. Ultimately, Mr. Bryson viewed the proposal as a balance between safety and aesthetics. He appreciated the measures taken to ensure safety and pointed out that the Ohio Building Code previously recognized safety covers as an alternative. While the current regulations no longer address this, he noted that decisions regarding pool safety now rest with municipalities like Gahanna, making this variance a matter of local judgment.

Chair Eisen shared his concerns, particularly referencing two points raised during the Planning Commission meeting. He stated that the fact a neighboring pool in Jefferson Township had no fence was irrelevant to this case because the township follows different regulations. With respect to Ohio Building Code, he emphasized that while the state code no longer addresses pool fencing, the City of Gahanna's code explicitly requires it. He noted that another neighbor had successfully complied with both HOA and City

regulations and found it troubling that the applicant had not. He also voiced frustration over the pool being used despite not meeting code requirements, particularly given the lack of a functioning generator to power the pool cover in the event of a power outage. Chair Eisen expressed skepticism about the reliability of the safety cover, particularly in scenarios where the pool cover could be left open due to oversight or emergencies. He found these risks unacceptable and stated that he would not be voting in favor of overturning the Planning Commission's decision.

After concluding the discussion, Chair Eisen asked if there were any additional comments from the board. Hearing none, the board moved to roll call.

A motion was made by Eisen, seconded by Stillwell, that the Appeal BZA-0002-2024 be Found in Favor of Appellant. The motion failed by the following vote:

Yes: 1 - Bryson

No: 4 - Beckmann, Burmeister, Eisen and Stillwell

Chair Eisen announced the outcome of the vote on the variance appeal, stating that the appeal failed with a 4-to-1 vote against it. He inquired if there were any additional comments.

City Attorney Tamilarasan provided a clarification, noting that although the motion to approve the appeal had failed, the Board had not yet taken an affirmative action to resolve the matter. She explained that a proper motion would be needed to rule in favor of the appellee, the Planning Commission, to ensure the issue was fully resolved. She emphasized that an affirmative action was required to finalize the Board's decision.

Chair Eisen acknowledged the clarification and called for a motion as described by the City Attorney-a motion to rule in favor of the appellee, the Planning Commission.

A motion was made by Burmeister, seconded by Bryson, that the Appeal BZA-0002-2024 be Found in Favor of Appellee, the City of Gahanna Planning Commission. The motion carried by the following vote:

Yes: 5 - Beckmann, Bryson, Burmeister, Eisen and Stillwell

F. POLL MEMBERS FOR COMMENT:

Mr. Bryson closed with a suggestion that the City consider revisiting its code regarding pool safety devices. He noted that during the Planning Commission discussions, a City staff member mentioned that a variance approval could prompt a review of the code to potentially integrate alternative safety systems like mechanized pool covers. While not in a position to mandate such a change, Mr. Bryson expressed support for exploring this option, particularly given the lack of current guidance from the Ohio Building Code. He stated that incorporating such provisions into City code could provide clarity and direction for property owners in the future.

Mr. Stillwell added that the decision-making process had not been easy. He acknowledged that both fences and pool covers could present risks if not used properly. However, he felt confident that the board had made a decision aligned with prioritizing the safety of the neighborhood.

Chair Eisen addressed the broader implications of the Board's decision. He noted that the pool in question was currently in non-compliance with City code and being used by the appellant. Chair Eisen inquired whether any actions should be taken in response to the ruling and directed his question to either the City Attorney or the Director of Planning.

Michael Blackford, Director of Planning, responded by stating that his initial research indicated no permits had been issued for the pool at the property in question. He acknowledged that the City had recently transitioned to a new permit portal, which might affect the accuracy of the records, but confirmed a high degree of confidence in the findings. He assured the Board that he would consult his team and arrange for code enforcement to inspect the property the following day.

G. ADJOURNMENT:

With no further business before the Board of Zoning & Building Appeals, the Chair adjourned the meeting at 7:31 p.m.

Jeremy A. VanMeter
Clerk of Council

*APPROVED by the Board of Zoning and Building
Appeals, this
day of 2025.*

Lorne Eisen