

LAW OFFICE OF
W. BLAIR LEWIS LLC

July 8, 2024

Jeremy VanMeter
Clerk of Council
Jeremy.vanmeter@gahanna.gov

RECEIVED

JUL 08 2024
BY: *J. Van Meter, Clerk*
COUNCIL OFFICE

Appellant: Robert LeVeck
1129 Brookhouse Lane
Gahanna, Ohio 43230
Parcel #025-009482-00

Appellant's agent: W. Blair Lewis
Law Office of W. Blair Lewis
400 Andover Dr.
Powell, Ohio 43065
614-519-1804
blair@blairlewislaw.com

Dear Mr. VanMeter:

This law firm represents Robert LeVeck. We are hereby submitting our appeal of the denial of Mr. LeVeck's application to vary former Chapter 1171.03(i) swimming pool fencing requirements of the Codified Ordinances of the City of Gahanna for Mr. LeVeck's property located at 1129 Brookhouse Lane, Gahanna, Ohio. The variance requested was to install an automatic pool cover in lieu of a fence.

Concise Statement of Reason or Legal Basis for the Appeal

The Planning Commission application was filed on April 30, 2024. The ordinance for swimming pool fences was contained in Section 1171.03 the Codified Ordinances at that time. The new code became effective May 1, 2024. Swimming pool fencing is contained in Section 1109.05(h) in the current version. The new section is virtually identical to the prior version and provides as follows:

1109.05(h) Swimming pool fences. A private swimming pool constructed on the premises of a detached one- or two-unit dwelling shall be enclosed by a fence erected wholly on said premises. ... All fences surrounding swimming pools shall conform to the following requirements:

- (1) In-ground pool fences. For in-ground pools, the top of the fencing shall be at least 48 inches above the grade measured on the side of the fence which faces away from the pool, but not to exceed 72

inches in height as measured from grade along the line of the fence as installed...

Codified Ordinance Section 1171.05 was the standard for a fence variance when the variance application was made and provides as follows:

1171.05 – VARIANCES AND APPEALS

- (a) Variance Procedure
 - (A) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.
 - (B) Whether the variance is substantial.
 - (C) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
 - (D) Whether the variance would adversely affect the delivery of governmental services.
 - (E) Whether the property owner purchased the property with the knowledge of the zoning restriction;
 - (F) Whether the property owner's predicament feasibly can be obviated through some method other than a variance.
 - (G) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
 - (H) Whether the fence is sufficiently compatible with the architectural and design character of the immediate neighborhood; and
 - (I) Whether the fence will be hazardous to passing traffic or otherwise detrimental to the public safety and welfare.

Mr. LeVeck requested that he be granted a variance and permitted to install an automatic cover in lieu of a fence around the pool at his residence. The decision of the Planning Commission to deny the Applicant's request for a variance should be reversed for the following reasons:

1. **The spirit of the code will be met with the proposed pool cover.** The obvious purpose of a fence is for safety. The automatic cover serves the same purpose. Specifically, the cover prevents people and animals from accidentally falling into the pool.
2. **The Ohio Building Code permits automatic pool covers in lieu of fencing.** Ohio Building Code Section 3109.4 provides that residential swimming pools shall be completely enclosed by a barrier complying with Section 3109.4.1 through 3109.4.3.

However, that section also provides: "Exception. A swimming pool with a power safety cover or a spa with a safety cover complying with ASTM F1346 need not comply with this section."

3. Automatic covers have evidently been approved for other swimming pools in the same neighborhood. Mr. LeVeck's neighbor to the south has a cover in lieu of a fence. 4279 Shull Road, Jefferson Township.

Proposed Exhibits (not already in the record)

Mr. LeVeck does not have any proposed exhibits beyond those that were presented at the variance hearing, which are already in the record.

Applicant respectfully requests that, for the reasons set forth herein, the decision of the Planning Commission to deny the Applicant's request for a variance be reversed.

Mr. LeVeck's affidavit listing the names and addresses of all property owners contiguous to, and directly across the street from the property, as appearing on the Franklin County Auditor's current tax list is being filed herewith.

Very truly yours,

W. Blair Lewis

W. Blair Lewis

AFFIDAVIT OF ROBERT LEVECK

STATE OF OHIO :
COUNTY OF FRANKLIN : SS

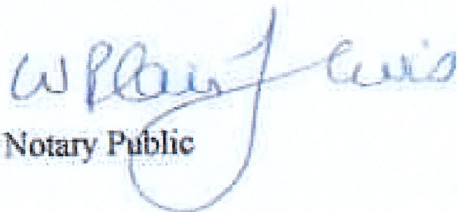
The undersigned, being first duly cautioned and sworn, and based on his personal knowledge, deposes and says:

1. I own the home located at 1129 Brookhouse Lane, Gahanna, Ohio 43230. (the "Property")
2. 1101 Brookhouse Lane, Gahanna, Ohio 43230 is the property directly west of my Property and that property is owned by Helen Gooden.
3. 1155 Brookhouse Lane, Gahanna, Ohio 43230 is the property directly east of my Property and that property is owned by Samuel and Sharon Edelman.
4. 1130 Brookhouse Lane, Gahanna, Ohio 43230 is the property directly across the street from my Property and that property is owned by Timothy and Becky Rooney.

FURTHER AFFIANT SAYETH NAUGHT.


Robert LeVeck

Sworn to and subscribed in my presence this 8TH day of July, 2024.


Notary Public



W. BLAIR LEWIS, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.