

MINUTES

REYNOLDSBURG BOARD OF ZONING AND BUILDING APPEALS

JULY 16, 2009

6:30 P.M.

A. CALL TO ORDER

1. ROLL CALL

Members Present:	Mr. Lucas Haire Mr. Duane White Mr. Chris Long Mr. Norman Brusk Mr. Patrick Feeney
Others Present:	Mr. Aaron Domini, Planning Administrator

2. APPROVAL OF MINUTES OF JUNE 18TH MEETING

Chairman Feeney: Are there any changes, additions, deletions, corrections to the minutes? (No response.) They'll stand approved.

3. APPROVAL OF AGENDA

Mr. Feeney: Are there any changes to the agenda? (No response.) It'll stand approved also.

4. SWEARING IN OF SPEAKERS

(Mr. Feeney administers the oath.)

5. PUBLIC COMMENT - None

B. UNFINISHED BUSINESS

1. VARIANCE APPLICATION, 1024 TIFFANY DRIVE, REYNOLDSBURG, OHIO; REQUESTING A VARIANCE FROM SECTION 1171.06(B)(1) B OF THE REYNOLDSBURG ZONING CODE TO ALLOW A POOL TO BE CONSTRUCTED CLOSER THAN TEN (10') TO ANY LOT LINE. CONTACT: DENNIS COLE (55-ZV).

Chairman Feeney: Is there anyone here for Variance for 1024 Tiffany Drive? Seeing no one—

Mr. Domini: Just for the record, Mr. Feeney, I did communicate with the applicant after the last meeting, which was in June, and indicated they were going to be on the agenda tonight. So I made a good faith effort to communicate with them to make sure they'd be here and I don't see them.

Mr. Feeney: I don't see them either, so do we make a motion to move it off the agenda, or do we just reject it?

Mr. Domini: We have to vote on it.

Mr. Brusk: We can't dismiss it. I move, therefore, that Item B1, that we vote on that to approve.

Mr. White: I second.

(Mr. Domini called the roll. Mr. Long voted "no." Mr. Brusk voted "no." Mr. Feeney voted "no." Mr. Haire voted "no." Mr. White voted "no.")

C. NEW BUSINESS

1. SPECIAL EXCEPTION APPLICATION, 6240 E. LIVINGSTON AVE., REYNOLDSBURG, OHIO; PRESENT ZONING, COMMUNITY COMMERCE (CC); PRESENT OWNER'S NAME, THE HINCKLEY GROUP; EXISTING USE, OFFICE BUILDING; PROPOSED USE, DRIVE THRU SERVICES. CONTACT: TODD KEMMERER (24-SE).

Mr. Domini: You have the staff report before you. What I did do to assist the Board is actually put some of the aerials in here for you to look at. I don't have an extensive amount of information in the PowerPoint for this application. My only consideration, was whether or not the entire building was going to be used as a drive thru, and then I also did have the concern regarding the old location and if there was going to be a net increase in drive-thru liquor sales in this area. I don't know if that's particularly pertinent to this application, but it was a consideration that I had. Here's the-- Let me back up. I will say that the applicant is applying for this Special Exception as this particular location has been vacant more than six months, so whatever Special Exception was there for the bank has expired, therefore they have to reapply for a Special Exception at this location. It was a Key Bank previously and, as you know, it's been vacant. I believe Jackson Hewitt's been occupying part of the building. It's zoned CC, which a drive-thru is permitted as a Special Exception. Here's the location here, the fire station being here and Big Lots here. Here's an aerial of the building. This is a site layout provided by the applicant which is in your packet. It's my understanding, from reading the application, that they will only be using one of the drive-thru lanes. This shows two. The applicant may state differently, but that's what I gleaned from the application. With that, I'll just leave these up here and go back and forth as needed as the applicant presents.

Mr. Feeney: Is there someone here to speak on this? Just as a side note, if you're going to speak tonight, if you'll sign in if you haven't already, we'd appreciate that.

Mr. J. Douglas Stewart: Good evening, council, gentlemen. My name is J. Douglas Stewart. I'm an attorney here in Reynoldsburg and I'm representing the applicant, Chi Bui, who is also present here this evening, for the Special Exception for what I've affectionately referred to as the "old Key Bank building." I heard most of the comments earlier. There were some other comments that my poor, limited hearing simply did not pick up on. The first issue that I think that I heard there was some desire for some additional explanation on, is the entire building going to be used as a drive-thru, or exactly what is the plan for this site.

Most of us have been by the Key Bank building a number of times over the years. We have the primary brick structure and to the west of the primary structure we have a couple of lanes of traffic that used to service drive-thru customers. It is my understanding in talking with Chi Bui that there will not be any use of the primary brick structure as a carryout other than for maintenance of inventory. The intent is to improve one of the lanes of traffic to the west for purposes of the actual drive-thru. And there's going to have to be a significant amount of improvement to manage those particular issues, because there's a need for coolers, there's a need for enclosures, there's a need for traffic to be able to literally drive thru one of those existing lanes of traffic. So it's the – the current plans simply call for the use of the current brick and mortar structure to handle the inventory. It's also going to manage, at least inside those walls, a liquor store if the drive-thru application is approved by Council and by the Board. Chi has already engaged the services of an architect. She has gotten a couple different ideas from the architect and from a builder. Those have just recently come into my hands. I can't necessarily represent to you that those are going to be the final plans, because they're still putting together cost estimates and cost projections for the improvement of the brick and mortar structure, as well as the drive-thru. But, hopefully, that will give you some general feel for how Chi intends on utilizing the current attributes of this property.

I'm sorry, I don't know that I caught the other issues that you were hoping to have some comment on from Chi or the existing owners.

Mr. Brusk: One of the questions was is the other business going to stay there, or is it the whole building that's going to be part of this? You know, half the building right now is Jackson-Hewitt. Is that staying or is that gone?

Mr. Stewart: I don't expect there to be any outside businesses to remain at the structure. Are you going to take control over all of the store?

Mr. Feeney: If you'll come on up so we can hear you and then also—

Mr. Stewart: Gentlemen, it's my pleasure to introduce to you Chi Bui.

Ms. Bui: Hi. Yeah, actually I will move the whole business from the old drive-thru right now and liquor store over to the new building that I'm planning to buy. I will make it look nicer, cleaner. Now the building is always dirty and it's old and that's what my intent.

Mr. Stewart: The question that was raised by Mr. Brusk is we have an existing brick and mortar building. Are you going to keep any of the existing tenants in that building, or are you going to use the entire building?

Ms. Bui: I will use entire building for my store.

Mr. Feeney: So it's a drive-thru and a walk-in?

Ms. Bui: Yes.

Mr. Feeney: So the drive-thru portion of it is going to be like a "hand-it-out-the-window" type of thing?

Ms. Bui: No, actually, drive-thru in the car in the drive thru, and the customer will be in the car.

Mr. Haire: I think the intention is that you'll enclose some of the lanes. You'll probably put a man door in where the window is now?

Ms. Bui: Right.

Mr. Stewart: Their existing structure is about 1000 feet away and that's what Chi has made reference to—

Mr. Brusk: Well, we understand that, but do you need a separate liquor license for this building or are you using the liquor license that's at the other building?

Mr. Stewart: The intent is to transfer the existing license from the current address to this address. That has to, of course, go through Liquor Control and they'll, of course, come back to City Council—

Mr. Brusk: No, I understand that. I just wanted to make sure there wasn't a new liquor license being—

Mr. Stewart: There will not be a separate or second liquor license.

Mr. Brusk: If they wanted to have two separate facilities, they would have to have two separate, is that correct?

Mr. Stewart: That is a correct statement.

Mr. White: How do you plan to make it possible for vehicles to drive thru that building which is currently, as I see it, has no opening to allow vehicles to go through. You say you're going to have vehicles go through pretty much like your other establishment? How would you be able to do that with the building as it is currently structured?

Mr. Stewart: It's my expectation, based upon the plans that you have not seen, we're not going to make any improvements to drive through the existing brick and mortar structure, but to the west it currently is structured, as I believe, three lanes of traffic for a servicing utility into the brick and mortar structure of the bank. It's my expectation that that will probably all come down. There's going to be additional construction in that vicinity to service one lane of traffic and it's going to have to be improved, because there's going to need to be coolers and freezers probably on both sides that are not inside the brick and mortar structure. There still has to be sufficient room, then, for an employee to be able to get across the anticipated lane of traffic to the far side where I would envision freezers and coolers to be, as well as to be able to service maybe a cash register, as well as other inventory for snacks, pop, what-have-you. But it's my expectation that there will be an enclosure that will be capable of being secured at night, be capable of being opened during the day, but none of which is in place currently.

Mr. Brusk: In other words, you will be putting a building up that's connected to the current building – not an addition to the building, but it will be a building that has to meet all the building code requirements. The question I had when I drove through there is the third lane to the west, the farthest lane away is quite small. Is this building going to encroach any further on that, or is it going to leave more space than there is now for traffic to go around the building, because you virtually – I had trouble with my car getting through the far left lane.

Mr. Stewart: I don't know that we have enough information yet from the drawings in hand yet, Mr. Brusk, to answer that question specifically. I know that in past dealings, I think the intent is to be able to have sufficient room to be able to get completely around the building in a circular fashion. I'll be surprised if the answer is anything but that. They don't intend to create any more than one of traffic to come through the new improvement that's contemplated. At least I'm thinking – I'm having a hard time visualizing how much space we have from that old ATM servicing area furthest towards Brice Road to the far property, but I know that we don't have – if we have a very wide vehicle going through there, that might—

Mr. Brusk: You'd probably have difficulty getting a truck through there.

Mr. Haire: It appears it's 34' from the setback of the building to the property line, so that should be ample space to put a 12' bypass lane around the edge of the building and still leave—

Mr. Brusk: You're saying from that last barrier?

Mr. Haire: No, I'm saying from the actual building itself, not including the canopy, because the canopy's going to be torn off and removed.

Mr. Brusk: Yeah, I understand that, but that barrier that's there right now—

Mr. Haire: The barrier will be gone.

Mr. Brusk: Okay, that comes down.

Mr. Haire: There'll be a building addition—

Mr. Brusk: And that was my question, is the building addition going to—

Mr. Haire: I'm sure they can design it so they can have a 12' bypass lane around the edge of the building.

Mr. Stewart: There's a 12' side lot setback requirement?

Mr. Haire: There's a 10' setback, but usually when the traffic's going around, we require it to be 12 minimum.

Ms. Bui: So I will talk with my architect and he will draw – I have a good architect, so he will draw and make it exit easy and enter easy.

Mr. White: What are you going to do for parking space for the retail store? Where are you going to actually have parking?

Mr. Stewart: There's existing parking—

Mr. White: If the vehicle goes on the west side, it's going to be very difficult to put parking on that west side.

Mr. Stewart: Correct. I don't envision much parking on that west side. I envision most of the parking being on the east parameter of the property. There is some also right in front where the current green space appears in front of the bank if memory serves me correctly, and there is opportunity for parking space at the rear of the lot close to what used to be Big Bear. That's not going to be real convenient for customers, because we had envisioned primarily for the access on the walk-in to be faced there on – or the current doors that face Livingston Avenue.

Mr. Long: I know that in a carryout you get a lot of cardboard and trash like that. Where's that going to be set up at, because it's pretty open.

Mr. Stewart: There is a current trash capacity already in place. It is a contained unit and it's in the northeast corner of the lot currently.

Mr. Feeney: Is that screened?

Mr. Stewart: My vague recollection is that it's approximately – it's going to be shy of 6', but it's basically wood plank.

Mr. Haire: What are your current hours of operation at your existing facility?

Ms. Bui: 10:30 in the morning to 10:00 in the evening.

Mr. Haire: And you'll continue to maintain those hours at the new location?

Ms. Bui: Yes.

Mr. Haire: And that's 7 days a week, or 6?

Ms. Bui: On Sunday we open 1:30 to 8:00.

Mr. Feeney: So your facility now is just north of this?

Mr. Stewart: It's in the out lots.

Mr. Feeney: Okay, so you're just moving the operation to a newer stand alone building.

Mr. Stewart: Correct. The intent, of course, then is to terminate all operations at the former location.

Mr. Feeney: So the existing facility has a variance, obviously, to have a drive-thru carryout. Does that stay with that property?

Mr. Domini: If a new tenant comes in, you'll have to transfer a Special Exception that is valid to the new tenant at that location. That's described in 1145.08, so it would be a similar process to what we're going through to transfer that. I guess I would want – I'd be interested to know that if in the process of that other store closing, that that doesn't remain open while this one is open. Then you'd have two active carryouts.

Mr. Long: I think we also determined that the liquor license is assigned to a specific address, so she only has a liquor license for the Brice Road location, so she wouldn't be able to legally operate out of both with that one license.

Mr. Haire: Right, that's my understanding.

Mr. Stewart: That's also the owner's understanding.

Mr. White: Have you made application with the Liquor Commission to make a transfer at this point?

Mr. Stewart: We have paperwork ready to go. It has not yet been filed, because we don't have a good timing yet on our construction. We have talked with them. We're familiar with their processes. We've been told that once we file that application transfer, just like it was a change of ownership, they will contact – rather than this Board it might be Council, to see if there's objections from the City of Reynoldsburg for the relocation. You'll hear from us again.

Mr. White: Would they not have a right to inspect the building to determine whether it can—

Mr. Stewart: Of course, at any time.

Mr. White: No, I mean before the actual application is accepted. They would have a right to inspect the layout of the building, get some full understanding of how it's going to be laid out.

Ms. Bui: I already talked to Liquor Control and they said the side of the building would be okay. I will draw a plan again and give to them, but the side of the building, they look at it already, and they say it's okay.

Mr. White: What is a "D" liquor permit? Is it just Sunday sales, no actual open containers in the building itself? Your "D-6" license. You do not open liquor in the store itself, do you? It's only carryout?

Mr. Stewart: There is no existing service capacity inside the structure. For lack of a better explanation, it's a retail, out-the-door concept.

Mr. Haire: With this zoning district, we wouldn't permit retail sales. The only thing we're considering is the drive-thru. We permit the retail sales of the alcohol, but we don't permit onsite service, and they're just here for the Special Exception for the drive-thru.

Mr. Feeney: Are there any other questions from the Board?

Mr. Haire: Just thank you for the completeness of the application. It's very well put together and included all the information.

Mr. Brusk: The only thing I objected to was I had no idea what was going to happen to the other location. I'm glad that's cleared now. That was my big issue.

Mr. Haire: I think they've addressed all that. The requirements for the Special Exception as well as the special requirements for the drive-thru. I don't have an issue with any of the items listed here.

Mr. Brusk: We're not giving permission for building the addition and all that, that goes through the—

Mr. Feeney: I'll entertain a motion.

Mr. Brusk: I so move that we – on Item C1 (24-SE) that we approve the Special Exception application.

Mr. Long: I'll second.

(Mr. Domini called the roll. Mr. Feeney voted "yes." Mr. Haire voted "yes." Mr. White voted "yes." Mr. Long voted "yes." Mr. Brusk voted "yes.")

2. SPECIAL EXCEPTION APPLICATION, 1314 BRICE ROAD, REYNOLDSBURG, OHIO; PRESENT ZONING, COMMUNITY COMMERCE (CC); PRESENT OWNER'S NAME, THE GILBERT INVESTMENT COMPANY, INC.; EXISTING USE, VACANT; PROPOSED USE, STATE LICENSED DAY CARE FACILITY. CONTACT: BRUCE GILBERT (23-SE).

Mr. Domini: Again, most of my concerns, Mr. Feeney, are in the staff report and my overview of the application. Similar to the last application, I have provided a series of photos for discussion purposes. With the Board given the amount of daycare applications we've seen recently, my biggest concern was regarding outdoor play area. I know that's been a requirement for other types of state licensed daycare facilities and I didn't see that mentioned in this particular application, so that may be something that the Board wants to raise with the application.

This is the location here. It's the end cap which is in, for lack of a better term, the K-Mart shopping center. This was previously operated as a daycare. That operation's still in the center. It just moved down a couple tenant spaces. So this particular tenant space has been approved by the Building Department previously for daycare. That makes it convenient for the applicant as there's not a change of use in this case. I took a snapshot earlier just of the back portion of the lot in case we did discuss outdoor play area, this particular aspect of the lot may come into discussion. This shows the other tenants in the shopping center. Dollar General is the biggest tenant to the north and to the south would be the Columbus Metropolitan Library. The Union Savings & Bank is also a business that is located out front. Obviously with this particular location, parking is not a concern, access is not a concern. There are no exterior modifications planned for the building other than, I'm sure, signage, so there's nothing to discuss there. The applicant has indicated in their application how many children they would be watching and the hours of operation, so all that's there for the Board to review.

Mr. Feeney: If you'll state your name and explain what you want to do.

Mary Turner: Hello. My name is Mary Turner. I'm interested in opening up an infant and toddler daycare center at this particular location. Aaron mentioned that he

didn't notice where I had put in about the playground. Licensing actually does not require a playground area for infants and since most of the children will actually be infants-- We are going to have toddlers. So if you look at 7 on my proposal, you'll see that I do mention that we're going to make, I think it's like a 6', I'm not exactly sure on the length, but I believe it's going to be at least 6'. There's already a space located from the previous daycare where she had an outdoor play area, so we'll just actually enclose the same location that she used as her previous daycare for outdoor play.

Mr. Domini: Is that this space right here?

Ms. Turner: Yes.

Mr. Haire: The fencing for that's gone. You'll just put a new fence in, same area, same postholes basically.

Ms. Turner: Yes, we'll just put a new fence in.

Mr. Haire: The daycare that was in that location was there for a number of years and moved, actually, to the location where Hancock Fabrics used to be. They moved in there, so they're still within the same plaza.

Ms. Turner: Right. And, actually, that's a great benefit, because she doesn't actually cater to infants and toddlers as our center will be, so we'll be able to work with each other. She has the older children and I'll have the younger group.

Mr. Brusk: Yeah, our graduates will go into hers.

Ms. Turner: Yeah, that's the plan. We'll see how it works.

Mr. White: Where, exactly, is her location?

Ms. Turner: She's about four buildings down.

Mr. Haire: Right next to K-Mart. So where the roofline changes—

Mr. White: Do they have a play area there?

Ms. Turner: She has a play area, yes, outside her back she has one. Right where the lines are going on there, her play area is right there. Right in the back where those lines are, right in that space in there would be her play area. I think that's it right there. That's her play area.

Mr. Haire: So you'll have Monday through Friday service, 6:30 a.m. to 6:30 p.m.?

Ms. Turner: Yes.

Mr. Feeney: I remember when we talked about this when it came – the first time it came to us, and I know we were concerned about that play area because people would come around – there's a lot of traffic that kind of drives around back there for some reason it seems like. I know we asked for enough parking blocks that cars couldn't just jump the—

Ms. Turner: There's currently – right in that playground area there's already what do you call them?

Mr. Feeney: Parking blocks?

Ms. Turner: Yeah. There's already an L-shape going in there. The dumpsters are on the other side. So it's really already kind of closed in from the traffic. Basically I'm assuming that's the way she had it set up when she was there.

Mr. Haire: I think there's metal bollards back there. I think it's pretty well protected. I don't know how many years that she was in that location, but I don't know that we ever had an issue and hopefully we never do.

Ms. Turner: She was there 10 years.

Mr. Haire: And most of the traffic that's driving back there is going to the library, so they're going the opposite direction. They're not going behind K-Mart.

Ms. Turner: We could always install, once the daycare gets open, we could put a sign out around the playground, just one of those signs that says "Slow, Children At Play" type thing so the traffic coming through will know that there is now a business there that operates with children, to ensure the safety of the kids.

Mr. Brusk: That would be a good safety issue.

Ms. Turner: We could do that.

Mr. Feeney: Any other questions for the Board?

Mr. White: I just wonder, you say you will have up to 60 children?

Ms. Turner: Well, what I did was I did it how licensing – they require – they say every 35 square feet, you can get a kid, so actually I dropped the number down from what they would have approved, because I mean – Let me correct this. I don't want to be squeezed in like sardines, so I'm not trying to build the number of capacity that they say you can have by square foot, so actually I dropped it down. But, in reality, we'll probably have like between 24 and 30. It just really depends on how the enrollment goes, but I'm not trying to be squeezed in. I want the kids to be able to explore. My whole concept of my daycare is that infants and toddlers will have the opportunity to really truly explore and we can't explore if we're all on top of each other. So it won't be

about numbers, trying to get in so many – this many number of kids, you’ve got to have this, you’ve got to have that. It’ll be more about the experience that the kids are going to get while they’re there.

Mr. White: How much restroom facilities do you have there?

Ms. Turner: There are two restrooms in this building. The one restroom will be set up for the adult use and then the second bathroom will be set up for my toddlers that are learning how to be potty trained toddlers. There’s a small little kitchenette, but our food will be catered in.

Mr. Feeney: Are there any other questions, concerns? (No response.) I make a motion that we pass Item C2, Special Exception application 23-SE.

Mr. White: I second.

(Mr. Domini called the roll. Mr. Long voted “yes.” Mr. Brusk voted “yes.” Mr. Feeney voted “yes.” Mr. Haire voted “yes.” Mr. White voted “yes.”)

Mr. Domini: Mr. Feeney, you will note that the applicant for the variance did show up and is present with us. I’m not sure how you want to handle that.

Mr. Feeney: You were first on the agenda.

Mr. Haire: We’ll have to make a motion to reconsider.

Mr. Feeney: Does someone want to make a motion to reconsider Item B1?

Mr. Brusk: Since I brought the other motion, I guess I should do that. I move that we reconsider Item B1 due to the fact that the applicant is now present and it would be unjustly harsh to not let her have her day in chambers.

Mr. Feeney: I’ll second that.

(Mr. Domini called the roll. Mr. Haire voted “yes.” Mr. White voted “yes.” Mr. Long voted “yes.” Mr. Brusk voted “yes.” Mr. Feeney voted “yes.”)

B. UNFINISHED BUSINESS

1. VARIANCE APPLICATION, 1024 TIFFANY DRIVE, REYNOLDSBURG, OHIO; REQUESTING A VARIANCE FROM SECTION 1171.06(B)(1) B OF THE REYNOLDSBURG ZONING CODE TO ALLOW A POOL TO BE CONSTRUCTED CLOSER THAN TEN (10’) TO ANY LOT LINE. CONTACT: DENNIS COLE (55-ZV).

Mr. Domini: Mr. Feeney, this was on the previous agenda for the Board in June and you continued it because the applicant was not present. I have communicated with

this applicant regarding the variance and the variance does encroach into the required side yard setback for swimming pools which is 10'. The applicant's requesting a 5' encroachment. This shaded area showing this green circle is the proposed area. This area here is an existing shed that was approved for this property. So the requirements for a swimming pool is they have to be 10' from all property lines. The applicant is requesting this 5' side yard encroachment to be here. After I looked at the application, I indicated to the applicant that, in fact, this round swimming pool – I believe it's an 18' diameter pool – could, in fact, be located on the property without receiving the variance. And for whatever reasons, or hardship, this applicant felt it was important enough to submit the application and request relief from that section of the code. That's pretty much all I have. I'll turn it over to the applicant to have the burden of proof for the hardship in their request for the variance.

Ms. Cole: Well, first of all, where he has his circle there's an underground wire and you have to be 5' from that underground wire. Then with the shed there now, to place the pool in the direction that he has it would basically be putting the pool right in front of the shed. There's not much room between that shed and the corner of my house. So the proper placement, and it's really difficult to look at something without being there, cause that yard isn't as big as that paper makes it look. You still, right in there with the shed, just not even probably what, Al, 5-6'? So you really don't have a whole lot of room there. I don't want-- To place the pool correctly and make it look appropriate and have room from the side of the house to the pool is to basically go within that diameter that I have. The neighbor, they have a property line that there fence is now a privacy fence on that side, so basically they would not be looking at our pool. And the 15' we looked at is small, but with another 3' we can have a little bit of fun, so with the 18' the placement would be best right there. There really isn't as much room as you think there is. Back in that corner there's an underground wire that runs diagonally up and then over, so I have to be 5' from that.

Mr. Domini: Have you had the Building Department involved to locate the wire?

Mrs. Bailey: I've had OUPS out twice just to make sure—

Mr. Domini: I don't think that utility was originally indicated in the application.

Mr. Haire: Could you just introduce yourself for the record? I didn't catch your name either.

Ms. Cole: Ms. Cole.

Mr. Haire: Where's your electric service come into the house? Where's your meter?

Ms. Cole: The meter's on the back center of the house towards the patio. The green box – the big, green box is to the left, and then you have this other box over here on the corner.

Mr. Haire: So you have overhead and underground wires?

Ms. Cole: We have no overhead. They're all underground wires.

Mr. Domini: The applicant does state in her letter where she's defining her hardship the fact there is an underground wire running at an angle from the northeast corner up to the back of the house. It's paragraph 2 of her letter dated May 31, 2009.

Ms. Cole: We missed June because her and I were on a cruise.

Mr. White: What's the nature of that wire? Do you know?

Ms. Cole: It's a power wire. You were out for an upgrade on the electrical box.

Mr. Haire: The building code doesn't allow you to put a swimming pool over top of an electric wire.

Ms. Cole: You know, your code is 5', so I mean—

Mr. Brusk: You've, to my satisfaction, have shown what we needed to know. That was our biggest concern. We felt that if it could have been fit in the other area it should be, but the fact that there is a wire and it's not legal, you show adequate hardship that I have no problem with it.

Mr. Feeney: So basically what we're saying is that this is about the only place to put it. It's kind of hard to scale it.

Mr. Domini: But that scale, even if the applicant moved it directly to the rear of the property, she'd still be more than 10' from the rear property line.

Ms. Cole: Not when you have wires back there.

Mr. Domini: Well, ma'am, if you moved it directly behind your house and you were 10' from the rear of your house, you'd still be within – you'd still be encroaching within the 10' setback of your rear property line, almost up to the 5' mark. So what I was indicating was the 10' here—

Ms. Cole: There is not – you have a wire that runs straight through there.

Mr. Domini: --would take you about back to the 5'.

Mr. Brusk: Where is the wire that you say runs through there?

Ms. Cole: You go from the middle of the house to the back of the house and you go at a diagonal straight across towards the shed.

Mr. Long: I believe the area that Aaron's talking about is directly behind the house, not over towards the right or towards the shed.

Mr. Haire: But what we're saying is you'd still need a variance, you can't—

Mr. Long: Yeah, even if you put the pool in that area, now you've into the 10' setback and it—

Mr. Haire: Where I've located the pool is pretty much the only place you could put it on the property without a variance.

Mr. Brusk: If we're going to need a variance from any point, I don't have any problem with where it's at.

Mr. Long: And where you've positioned the pool, it's on top of the power feed that's coming into the property off the corner of the house.

Mr. Domini: That's what the applicant indicated.

Mr. Brusk: And any other place along the back, you'd still need a variance, you're saying?

Mr. Domini: That's correct.

Mr. Brusk: So if you'd still need a variance, I have no problem with her choosing where we put the variance.

Mr. White: Well, I have a question. Encroachment of the setbacks, if we were to move it to the back, would there be less of an encroachment than if you were to put it where you proposed?

Mr. Domini: Well, where I proposed, there's no encroachment. If you put it to the back, there would be the same – basically the same amount of encroachment as the applicant has proposed to the side. Anywhere you move that circle around her house, give or take 2-3', there's going to be the same amount of encroachment.

Mr. Haire: Do we require pools to be 10' from the house?

Mr. Domini: This would be 1171.06(B)(1)(b), "The pool, including all walkways or paved areas, or accessory structures adjacent thereto shall be not located closer than 10' to any lot line, and shall be not closer to any frontage than a distance 10' greater than the setback required for the main building.

Mr. Haire: Right, but there's nothing that says it needs to be located 10' from the primary structure.

Mr. Domini: No, it doesn't have to be 10' from the structure.

Mr. Haire: So they can move it closer to the house?

Mr. Domini: Yes.

Mr. Feeney: Do you have a reason why you want it 10' from the house?

Ms. Cole: Yeah, because of the placement of it. It would be sitting right next to the house and I don't want it sitting right next to the house. It would look stupid, to be honest.

Mr. Haire: Well, we have to look out for your neighbors, and maybe your neighbors don't want it right against the property line, and that's why we have that 10' requirement.

Ms. Cole: Well, they're not here, though, are they? They had an opportunity to come, right?

Mr. White: Well, no, it's just the opposite here. You have the burden of showing the hardship is on you.

Mr. Long: Right. Our position here is to protect that neighbor without them having to come here and defend themselves on the situation like this.

Ms. Cole: Oh, I see. I thought that's why you put them in the paper, so that they can – if they had concerns—

Mr. Brusk: Well, it allows them to voice it, but they still do not have to show up.

Ms. Cole: Well, truthfully, I don't want it placed any closer to the house than where I have it now.

Mr. Brusk: How much would that move it, Aaron? How close to the house would it be?

Mr. Domini: Luke, thank you for pointing that out. I was focused on the 10', because that was the condition of the applicant was working with. We do not require a 10' setback from the primary structure, just the property lines. So what I've shown here – what I've redrawn is actually 7' – see where I sketched in the 7? – 7' from the house, 5' from the shed. If, in fact, they did move it back here to the rear, it would work without a variance. It would be close to the house. You'd just have to move that circle over. This dashed line here is the line I drew, which is 10'. This is my drawing. This is not part of this, the plat that's shown here. That's the 10' line. Similarly I drew here the 10' line on the side, and a 5' line.

Mr. Feeney: What I'm looking at is the patio's not on this sketch here and I know they have a patio there, so that eats up some of this area here and then if the power comes from the center of the house, the rear far corner over to the middle of the house, that kind of chops it up and there's not a lot left besides the side yard.

Mr. Long: Are your neighbor's trees still there in the side yard?

Ms. Cole: Oh, yeah, there's three trees there. The biggest one is a huge pine tree. The corner, they have 2-3 apple trees in the corner, and the front one looks like a big bush.

Mr. Haire: That'll give you something to clean out of your pool.

Mr. Domini: Yeah, and against here is no setback to the primary structure, so she could have located the pool here. I think the patio sits right about here. It could be located here.

Mr. Brusk: The problem there is the middle of the house is where the power line comes in, so, therefore, that cuts everything from the middle of the house over – actually 5' from the middle of the house over, so there really isn't any space over there, either. I would say that you'd have a hard time putting that circle somewhere that's not going to be encroaching either a power line or the setback.

Ms. Cole: I have power lines that run from that corner over to the middle of the house. You have a power box that runs over to the left corner up to the house. You have power lines that run clear back on the back of the property.

Mr. Domini: This is actually the utility box right here.

Ms. Cole: There's one there and there's one over there on the left hand side.

Mr. Brusk: Do you have – are you hooked to both of them?

Mr. Long: Well, they probably have a line going through the back of the house.

Ms. Cole: That goes just like that, just like that; and then you have lines that run on the back of the property.

Mr. Brusk: Oh, you do have lines also?

Ms. Cole: Oh, yeah, yeah, straight across over to the power box that's over there on the left.

Mr. Brusk: I don't think we ought to beat this to death, or try to measure to a degree – five degrees or anything. My feeling is we should go forward.

Mr. Feeney: Well, are there any other comments from the Board or questions?

Mr. White: How tall is the pool?

Ms. Cole: Four foot.

Mr. White: And the fence that blocks your neighbor?

Ms. Cole: That's a 6' privacy fence.

Mr. White: I guess my concern is you – what you propose is encroaching upon the setback and you're not willing to have it move any closer to the house, but yet, still, you desire to have it within the setback. I think you need to do some kind of compromise here in some way.

Mr. Domini: I think what Mr. White's suggesting is that the pool could be located closer to the house than the 10' that's shown here and less in the 10' setback, splitting the difference.

Mr. Long: Yeah, my thought on that is the 10' is not very wide and if you've got to get the lawnmower around there, you move that 18' diameter circle in the middle of that area, you'll have 6-7 feet on either side. That just kind of limits your ingress and egress into your back yard. I don't have a problem with the 10' from the house. That puts it 5' to the property line, right? 5' from the property line, 10' from the house and the pool's there. If you move it closer, you're going to have 7' on one side, 7' on the other, give or take a foot or two.

Mr. White: Do you still have that picture of the actual property? You say the wires go through diagonally from the corner of your house towards the utility box—

Mr. Feeney: From the center of the house over to the box.

Mr. White: The center of the house?

Mr. Feeney: Yeah, she said the meter's in the center of the house.

Ms. Cole: You're right in that area.

Mr. White: If it's going over to the left toward the center, it seems that you could move that pool up north a little bit—

Mr. Brusk: Remember, there's wires across the back.

Mr. Feeney: The shed's not on that picture, too.

Ms. Cole: I think the shed's 10 x 12.

Mr. White: Is the shed permanently placed, or is it something you could move a little bit?

Ms. Cole: The permit was approved for where it's at.

Mr. Domini: --from my proposed location is that it's within 5' of the power lines. So if the power line runs here, it's within 5' from where that comes.

Mr. Feeney: I still think that's about the only place you're going to put it.

Mr. Brusk: Well, she could put it in the back, but you'd have the exact same problem she's got right now, so why make her move it to have the same issue? I have no problem. I'm ready to vote.

Mr. White: I have one more question. Have you discussed this with your neighbor?

Ms. Cole: No, no, I haven't. I don't see them very often. They come and go. I can. I don't think it'll be an issue, but if it's something you want me to do, Mr. White, I will.

Mr. White: They had a posting, you said it was out there, it was obvious.

Mr. Feeney: Have we gotten any calls from the neighbors from that posting?

Mr. Domini: No.

Mr. White: I have nothing further, then.

Mr. Brusk: I move Item B1, Variance Application, Item 55-ZV, be approved.

Mr. Long: I'll second.

(Mr. Domini called the roll. Mr. Long voted "yes." Mr. Brusk voted "yes." Mr. Feeney voted "yes." Mr. Haire voted "no." Mr. White voted "no.")

Mr. Feeney: It's three to two, so it's been approved.

Ms. Cole: Thank you.

D. OTHER BUSINESS

Mr. Feeney: Is there any other things we need to take care of tonight? (No response.) Hearing none, we'll adjourn.

E. ADJOURNMENT

The meeting adjourned at 7:35 o'clock, p.m.

Patrick Feeney, Chair

Aaron Domini, Planning Administrator

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