

Board of Zoning Appeals

Application #'s CU-21-02 & VA-21-04

April 15, 2021

LEGAL NOTICE

Notice is hereby given that the Orange Township Board of Zoning Appeals will hold a public hearing on Thursday, April 15, 2021, beginning at 6:00 p.m. to consider the following application/s:

Variance Application #VA-21-04 Sheryl and Donald II Everett,

Seeking an area variance from Rezoning Case #13-0302 North Farms to allow for the construction of a fiberglass pool with a retractable safety cover system that will encroach in the rear-yard setback and to allow a fence lower than 5'. The subject property is located at 5255 Loudon Dr. Lewis Center, OH 43035 and having parcel number 318-220-12-015-000.

Conditional Use Application #CU-21-02 Joshua J. Morgan,

Seeking a Conditional Use for a model home under the Rezoning text for Rezoning Case ZON-17-06 The Enclave at Abbey Knoll The subject property is located at 7144 Zander Way Lewis Center, OH 43035 and having parcel number 318-133-18-007-000.

The hearing will be held virtually using electronic means and can be accessed by the public on the internet on the Zoom application at

<https://us02web.zoom.us/j/86212145010?pwd=MFF1ZEEdRdGhtMXpLeTRiMUN2LytHdz09>

During the hearing the public may submit questions and comments to the Board by sending messages to Senior Zoning Officer, Jeff Beard via the Zoom meeting chat room.

The application and plans are available for inspection for a period of at least 10 days prior to the hearing by e-mailing Jeff Beard at jbeard@orangetwp.org. The Zoning Office is closed to the public during the public health emergency, however zoning staff is available by e-mail during normal business hours of Monday through Friday, 8 a.m. to 4:30 p.m., except legal holidays.

Following this hearing the Board may meet for general purposes to consider such business as may properly come before it including, but not limited to, consideration and/or approval of minutes, scheduling future hearing dates for this or other applications, and like matters.

The person responsible for the publication of this notice is Jeff Beard, Orange Township Zoning Department.

*Jerry Miller, Chairman
Jeff Beard, Orange Township Zoning Department*

Please publish one time, on or before Saturday, April 3, 2021 in The Delaware Gazette

Mr. Miller called the hearing to order at 6:00 p.m.

Roll Call: Aaron Shipley, Rick Oster, Jerry Miller, Kelvin Trefz, Punitha Sundar-absent

Township Officials Also Present: Jeff Beard, Senior Zoning Officer

Mr. Miller administered the oath to those speaking: Anyone who intends to testify, please raise your right hand to be sworn. Do you solemnly swear that the testimony that you are about to give is the truth, the whole truth and nothing but the truth, and state I do. And when it's your turn to offer testimony, please state your full name, address and affirm that you've been sworn in. Anyone who intends to offer

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51 comments or testimony through the online chat room function also needs to be sworn in remotely. Before
52 your initial comment, please type in your name, address and the words “I affirm” to indicate you
53 solemnly swear that the testimony that you are offering is the truth, the whole truth and nothing but the
54 truth.

55
56 **Conditional Use Application #CU-21-02 Joshua J. Morgan,**
57 Seeking a Conditional Use for a model home under the Rezoning text for Rezoning Case ZON-17-06 The
58 Enclave at Abbey Knoll The subject property is located at 7144 Zander Way Lewis Center, OH 43035
59 and having parcel number 318-133-18-007-000.

60
61 Mr. Beard presented the Staff Report and presentation. The subject property is located on the west side of Zander
62 Way. Surrounding north, south and east are all Single Family Planned Residential District; to the west is Farm
63 Residential District. They are still complying with the standards in our Code from Section 10.04 b). Have updated
64 site plan since this is a continuation which shows the driveway which can have 2 parking spots and then there will
65 be 4 parking spots on the east. Exhibit 2 is the landscape plan which shows a walkway between the parking lot over
66 to the residence and then a trash can along the walkway for the access.

67
68 Mr. Miller: You stated there would be 2 spots for parking in the driveway but the drawing shows 3 where it says
69 yard light on the 30’ area.

70
71 Mr. Oster: We looked at that in our guidelines and you’re only allowed to claim 2 for the driveway.

72
73 Mr. Shipley: He can only use 2 and then he’s got 4 up to the side so he has his 6.

74
75 Mr. Beard: They are allowed to have 7 spots, so technically they’ll have 7. They’ll meet the code with the 2 in the
76 parking in the driveway and 4 on the other one as this is a 3 car garage.

77
78 Mr. Miller: I just want clarification with that because we know it’s going to be a 3 car garage with a 3 car driveway.

79
80 Mr. Beard: And that driveway is 10’ wider than most driveways in the Township. Compared to houses across the
81 street in Abbey Knoll, most of those driveways are 20’ wide; this one is 30’ wide so that’s why it has the third car.

82
83 Mr. Shipley: The only part of that that concerns us is that they’re using 2 of those in the driveway with the other 4 to
84 make the 6.

85
86 Mr. Oster: And they could be using the 3 in the driveway and then 3 in the other spot.

87
88 Mr. Beard: They provided an exhibit of lights, they’re the landscaping lights that will be shone onto the parking lot
89 as stated in the text. They have an exhibit of the sign they’ll use which is just an A-frame sign that they’ll put out
90 when they’re there then they’ll put it inside when the model home is closed.

91
92 Mr. Oster: Is that a downlighting light?

93
94 Mr. Beard: It has a shield on it and it can be adjusted. They are just showing an example of what the light might look
95 like, not necessarily how it’s going to be placed, but they did state that it would be downlighting and its landscape
96 lighting. The owner along with the consultant for the owner are on here if you have questions for them.

97
98 **APPLICANT PRESENTATION/BOARD QUESTIONS & COMMENT**

99
100 Courtney Wade, 3 Levering Drive, Fredericktown, Ohio 43019. I’m the consultant working with Josh on
101 this application, and I did want to point out the comment about the light. Those are adjustable and we
102 chose those specifically so if there’s any issues once they’re installed, we could adjust them to meet any
103 standards or concerns with those. The picture does show them pointing up; I think that was shining on a
104 flag which obviously ours will not.

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105 Mr. Miller: The concern is that it openly states the 270 degree adjustable head, but you could potentially
106 be in violation of zoning if the Zoning Inspector comes out and they're pointed upward.

107

108 Ms. Wade: We have every intention of having them downward as our application states but if there ever
109 was any concern, we would be able to tilt them further down.

110

111 Mr. Oster: I wasn't clear exactly what it is going to be shining on. The little plot shows it's all the way
112 over by the lot line.

113

114 Ms. Wade: They're landscaping lights. You asked for downward lighting so those are located into the
115 landscaping for the parking lot area.

116

117 Mr. Trefz: Will they also be used around the model home?

118

119 Ms. Wade: We don't have them on there, only in the parking area.

120

121 Mr. Trefz: So the home itself doesn't have any landscaping lighting?

122

123 Ms. Wade: Correct.

124

125 Mr. Shipley: Those lights are only used during the hours the model home is open also, correct?

126

127 Ms. Wade: Yes, it would meet your lighting standards and will be turned off.

128

129 Josh Morgan, 1739 Township Road Number 166, Marengo, Ohio 43334. In regard to the question on
130 lighting, it will definitely not be used except during model open hours; we won't have it on any other
131 time.

132

133 Mr. Oster. I had a question about the walkway that's at the corner on Abbey Knoll that intersects both of
134 these corners. Are those going to be completed and finished so they can be used and people don't have to
135 go into the street? And your corner will be operable?

136

137 Mr. Morgan: Is this in regard to the model or just overall?

138

139 Mr. Oster: Since the model incorporates one corner and overall the walkway path really has to be usable
140 so people don't have to go out into the street, is that going to be completed when this model starts up?

141

142 Mr. Morgan: It should be. Decker Construction is my contractor doing the bike path. As of last week they
143 are not up and running on the asphalt from what they told me. He said that I am in line to get it done
144 because it was a holdover from last year. They ran out of time and actually had water sitting in the bike
145 path/multi-use path on the west side of the property. They weren't able to do anything so they didn't do
146 any of the paths; they want to do them all at one time.

147

148 Mr. Oster: That's not the path I'm concerned with; it's the one that intersects both of these corners.

149

150 Mr. Morgan: I understand, but they'll do them all at one time.

151

152 Mr. Oster: This one here, I think a lot of that is going to be concrete and then it's just going to tie into the
153 black topped path.

154

155 Mr. Morgan: The concrete will definitely be finished before.

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156 Mr. Oster: With the handicap regulations, kids on their bicycles, etc., at the present time it's a hazard
157 because they have to go into the street and everyone flies up and down that street, and I was just
158 wondering if those corners were going to get done in time for the opening of the model just in case
159 somebody accidentally parks on the street and walks down the sidewalk to the model.

160
161 Mr. Morgan: I would say with 95% certainty that it would be finished. Obviously weather is going to play
162 a factor and with me not being M/I Homes or Pulte Homes, I kind of get pushed to the back of Decker's
163 list. Today we had the dozer guys out and they were doing the touch up grades today, so I fully anticipate
164 that by the end of May, which will be before the model is open, that we'll have the multi-use path, all the
165 site work complete, seeded and mulched, so we should be complete with everything on the surrounding
166 properties, multi-use path and sidewalks as well.

167
168 Mr. Miller: Are there any more comments or anything from the chat room?

169
170 Mr. Trefz: There is nothing from the chat room.

171
172 **MOTION TO APPROVE CONDITIONAL USE APPLICATION #CU-21-02**

173
174 Mr. Miller made a motion to approve Conditional Use Application #Cu-21-02, Joshua J. Morgan,
175 seconded by Mr. Trefz.

176
177 Vote on Motion: Mr. Trefz-yes, Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes

178 Motion carried

179
180 Hearing continued with Variance Application #VA-21-04

181
182 Minutes prepared by Cindy Davis, Zoning Secretary

183
184 At their May 20, 2021 meeting, Mr. Trefz made a motion to approve the April 15, 2021 minutes of the
185 Orange Township Board of Zoning Appeals for Conditional Use Application #CU-21-02, Joshua J.
186 Morgan, as written; seconded by Mr. Miller.

187
188 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar-yes

189 Motion carried

190

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Application #VA-21-04

April 15, 2021

Variance Application #VA-21-04 Sheryl and Donald II Everett,

Seeking an area variance from Rezoning Case #13-0302 North Farms to allow for the construction of a fiberglass pool with a retractable safety cover system that will encroach in the rear-yard setback and to allow a fence lower than 5'. The subject property is located at 5255 Loudon Dr. Lewis Center, OH 43035 and having parcel number 318-220-12-015-000.

Mr. Beard presented the Staff Report and presentation. The property is located on the southeastern side of Loudon Drive. North, south, east and west are all zoned Single Family Planned Residential District. There also is an area in the southeast corner zoned Farm Residential District but they are all single family homes. Variance request #1 is the pool setback. The rear yard requirement is 35'. The pool will encroach 16'4" into the rear yard setback for roughly a 46% request. Exhibit 1 is the site plan showing the proposed variance's setbacks. Exhibit 2 is the neighbor's rear yard difference with their lot being cut out there. Exhibit 3 is signatures of support from neighboring properties. We'll go over the second request also and then make decisions one request at a time. Variance request #2 is the fence height. Code calls for all swimming pools where the property upon which swimming pools are located are to be walled or fenced to fully enclose the swimming pool to prevent uncontrolled access to the swimming pool. Said wall or fence shall not be less than 5' in height and may include the wall of another building or structure, shall be of such construction as to not allow uncontrolled access under or through the wall or fence and shall be maintained in good condition with all entry or access points having functioning locks. The applicant has an already constructed fence that was HOA approved in 2018 at the height of 4' surrounding the property's rear yard. The HOA maximum height is normally 4' so the applicant is requesting a 1' variance to allow the already constructed fence to remain. This would be roughly a 20% request. Exhibit 1 is an example of the fence type. Exhibits 2 and 3 are the deed restrictions from the HOA regarding the fencing. Exhibit 4 is the proposed screening for around the property for around the pool. Showed site photos that show the fence as currently installed.

APPLICANT PRESENTATION/BOARD QUESTIONS & COMMENTS

Sheryl Everett, 5255 Loudon Drive, Lewis Center, Ohio 43035, and I affirm I have been sworn in.

Mr. Miller: The photos showing the arborvitaes, what size arborvitaes do you plan on putting in?

Ms. Everett: The landscaping company I've been working with start 6-8', but the goal would be to be at least 8' and that would be in the entire surrounding area of the concrete apron. There is an area against my house that has a small deck. That will be a full deck with the construction of the pool. That area that is kind of an "L" shape will be a deck, so I believe the area from the ground to the bottom of the deck is about 2-3' from my patio door, then there will be railing across the entire deck to kind of fence off that area.

Mr. Oster: Is this an in-ground fiberglass or an above ground?

Ms. Everett: In-ground. The deck will be a separate part of my project.

Mr. Miller: In regard to the HOA approval from 2018, with your deed restrictions that have 4', you have neighbors who have signed agreements in support of you but there's nothing from the HOA. Have you filed with the HOA?

Mr. Oster: I thought our requirement that usually has it as a minimum of a 5' fence is generally around the pool, not around the whole yard.

Ms. Everett: Correct. I do have the HOA approval. If that paper was not provided, I have it readily available. I received it about 2 months ago when I decided to move forward with the variance. I got their

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53 approval and then went and spoke to the neighbors. We moved in in 2018. Our neighbors directly next
54 door to us already had the exact same fence put in, so looking at my entire property to the left, that 4'
55 shadowbox fence was already constructed, so to stay consistent with what they put in, we decided to put
56 the same fence in. I understand there is a 5' fence minimum but given the fact that we have a hardship on
57 our property of our neighbors already having their fence in, I wanted to propose putting the deck in, then
58 landscaping and having that retractable safety cover that requires a password open and close would
59 hopefully help compensate for that divergence that we had. Also, our neighbors had a lot larger property
60 line, that build line. We have 2 small kids that are water bugs and have been in swim class as well as our
61 neighbors smaller children have been in swim class as well and water safety is one of my biggest
62 concerns as a mother. I've been an ICU nurse for a little over 10 years and last year has been very hard
63 with COVID and the stress with that and we're just really looking forward to some family time at home,
64 and getting this pool moving forward just would be a value to our mental health. All of our neighbors are
65 so wonderful and have been so supportive of this project. We sat down with them multiple times, I've
66 been working through this variance with the pool company for months to make sure we're taking into
67 consideration our neighbors and my family. We have flood lights installed above our master bedroom
68 looking down as far as lighting. We plan to place locks on the 2 entry ways to that shadow box fence; we
69 have security cameras in our backyard. Like I said, we're doing that retractable cover and you can drive a
70 car on it and nothing would sink in. That was something that was a must have for me as far as safety
71 concerns. It's more of an aesthetic thing to do the landscaping since we have the fence in place. We knew
72 the HOA allowed in-ground pools when we moved into the neighborhood but at the time since we
73 weren't moving forward with the project yet, we couldn't get that 5' fence. That's kind of the background
74 on why I'm requesting the fence variance and then in talking with the neighbors, I feel like I have a lot of
75 support for my ideas.

76

77 Mr. Oster: So you're asking for a fence variance because the HOA will not allow a 5' fence?

78

79 Ms. Everett: They did not allow it initially. We have a couple of dogs so when we first put in the fence,
80 we weren't allowed to go over 4' because we didn't have a pool.

81

82 Mr. Oster: But would they now?

83

84 Ms. Everett: I would have to put an additional request into them and I don't know how that would work
85 around the deck.

86

87 Mr. Oster: From the ones I've seen before, that 5' minimum box was generally right around the pool, not
88 around the whole yard, and that is usually a barred type fence that's 5' tall which I figured the Township
89 had for liability purposes, and that could still be done with your 4' fence where it's at, using the fence
90 around the yard as your 5' fence.

91

92 Mr. Beard: Our Code does not state that it has to be right around the pool; it just says it has to enclose, so
93 we have to go by what's in our Code, not what you assume and what you think is best. We have to
94 interpret what the Code says and it says it has to be the fence around, it doesn't say it can't be around the
95 property. It doesn't have to be around the pool or any set distance from the pool.

96

97 Mr. Oster: But it does state it has to be 5'.

98

99 Mr. Shipley: 5' is the only requirement; it doesn't state what type of fence it has to be.

100

101 Mr. Oster: A 5' fence could still be put around the pool, not utilizing the whole yard fence. If they are
102 wanting to trade off the 5' pool fence for their yard fence; am I not assuming that?

103

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104 Ms. Everett: I'd like to substitute as far as the 5' goes. When you originally asked about the arborvitaes
105 like a wall or other structure which would be in "good condition" which is why I'd like to move forward
106 not just saying 4' around my property that's it, I'd like to incorporate some landscaping and not only
107 would you have to come into my property over a very private shadow boxed fence you'd also have to
108 bypass landscaping and the hard cover, so I feel I've crated even better safety. Could I put in another
109 fence inside of a fence inside my landscaping inside of all that? Potentially. For aesthetics and cost-wise
110 though I am comfortable as are the rest of my neighbors that my ideas of what I want to do with the
111 landscaping is beyond sufficient.

112
113 Mr. Oster: I was only saying to meet the requirements of the 5' fence, a 5' fence could be installed around
114 the pool as stated.

115
116 Mr. Miller: Or around the property line.

117
118 Mr. Oster: But she doesn't want to do that because of the cost of the whole yard.

119
120 Mr. Beard: The HOA could still deny it. They have it in their deed that a government agency can request
121 higher but it doesn't mean the HOA has to approve that.

122
123 Mr. Oster: That's where it's confusing. If they have approval for a 5' pool fence from HOA and she built
124 a pool.

125
126 Mr. Beard: She has approval from the HOA as it stands in the application with the 4' fence around the
127 property.

128
129 Mr. Oster: That doesn't meet our Code.

130
131 Mr. Beard: But it meets the HOA Code and they approved it as requested.

132
133 Mr. Oster: But the HOA is not us.

134
135 Mr. Beard: Right.

136
137 Mr. Miller: Let me say something not only in regard to the fence but from a safety standpoint. When I
138 lived in New Orleans, there were 2 adults and their grandchildren and they weren't paying attention.
139 Myself and another guy dove into the lagoon and pulled out a 4 year old, 5 year old and 7 year old, had to
140 perform CPR, and we lost 2 of them.

141
142 Ms. Everett: I'm not going to argue my parenting style, and I'm a nurse and I've had to jump in, I've done
143 that too, and I'm aware of the safety issues walking into this. I have put money into the retractable cover
144 and if I need to put the 5' fence in, I'll do the 5' fence. I haven't made that request yet because I was
145 hoping that what I present to you would be adequate. As a nurse I understand what it means to save lives
146 and I've been in the thick of it for a long time and, like I said, water safety aside from car safety is my
147 number 1 issue and anyone who knows me knows I'm like a hawk. Anywhere I go, I don't care if they
148 want to put something in across the street that's going to have water but my first concern is what are you
149 going to do to protect my children from the water? There was some hesitancy in requesting a pool
150 whether I put the 5' fence in or not. I have a play set in my backyard; we have kids that want to come
151 over all the time and there's a 9, 10 and 11 year old next door. They can't scale that fence, they can't get
152 over it and they're tall kids. I think just the privacy of having the shadow box fence is a huge safety
153 factor. Nobody can go under it, nobody can through it, my dogs can't get under it

154

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155 Mr. Miller: I'm not saying anything against your parenting styles, your concern over safety; I'm not
156 saying anything negative of that. In my situation here you had 2 adults that were not paying attention, the
157 kids fell in, they drowned. The reason why there's a 5' fence limit is safety. And you may have tall 10
158 year old today but in 3, 4, 5 years, then you have 14, 15, 16 year kids, and once people know there is a
159 pool, as teenagers, it goes back to we can climb that fence.

160
161 Ms. Everett: Which is why we're doing the retractable cover.

162
163 Mr. Miller: It's safety issue short term, long term. You may also get some dramatic increases in insurance
164 costs because you're not at 5' and above level. I strongly appreciate that you're going to have a
165 retractable cover that is lockable because we've had other applicants come forward and it's been a very
166 active discussion about the safety of rigid covers, etc., so the Board as a whole is very familiar with that
167 entire scenario and do appreciate where you're coming from, but there's a reason why the Codes are the
168 way they are of a 5' minimum.

169
170 Ms. Everett: Is there anything in the County requirements that...

171
172 Mr. Miller: This is Orange Township.

173
174 Mr. Beard: Jerry, just so you know, the County and State building have changed their Codes. If they have
175 the safety cover, the County does not require any fence and talking to some pool companies that have
176 inquired here recently, most of the Townships in the area do not require a fence. I believe Liberty
177 Township does not require a fence as long as they have the approved safety cover that the County
178 approves.

179
180 Ms. Everett: And the County told me that they were okay with the 4' fence when I contacted them.

181
182 Mr. Shipley: I know we kind of went to Variance #2 when we're talking about the fence, but shouldn't we
183 get through Variance Request #1 first?

184
185 Mr. Miller: Yes.

186
187 Mr. Oster: Yes, but it's all the same thing but I think Jerry brought up some good information. There are
188 insurance regulations that fall in here. I know one time when we checked, they wanted a 10' fence, so
189 depending on where you are and what kind of liability they're willing to insure, they have things you have
190 to meet too which again might step on Orange Township or HOA and nobody overrules anybody. I don't
191 know if you've checked with the insurance company to see what they require but I think we ought to
192 move onto the pool and its location and how much of a variance this is going to need because it's quite
193 large.

194
195 Mr. Miller: I agree and you can't do one without the other, so we need to take Step A before we go to
196 Step B.

197
198 Mr. Oster: I've seen a lot of them where they put the fence right around the pool area to meet that 5'
199 lockable safety. Is there a reason this whole structure isn't tucked into the house because it looks like it's
200 10' off the house.

201
202 Ms. Everett: It didn't make sense to step out my back door directly into a pool. I wanted to put a deck in
203 place as another safety measure and in looking at my property line, I do have quite a bit of a downhill
204 trend in my land, so putting the concrete closer to the pool allowed for a lounge or pool chair or
205 something like that put out by your pool, so I wanted to make sure I allowed adequate areas walking

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206 around those chairs to keep anyone from falling into the pool or just to keep those things up against the
207 house more and to not have to create more concrete near the back end of the house. In talking with the
208 pool company, it just made more sense to move it a little further away from the house for safety reasons
209 and we're going to talk about some cost saving things where the sun comes in and hits our house. It's
210 very shaded close to the house, so we are putting a heater on the pool but perhaps having it in the sunlight
211 longer provides longer usage of it and it just becomes less practical the closer you get to the house.

212
213 Mr. Oster: So the 10' is going to be concrete, not decking on that side of the pool closest to the house?

214
215 Ms. Everett: Yes.

216
217 Mr. Oster: And it looks to be about 10' when you come out of your house.

218
219 Ms. Everett: Yes, so the remaining feet that go up to the house will be a deck.

220
221 Mr. Oster: So you're going to put a deck in between the concrete pool and the house?

222
223 Ms. Everett: That is the plan.

224
225 Mr. Miller: So up next to the house you're going to have a 10' wide concrete area around and then a
226 decking between the house and that concrete.

227
228 Ms. Everett: Yes.

229
230 Mr. Miller: The back side of it you're going to have 3' concrete around the pool?

231
232 Ms. Everett: Correct.

233
234 Mr. Oster: There are no plans on the deck showing how it's going to go in here?

235
236 Ms. Everett: I have the plans ready to go. It literally goes to the line of my house to that 28.9 where it
237 ends, that L shape is the size of the deck, so it's going to be a 28.9' deck, 10' wide and the steps go down
238 to the concrete.

239
240 Mr. Trefz: Did you ever consider rotating it 90 degrees clockwise, and then tuck it back up...

241
242 Ms. Everett: Just aesthetically design wise and I did not want to walk out my house directly into a pool. I
243 wanted some type of barrier for safety reasons where I can put in a retractable door to close off the deck
244 walking into the pool.

245
246 Mr. Trefz: You could still do that.

247
248 Mr. Oster: And you were talking about an L shaped deck coming across the back of the house and then
249 back up side of the house?

250
251 Ms. Everett: No, the house is L shaped, so it's just going to be a rectangular 28.9' deck.

252
253 Mr. Trefz: So it's just a rectangle tucked in?

254
255 Ms. Everett: Yes.

256

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257 Mr. Oster: Because that has to be approved, too correct?

258

259 Ms. Everett: By the HOA, correct.

260

261 Mr. Miller: You may want to request to have this tabled until you have your HOA approval.

262

263 Ms. Everett: I do have it. I had it in my paperwork that I sent, so I don't know why it's not visible to you
264 guys.

265

266 Mr. Trefz: We have approvals for the pool?

267

268 Ms. Everett: Correct; I'm not moving forward with the deck yet. I have a design plan in mind, I have not
269 applied to the HOA for the deck. Financially we're waiting for the deck. I'm just moving forward with the
270 pool right now.

271

272 Mr. Oster: That explains why the pool isn't tucked up into the notch of the house then.

273

274 Mr. Trefz: That variance is huge.

275

276 Mr. Oster: It's almost half of the setback and the one side of the pool I think looks like it's totally in the
277 setback.

278

279 Ms. Everett: I know it's a large request, it has large value to me personally. Because of the number I was
280 following a couple of pools that did get approved off of Shawbury Lane. They were not providing the
281 retractable covers. I feel I made quite a good effort with the safety issues. I'm open to more discussions
282 on the fence. I just think aesthetically with the way the backyard sits, having that morning room off the
283 back of my house kind of pushes things further away and having HOA approval, having multiple
284 neighbors being very supportive of the plans I've put forward, I just feel moving forward is really going
285 to add value to my family.

286

287 Mr. Shipley: There's no doubt that that's a substantial request for the location variance but as a reminder
288 for the rest of us that's one piece of a seven piece puzzle we're looking at.

289

290

291 Mr. Trefz: Yes, but I have other issues with some of those and I've had issues with some of the other ones
292 we've approved over the time.

293

294 Mr. Miller: On your comment about other pools, etc., we have to take every case independently. There are
295 multiple things that are different between one and another, and what's provided here and what we can see
296 is what we have to go by. We don't see an HOA approval in the documents that have been provided, so
297 we have to go by the facts that are presented to us.

298

299 Ms. Everett: I guess the piece that's pulled up right now is the HOA approval.

300

301 Mr. Trefz: It's in there. It was in the loose stuff. It's not the same form.

302

303 Mr. Beard: Ms. Everett, if your HOA emailed that to you, if you just want to send that to me, I can post it
304 for them. I'm sharing the application that you sent to the HOA. I think the fence one was sent in with the
305 physical copies but not the pool one. This is the one you applied for February 2 of this year.

306

307 Mr. Miller: The only thing we have from Borrer is a 4' fence dated September 20, 2018.

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308 Ms. Everett: I can share my screen.

309

310 Mr. Beard: Jerry, I have the one up that she sent February 2, 2021 on the screen right now.

311

312 Mr. Miller: I'd like to see that but again, we have to go by what we're presented. Is this the same one
313 from Landmark Survey Group from June, 2018?

314

315 Mr. Beard: This is not Landmark Survey and its February 2, 2021.

316

317 Mr. Miller: What was attached to the paperwork we received was from....

318

319 Mr. Beard: That's the one for the fence. The pool one was not a part of the physical packet, and I did not
320 realize that. This was an email I received from her at one time. It was not included as part of the physical
321 packets; and I overlooked that when I reviewed it.

322

323 Ms. Everett: I have it pulled up on my other screen and can show you that your request to install a pool
324 has been approved at your properties. Here's my street address and my husband's name is Donald.

325

326 Mr. Miller: And that was dated when?

327

328 Ms. Everett: March 3, 2021.

329

330 Mr. Oster: You'll need to send that to Jeff for the record.

331

332 Mr. Miller: Mr. Trefz, you said you had some other comments?

333

334 Mr. Trefz: It's just on our 7 conditions.

335

336 Mr. Miller: Ms. Everett, are you aware of the 7 items we....

337

338 Mr. Trefz: Jeff has them on the screen now.

339

340 Ms. Everett: When I moved forward with the application, I believe I addressed these. I will gladly go over
341 each of them if you would like me to.

342

343 Mr. Trefz: You can, but we have to determine on each of the 7 and your view may be different than ours
344 or it may be exact with ours. Like #5, when you purchased the property, you were aware of all of the
345 restrictions.

346

347 Ms. Everett: I knew that the HOA allowed in-ground pools but I was uneducated about the 35' build line
348 and seeing how much larger my neighbor's property was, I consider that hardship on my property.

349

350 Mr. Trefz: But it was knowable at the time you purchased it.

351

352 Ms. Everett: I was uneducated on the fact that it existed and I would have to put this type of request in.

353

354 Mr. Trefz: #6, can the problem be solved by some manner other than granting the variance? It's my
355 opinion that re-positioning the pool might get you with a much less variance if not completely out of it.

356

357 Mr. Oster: Yes, much less.

358

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359 Ms. Everett: When designing the pool, we positioned it multiple ways on the house.

360

361 Mr. Oster: Using the 10' before the pool instead of the deck would gain you 10' out of that variance.

362

363 Ms. Everett: It would also in my opinion take 10' of safety from my house.

364

365 Mr. Miller: Ms. Everett, I don't mean to be rude, but if the Board is asking questions or making a
366 statement, please let's not talk over each other. Any other questions or comments from the Board about
367 the 7 items?

368

369 Mr. Shipley: I went through them. I have a pool and I understand the distance between our slider walking
370 out to the pool and having room between the house and the pool makes sense to me.

371

372 Mr. Oster: There would be; there's 10' concrete pad at the pool but you're almost at a 50% variance into
373 that 35', almost to the utilities from the looks of one of the sheets in here. The lower right corner looks
374 like it's right at the AEP easement which if this was shifted and shoved up 10' or better, because there's a
375 little gap there at the end of the house.

376

377 Mr. Trefz: And safety issues could be mitigated by some other barriers other than just 10' of space.

378

379 Mr. Oster: I don't know what those safety issues would be but if there's 10' of concrete there or 10' of
380 wood deck, you're going to have to come out the steps, the deck or the concrete in some fashion, so I'm
381 not even sure what that would be.

382

383 Mr. Shipley: Jeff, is that 35' setback standard for all subdivisions?

384

385 Mr. Beard: Not all subdivisions. Some are 30', some are 25. We have some where the principle dwelling
386 is at 25' and accessory structures can be within 5' of the rear yard setback, so it is not standard
387 everywhere.

388

389 Mr. Miller: I know one of the other Board members asked about the possibility or consideration of
390 rotating the pool and/or the pad. Because you do have the corner the way the lot line is down the 168.34
391 on one side then you have the difference on the other of maybe reducing the concrete pad, go up close to
392 the house and that way you could rotate your pool 25-30 degrees and actually be more in line to our
393 standards.

394

395 Ms. Everett: I met multiple times with the pool company, and they were able to take the pool and move it
396 all around our property, looked at different shapes to tuck it more up in that area. I looked at reducing
397 concrete. Things I take into consideration are size of furniture and I don't want my kids to have to walk
398 around something that they could potentially fall in the pool because they're trying to walk around that
399 piece. We have a play set kind of tucked away back in that corner for the children. It is a moveable piece
400 but it is something that is installed into the ground right now and I would prefer not to move, so having
401 children on the play set too close to the pool, I wouldn't want to rotate it and then it would also impede on
402 my structural ideas for the deck I want to put in, so having more than an aesthetic view of a tiered deck
403 coming down the concrete that I can use for safety reasons and a little further away from the pool so we
404 can still enjoy the area around the pool without having to expand the concrete onto the AEP easement or
405 utility easement. I didn't necessarily want to put concrete more toward back under the house because
406 we've had some issues with freestanding water back there where our construction company has had to
407 come back and put some drains in place. There is a catch basin in the back so I don't want soggy water
408 with a lot of concrete, so that's why I chose to keep the concrete closer to the house and keep that resin
409 basin fiberglass pool to put in for longer lasting given I'm not sure how the land will do 20 years from

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410 now since we have had some freestanding water. There are a lot of factors I have taken into consideration
411 in choosing the design of this pool and placement, and I think I've come up with what best fits my
412 backyard The pool company was in agreement and tried to tuck it up as much as the company and I were
413 comfortable with to at least try and get it past that build line so that I wasn't asking for, and I understand
414 it is a large variance, but I didn't want it to become outrageous and just wanted to make it what seemed
415 the most reasonable for my backyard.

416
417 Mr. Miller: I was referring to the corner where it says with steps to grade, to the right of that just under
418 the 11.1 if part of that was cut at a 45 off the end, you could actually rotate it possibly a little bit that
419 would make it a lot more in line. The other thing is, with water pooling up in that lower left hand corner,
420 if those drains don't work properly, you could have nightmares with your pool.

421
422 Ms. Everett: They did come and place additional drainage in my backyard after we had a small issue back
423 there with water. There is additional drainage that goes directly to that catch basin that kind of cuts back
424 in that V-shaped corner and drains it to that catch basin, and that is something I have taken into
425 consideration is the cut up of the down grade of my yard and where I would want the concrete compared
426 to the insertion of that fiberglass pool.

427
428 Mr. Oster: I was looking at the deed restrictions and the grade of her backyard, which her deed
429 restrictions really isn't us.

430
431 Mr. Beard: We can't enforce it so, that's up to the HOA, so we don't need to discuss it if it's an HOA and
432 deed restrictions; that's not something we can enforce.

433
434 Mr. Oster: I had some thoughts about the grade.

435
436 Mr. Beard: And that's up to the HOA and they've already approved it, and she sent it so it is on record
437 and I will put it in with the case file so we will have their approval.

438
439 Mr. Oster: I was just wondering if they were going to regrade the whole thing once they get it in. So
440 we're not concerned with grading at all?

441
442 Mr. Beard: That would be the County Building Department or Soil and Water and HOA's problem.

443
444 Mr. Miller: On Exhibit 3 with your arborvitaes, do you have knowledge of from the edge of your
445 arborvitaes to your concrete?

446
447 Ms. Everett: Are you saying how far away from the concrete are they going to be?

448
449 Mr. Miller: It's a question; how far from the arborvitaes to the concrete?

450
451 Ms. Everett: I plan to place rock around the patio and allowing at least 12" from the concrete so the roots
452 don't impede my concrete placement. It will probably be 2' just to be sure.

453
454 Mr. Miller: And then to the back side of the arborvitaes, it would be how far toward your property line?

455
456 Ms. Everett: I'm going to continue with a rock placement and I don't have any plans to make it anything
457 more than what aesthetically looks right, so maybe a foot from the back of the arborvitaes, putting rocks
458 down and then allowing the grass to remain to the back of my property.

459
460 Mr. Miller: How are you going to get back there and mow it?

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461 Ms. Everett: I'm not quite sure of that.

462

463 Mr. Trefz: I think the concern is the lower right corner of the pool area as we're looking at it is sitting on
464 the easement and that means the arborvitaes will be in that easement and I assume they're going to come
465 down the right side and down and around because I think there's still 15' to the easement, so there should
466 be plenty of room to get a lawn mower in there On the left side as the pool is positioned, if I've got my
467 dimensions correct, the arborvitaes are in that build line also.

468

469 Mr. Miller: If you put giant arborvitaes in there that grow 2-3' per year, at maturity they're going to be
470 20'-24' tall but their width will grow in excess of 6'-7'.

471

472 Ms. Everett: I've had arborvitaes growing up my entire life around our pool and my dad was really great
473 with a chain saw and a trimmer, so I'm not thinking that will be an issue.

474

475 Mr. Miller: Is there any comment from the chatroom?

476

477 Mr. Trefz: No, there's nothing in there.

478

479 Mr. Miller: Any other questions or comments from the Board (none). Anything you would like to add?

480

481 Ms. Everett: I just really appreciate your time and consideration, and I know this is something my family
482 is really looking forward to and would really add value to our lifestyle and a nice stress reliever from all
483 the chaos of the last year, so thank you for your time.

484

MOTION TO DENY VARIANCE APPLICATION #VA-21-04

485

486
487 Mr. Trefz made a motion to deny Variance Application #VA-21-04, Sheryl and Donald Everett, for the
488 Area Variance to encroach into the rear yard setback due to the size of the variance and based on the
489 following criteria:

490

- 491 1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the
492 property without the variance: The property can yield a return without the variance.
- 493 2. Whether the variance is substantial: The variance is very substantial
- 494 3. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties
495 would suffer substantial detriment as a result of the variance The character of the neighborhood would not be
496 disturbed
- 497 4. Whether the variance would adversely affect the delivery of governmental services: The variance would not
498 adversely affect
- 499 5. Whether the property owner purchased the property with the knowledge of the zoning restrictions: We have to
500 assume that. Property owner stated they were not educated at the time, but that is the assumption that that was
501 done.
- 502 6. Whether the property owner's predicament feasibly can be obviated through some method other than the variance:
503 This can be done without granting a variance of this size
- 504 7. Whether the variance preserves the spirit and intent of the zoning requirements and substantial justice: would not
505 be by granting the variance.

506

507 Mr. Beard: Based on that, if there are other members who disagree.

508

509 Mr. Shipley: I think Number 5, they stated in their package that they did not know about the restrictions,
510 so we could make the assumption and that's on you; you should have known that. But it states whether
511 they purchased it with the knowledge of the zoning restrictions and my understanding of that is if there is

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512 a discrepancy, then the default goes to the property owner and the property owner says they did not know
513 that. They knew there was a restriction on fence height; that's my personal take on that.

514

515 Motion seconded by Mr. Oster

516

517 Mr. Oster: The 7 criteria were laid out and I can't say that I disagree with him. Mr. Shipley disagrees with
518 Number 5, but we were always operating under the premise that you should have because you should
519 have asked and that was not an excuse, so I can't say I agree with Aaron.

520

521 Ms. Everett: I've been going into the purchase of our property being that it was a very new construction
522 neighborhood and the hardship that our property does suffer because of how large our neighbor directly to
523 the left of us. Their yard is substantially larger, so taking that into consideration as a hardship on our
524 property, is there a way you can explain to me more for Numbers 6 and 7 and if there is something I can
525 do to change granting of the variance? Then the spirit of intent for me, I feel I justified that pretty well, so
526 I would like a little more information on those two points.

527

528 Mr. Miller: I'll address Number 5 first. I ran into an issue with the developer where I was at and he said x,
529 y and z verbally and 4 months after I purchased the property and built a custom built home, I got what I
530 considered some very strong worded nasty-grams from the attorney for the HOA and he point blank said
531 "it's your fault for not studying the HOA deed restriction that are filed with the County". I realize this is
532 hindsight but for any futures, I strongly recommend that anybody that is going to buy any kind of
533 property or build to make sure they research the deeds and restrictions and easements and conditions that
534 are filed within the appropriate county within the State of Ohio.

535

536 Ms. Everett: I am asking at this point to maybe see past some of my ignorance with that situation. I have
537 not owned a property where I was able to afford a pool and I've worked so hard the last couple of years
538 and in such situations that I have endured every day, and I just really want what's best for my family. I
539 think moving forward with a project like this the benefit truly outweighs any risk you may see in such a
540 large request. We have a lot of hardships on the property with the pipe that was already installed, the size
541 of the property, great things you can see on the picture of the property that I've already pulled up. There's
542 nothing behind us; that's one reason we chose this property. We really love this location. The school
543 district was so important to me for my children. This area is so popular; it's so challenging to find a single
544 family home with any yard at this point, and then what's going on with Evans Farm and given what's
545 going on with the potential of condos being placed in my backyard. The ability to find a yard where I
546 could move forward with this requires a request for a variance, and I'm just asking you to forgive me for
547 my ignorance and allow me to make some type of adjustment or continuance where I have to cut down
548 and compromise safety by putting in more concrete because that's what would make the variance request
549 a little smaller. I may be willing to do that but I think having more space up against the deck, up against
550 the security cameras, and locks and hard covers and all these things because that's what works for my
551 family, and I just beg you to see what I see with that situation. I'm not requesting it just because I think it
552 would look good; I'm requesting it because it's a benefit that outweighs the risk of what I've designed in
553 my mind.

554

555 Mr. Miller: I highly respect what you're saying and I understand and appreciate the importance of family
556 and safety. In regard to, and this is my perspective, in comments for Items #6 and #7, as the Board
557 discussed there were some slight modifications like bringing it up to cut just one part of that corner and
558 rotating it a little bit. That would make it far more in compliance. One of the big things for me is the
559 physical size of the request.

560

561 Ms. Everett: I know we talked about very personal single circumstances. There have been pool variances
562 requested. I've watched multiple meetings so I would kind of know how to present myself because I want

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563 to present issues or other variances that have gotten that request, and I want to make sure those are seen
564 and are kind of fair in those instances where we do a 17-1/2' variance for the house on Impatiens Way.
565 That really gave me a positive thought that they granted that one so maybe they'll grant this, and I just
566 want that to be taken into consideration. I feel I may have put in a little more effort with my safety
567 concerns and hoping that you giving that story with what happened to those kids. I read that all the time
568 and that's a huge concern of mine. And it wasn't always about aesthetics, concrete or utilities; it was all
569 about the safety of my kids and making it known that that's what's most important to me. If it has to be
570 moved a little bit, to me that's a compromise for safety so I just want it looked at from a little different
571 view for that.

572
573 Mr. Miller: I tried to explain my thought process in regard to the size of the variance which it is
574 substantial. There could be some feasibility if changes or alterations were made that could make it more
575 feasible for the Board to approve this. And again, we have to take each case individually.

576
577 Mr. Beard: Jerry, you did just mention the feasibility for the Board. That's not what #6 says. It's if the
578 owner's feasibility can do it without the variance and based on that drawing, I don't believe there's a way
579 she could design the pool that would not request a variance and that's what it states; other than a variance,
580 not the size of the variance. The size of the variance is #2.

581
582 Mr. Shipley: Anything over 25% is going to be considered a substantial variance, correct?

583
584 Mr. Beard: Correct.

585
586 Mr. Shipley: So to get out of the substantial variance, we've got to get under 25%, so, and I'm not saying
587 that it can't be done, but moving it 5', 6', 8', even if it gets is to 32%, it's still substantial. Less
588 substantial, but still substantial.

589
590 Mr. Oster: I didn't even see anywhere what the actual size of this pool is.

591
592 Ms. Everett: It's shown on my HOA request, 35' x 16'.

593
594 Mr. Beard: Mr. Shipley, to go back to your 25%, the substantiality of it, the 25% would be allowed to go
595 8.75' into the setback to get to the 25%.

596
597 Mr. Oster: You would be back at that 10' concrete pad for that as an example.

598
599 Mr. Beard: Correct.

600
601 Mr. Miller: Any other comments about the 7 items from the Board? Mr. Beard, we have a motion to deny
602 with a second. If there are no further comments, I'd like to take a vote.

603
604 Mr. Beard: You guys have stated that if you adjust the pool, the request is substantial and you're trying to
605 redesign the pool for them.

606
607 Mr. Oster: And we're not supposed to do that, are we?

608
609 Mr. Beard: You're not supposed to do it but you also mentioned that if she lessens the size of the variance
610 request, there's a possibility to be approved but not stating what that has to get to.

611

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612 Mr. Oster: What I was saying was if this was setback off the house so far and then put down a concrete
613 pad and then she wants to put on another 10' deck. It's at the 50% mark and there's the AEP utility
614 easement line.

615

616 Mr. Beard: The easements we can't enforce. We can't stop a permit because of an easement.

617

618 Mr. Oster: I didn't say that but I can consider things like that, can't I?

619

620 Mr. Beard: That can't be the deciding factor of not allowing something because of an easement.

621

622 Mr. Oster: Was that a deciding factor?

623

624 Mr. Beard: I'm just saying you're bringing it up as a point and I'm just letting you know of the facts and
625 the legality of it.

626

627 Mr. Oster: Kelvin is the one who made the motion and I agreed with his points. Now you're wanting a
628 redesign, so do you want to redesign things so we can turn around the denial?

629

630 Mr. Beard: No, what was stated by Kelvin that it's a substantial request and if it was lessened that he
631 would have other consideration.

632

633 Mr. Oster: We can always re-review anything is what I'm saying.

634

635 Mr. Beard: But if there's an amount.

636

637 Mr. Oster: But I don't have to state where they have to be to re-review to.

638

639 Mr. Miller: Ms. Everett, what I think the Board is referring to is that we can make a comment in regard to
640 what's being requested is substantial, it's over 50% and there was a discussion that anything over 25% is
641 considered substantial. We can make statements like that to let you know what the Codes are but we
642 cannot tell you to redesign to x, y, z spec. We try to be very helpful and give people hints of what can be
643 done.

644

645 Ms. Everett: From what I understand, if I do redesign it and remove some of the concrete, it's still going
646 to be a substantial request, so aside from removing some of the concrete and make our request less
647 substantial even though it will still be substantial, and that's my confusion I guess. We're trying to use
648 substantial as a point of yes or no and we're still going to be substantial. Just because we're going to
649 remove some of the concrete maybe I don't understand how that's going to make it to that point of
650 changing a yes to a no or visa versa as far as the substantiality of the request. In retrospect of my ideas of
651 what I want for safety it's so substantial, so if I redesign it and I come back, and maybe you can't say, but
652 what exactly has to happen in a redesign other than rotating it like I said, I went through the kidney bean
653 design of the pool, I went through different designs. I spent probably a solid 4 hours on trying to decide
654 where exactly to position the pool so that the request still sounded reasonable, especially given some of
655 the other requests that have been done with the substantial variance, so maybe I need a little more
656 direction on what would help make it not substantial, but I don't know if that's possible.

657

658 Mr. Oster: She knows what I thought. I thought you could save 10' by shoving your concrete back there
659 and having your wood stoop step off right on the concrete pad.

660

661 Ms. Everett: I just didn't want stepping right off the deck into a pool.

662

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663 Mr. Oster: That's not right into the pool; it's onto the concrete.

664

665 Mr. Miller: Right where it says wood stoop with steps to grade, if that corner was brought in 4 or 5 feet,
666 that would not only radically change, and if you slide the position or angled it a little bit, you would take
667 off a tremendous amount.

668

669 Ms. Everett: Would it still be substantial?

670

671 Mr. Miller: It would nowhere be near as substantial; you could reduce that 30% just by bringing the pool
672 closer to the house by reducing that corner area. That would still give you 15' from the house for an
673 example to the edge of the pool which is a lot of concrete.

674

675 Ms. Everett: Would you allow me to go back to my design company and look at some of the concrete?

676

677 Mr. Miller: We cannot "tell you that" but I can give you a hint that if you request to have this tabled...

678

679 Mr. Trefz: Continued.

680

681 Mr. Oster: But there's already been a motion.

682

683 Mr. Beard: But she can still ask because it hasn't been voted on. If she asks for it, then you can rescind
684 the motion. There's a difference between a continuation and tabling. If she wants to continue it to next
685 month or she can continue it to 2 months to have it redesigned, as long as we have a date and time which
686 would be one of our regularly scheduled meetings but if she doesn't know when she would have it back
687 or have it ready, then that would be a tabling, that would incur tabling fees.

688

689 Ms. Everett: Is there any way it can be approved tonight? My biggest concern is I've taken a lot of time
690 and effort with the company and I saved a lot of money to put my down payment on it to move forward
691 and every day I push this back, it just pushes back installation and getting in that cue. The company I've
692 been working with is great; they could probably put something together and have it ready tomorrow. But
693 that's another month of people getting ahead of me.

694

695 Mr. Miller: If you had your pool design ready by Monday, it would still be at the earliest next month. The
696 third week of May would be the next scheduled meeting. Right now there is a motion to deny with a
697 second with 4 Board members here tonight. On this I am strongly leaning on denying it as well based on
698 the existence of what's been presented, so it's your call.

699

700 Mr. Trefz: If she asks for a continuance until the 20th of May, we could cancel the vote and grant her the
701 continuance.

702

703 Mr. Beard: Correct. You could rescind your motion and then you could amend your motion.

704

705 Mr. Trefz: That would also not incur any additional fees, correct?

706

707 Mr. Beard: Yes, as long as she sets it to that scheduled meeting or the following scheduled meeting. As
708 long as we have a date set and time, there would be no fees associated with it.

709

710 Mr. Miller: The exact date of that is May....?

711

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712 Mr. Beard: May 20th is the next hearing, so we would request updated materials the week of May 10th so
713 they can be distributed around May 13th. Ms. Everett, they can either act on what's applied for now, and
714 they've already got the motion and a second, or you have to request a continuation or tabling.

715

716 Ms. Everett: There's a motion to deny and a second and there's only 4 of you and if the other 2 would
717 deny the denial, it would go to the next meeting?

718

719 Mr. Beard: It would not; you would have to ask for a continuation to redesign it. What they have on table
720 right now is to deny the application, so the variance would not be approved for the setback for the pool as
721 it states.

722

723 Ms. Everett: And there's 4 of you?

724

725 Mr. Beard: There's 4 members present tonight.

726

727 Mr. Miller: Normally there's 5, so it would take 3 votes for or against. Our quorum is a minimum of 3
728 members then that would be a 2 to 1 vote. If there are 4 members, it would have to be a 3 to 1 vote for or
729 against.

730

731 Ms. Everett: Then if you all disagree, it gets tabled?

732

733 Mr. Miller: If there's 2 votes for and 2 votes against tonight, Mr. Beard, what's the legal?

734

735 Mr. Beard: Someone could either make a different motion and re-vote or if it's 2/2 it could be continued
736 to the next hearing. If it was 2/2 and no one was changing their votes, you could also go into private
737 deliberations to discuss things like with legal counsel last month, but if it's 2/2 and no one is budging, it
738 would be continued to the next month. Hopefully we'd have all 5 of our Board members present.

739

740 Ms. Everett: I think I'd like to do that.

741

742 Mr. Beard: You're asking for a continuance to next month?

743

744 Ms. Everett: I'm asking for the other 2 to vote on it.

745

746 Mr. Beard: If they vote and it's 3 to 1, it will be denied.

747

748 Mr. Miller: And I already gave you my indication based on the 7 criteria we have to abide by.

749

750 Ms. Everett: I just don't see how I'm going to fix the substantial request unless I put the pool out my back
751 steps. Mathematically it's still going to be a substantial request.

752

753 Mr. Miller: Right now you're over 50%.

754

755 Mr. Beard: About 46%.

756

757 Ms. Everett: But you said anything greater than 25% is substantial.

758

759 Mr. Miller: Yes, but there's other things that are involved with the 7 items. The big thing to me is the size.
760 I feel there are other things that could be done to alleviate some of these issues; it's up to you whether you
761 want to do some of them or not.

762

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763 Mr. Beard: Jerry, can I ask you a question just to clarify something? When you were talking about the
764 angle of the pool, which direction are you t talking about?

765

766 Mr. Miller: If that corner area could be dramatically reduced and the pool moved up closer to the house
767 because where the wood stoop's at to grade, if that corner could be reduced, you can easily bring your
768 pool up closer to the house and still be 15' from your house. That's #1. #2, if you did the same thing, you
769 could also bring the pool to the right and do the same thing. That's just an example of what I feel could be
770 done.

771

772 Mr. Trefz: It would just be cutting it off and sliding the pool north toward the house.

773

774 Mr. Miller: That would still give you a good 15' and you would have at least 5' from the base of the steps
775 to the grade to the pool.

776

777 Ms. Everett: I'm not keeping those steps; that's going to be gone and eventually end up with steps on the
778 other side. I'm talking about placement of furniture and having only 5' of concrete isn't adequate in my
779 mind. If it was your pool, your house and you wanted to put concrete around your pool, I don't think
780 anybody would choose such a small amount of concrete and I still think the variance would be substantial.

781

782 Mr. Miller: I was not aware that the wood stoop was going to be eliminated.

783

784 Mr. Oster: I think she can gain the most load by moving it up and using the 10' that's in there as her first
785 10' of the concrete ahead of the pool and then changing her wood step down from her sliding patio doors
786 to that concrete. Instead of coming out and down, you'd just be coming out with steps onto the concrete.
787 Then the pool would be right below that and it would gain you literally 10' in moving the whole assembly
788 straight up.

789

790 Mr. Miller: We're trying to give you some ideas to help you.

791

792 Ms. Everett: I think when you define substantial in all of this, no matter how I move it given the amount
793 of time I spent designing it, putting the concrete and the pool where I felt, it was very difficult to place the
794 pool where I would still have enough concrete in my mind and if Jeff could show some of the grading
795 pictures of my backyard, and it would be anything closest to the house would grade better and the
796 concrete would last longer so that we wouldn't run into having to put concrete at the bottom of the pool.
797 Only putting only putting 3' around the pool, where do you enjoy it, sit around it, put tables and chairs,
798 where does a family enjoy the pool without just being in it? You can abut it up against the house all you
799 want but aesthetically you want to talk anything seeing it in rose colored glasses as a design factor rather
800 than just a variance factor I guess is what I'm asking you all to look at.

801

802 Mr. Miller: It's up to you whether you want to talk to the pool builder and see if it's feasible.

803

804 Ms. Everett: That's like the best picture; that shows how it all goes downhill. I feel stuck in both
805 situations now, where I spent a substantial amount of time trying to move it and we actually took the
806 concrete from the back and added to that 8' of concrete on the back end and moved that up to 3' just to try
807 and shove it all...

808

809 Mr. Oster: And if you did move it up to 10' and had that first 10' of concrete from the house before you
810 add the pool, you could put 10' of concrete on the backside of the pool.

811

812 Ms. Everett: But then you'd be coming right out the backdoor into the pool. I wanted the deck to allow
813 for a variance in aesthetics and...

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814 Mr. Oster: You could put 10' of concrete off the back if you wanted to be 10' from the backt.
815

816 Ms. Everett: Then there'd be a lot of grading at that point.
817

818 Mr. Oster: You're going to have a lot of dirt from the dig out of the pool to use to grade that whole deal
819 out in the yard; however, they're going to disburse all that ground.
820

821 Mr. Miller: We're trying to help you with some ideas; it's up to you if you want to ask for a continuance
822 to next month and talk to the pool manufacturer to see if there's anything that can be done. The ball's in
823 your court.
824

825 Ms. Everett: I don't feel like I have a choice. I guess I'm just going to have to request a continuance at
826 this point.
827

828 Mr. Miller: If you're going to request a continuance, what we need to have you say is I need a
829 continuance until May 20, 2021 for #VA-21-04 and the Board will vote on it. This will also help you get
830 other ideas in regard to how you're going to resolve some of the fence issues which is the second part of
831 this, and I remind you of that only because this is two part.
832

833 Ms. Everett: I'm going to ask for a continuance until May 20, 2021 so I can take out some concrete.
834

MOTION TO RESCIND MOTION OF DENIAL FOR #VA-21-04

835
836
837 Mr. Trefz made a motion to rescind the Motion of Denial for Variance Application #VA-21-04, Sheryl
838 and Donald Everett, in favor of the continuance.
839

MOTION TO ACCEPT CONTINUANCE OF #VA-21-04

840
841
842 Mr. Miller made a motion to accept the request for a continuance from the applicant of Variance
843 Application #VA-21-04, Sheryl and Donald Everett, until May 20, 2021; seconded by Mr. Trefz.
844

845 Mr. Trefz-yes, Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes
846

847 Motion carried
848

849 Mr. Beard: Ms. Everett, we will need updated plans by the 10th or 11th of May.
850

851 Ms. Everett: What about the fence?
852

853 Mr. Beard: We can have the discussion if you want since it's a 2 part in session tonight or if you want
854 to...
855

856 Ms. Everett: I think I would like to have the discussion now just so I can have more of an idea of what to
857 present on the 20th.
858

859 Mr. Shipley: The issue with the fence is the Township requires a 5' fence around a pool. The HOA rules
860 are set up to only allow a 4' fence, so you obviously could ask the HOA to have a 5' fence. I do think it's
861 important to note in my opinion that you went above and beyond the safety piece which Mr. Miller
862 brought up earlier with the hard cover password protected which is not required, so there's no
863 requirement whatsoever other than for extra protection on your part to have that cover. You could have a
864 5' fence with no cover whatsoever. And since it was brought up before, and not that it's our business, but

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865 Delaware County, as Jeff mentioned, approved the pool with that cover with no fence around it at all.
866 You're asking for a 4' fence; that's 1' less than what the Township requires. I don't know the percentage
867 of that.

868
869 Mr. Beard: 20%.

870
871 Mr. Shipley: So 20% is what you're asking for just to be clear on that. There's no specific type of fence
872 required, so the shadow box fence that you have, although Orange Township requires that it's 5', is an
873 acceptable fence for that.

874
875 Mr. Miller: Anything that you present, if there's anything that needs to be approved by the HOA, not just
876 the fencing issue, please have the HOA's acceptance for approval or denial be submitted when you
877 provide all your drawings. I have a pet peeve about it because we are a quasi-judicial arm and we are not
878 allowed to go out and visit sites, so we have to go by what's presented to us. That's one of the reasons I
879 was so adamant on some of these issues.

880
881 Ms. Everett: Do you give it any consideration that the HOA did approve it given it was a 4' fence?

882
883 Mr. Miller: No. There were a couple of things we didn't have the approval of in our packets, so have all
884 your ducks in a row and I's dotted and t's crossed. It will help you, it will help the Board make better
885 determinations without having to second guess things and I'm not saying we had to second guess things
886 in this instance but we have to have the data, we have to go by the data.

887
888 Mr. Oster: They allow that size pool but they don't allow a 5' fence that we require? That doesn't make
889 sense either out of the HOA.

890
891 Mr. Trefz: That's on the HOA though.

892
893 Mr. Oster: But that's why I'm saying I don't understand that if they would allow that, why wouldn't they
894 allow the other because they go hand in hand in Orange Township? But that's what you run into and next
895 you start looking at insurance companies and they have this or that.

896
897 Ms. Everett: I want to reiterate the hardship on our fence given the entire one side was completed prior to
898 us even moving in, so to your point could I add another fence inside a fence, yes, but given the fact we
899 already had a fence in place, the type of fence we have, and going above and beyond the safety measures,
900 is it adequate enough not to have to put in another fence?

901
902 Mr. Miller: Where are you going to put all the dirt from your pool?

903
904 Mr. Oster: She's going to use it to grade. You're going to have it all the way and according to the HOA
905 that pool cannot crest out of the ground over 12". With the grade she's got here, I don't see how she's
906 going to alleviate that requirement from the HOA without using a whole bunch of that dirt to re-grade the
907 backyard, so the closer you get to the house, the less you're going to have to grade in the end and the
908 better compliant you're going to be all the way around with your pool up closer to your house.

909
910 Ms. Everett: Would adding concrete to the sides of the pool given the fact that they have to grade it
911 anyway because obviously I've made it known that I want concrete around it to have stuff around it.

912
913 Mr. Oster: You can have concrete from what I can understand; the concrete doesn't come into play. You
914 could concrete it all the way to the fence if you want.

915

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916 Ms. Everett: When I do the redesign, do I put it on the back end?

917

918 Mr. Oster: You could.

919

920 Mr. Trefz: Do you have to have the concrete? She said a deck and I've seen many pools that have a deck
921 along one side and then you had a step down with a lock gate to get down to the pool area. You might
922 want to think about incorporating the deck in the pool design. Together it might alleviate some of your
923 issues that you don't have to have the concrete there. You can still have all the concrete you want but it
924 gets you a little bit closer to an integrated design which I think is what I've seen and heard you talk about.

925

926 Mr. Oster: And that's why I suggested just move the concrete up there because most of the ones I've seen
927 have it all around then you'd have your 10' up front that you could use, then your pool, then you could
928 put 10' on your back and put 10' on the sides if you wanted, 10' all the way around it.

929

930 Mr. Miller: Just think of how much more room you're going to have for furniture on the fence side.

931

932 Mr. Trefz: I have another suggestion because I couldn't quite picture, I'd like to see the pool, the
933 arborvitae, the stones around like you wanted to do and how. You can't surround it with arborvitae, but
934 you've got an entrance somewhere. How was that planned? Give us the entire look because that makes a
935 difference.

936

937 Mr. Oster: Moving it 10' would help with that too. You'd have a lot more room for all those arborvitae
938 coming across the back.

939

940 Mr. Trefz: And what the spacing is on the arborvitae is because you could create a pretty good hedge
941 with those.

942

943 Mr. Miller: The pool company should be providing that for you. If they want to sell a pool, they'll do
944 some of that layout and design work for you. The other alternative is if you do have a drawing and they
945 don't have the time to put in the arborvitae, go to Hobby Lobby and just get a little stamp.

946

947 Mr. Trefz: Honestly you can draw it in yourself.

948

949 Ms. Everett: I thought about trying to do something along those lines.

950

951 Mr. Trefz: It doesn't have to be a professional drawing to give us the idea of what you're trying to
952 achieve.

953

954 Mr. Beard: And their point is for the pool setback is to the pool itself, not the concrete.

955

956 Ms. Everett: Right. I think I just fixate on that substantial variance and that that's a key point.

957

958 Mr. Trefz: But your pool is 8' x 35'?

959

960 Ms. Everett: 35' x 16'.

961

962 Mr. Oster: So she's moving the deck line up 10'.

963

964 Mr. Trefz: If she can go that way.

965

966 Ms. Everett: So what do we do about the fence? Do we table that?

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967 Mr. Miller: We can table that as well since it's under the same....

968

969 Mr. Trefz: Continuance.

970

971 Ms. Everett: Hypothetically if you all were to move on the 4' fence tonight and it were denied, would I be
972 able to come back with the redesign with a 5' fence?

973

974 Mr. Beard: If it gets denied and you comply with the 5' fence, you're meeting the zoning code, then
975 there'd be no need for a variance. That would solve that and you wouldn't have to seek anything with
976 that. Now if it got denied, I'm sure the Board would like to see where you're going to have that 5' fence
977 and a picture of that 5' fence but they don't have to see that. That would be up to the permit side of that
978 and would go through the zoning. If it got denied, you would just have to comply with the 5' fence. And
979 if the Board wishes to make a motion or go with the fence part of this, they can.

980

981 Mr. Oster: I don't want to do that until you have a pool that's going to require that.

982

983 Mr. Miller: I agree; we'll let you get your ducks in a row.

984

985 Ms. Everett: I'd like to come back and not have to put the fence in the design but if you would prefer to
986 see that, should I incorporate that into....

987

988 Mr. Oster: I think that's something we should take into private session with the attorney and get his
989 thoughts on it.

990

991 Mr. Beard: If the fence that you're going to incorporate is a 5' fence, then...

992

993 Ms. Everett: It doesn't matter.

994

995 Mr. Beard: Correct. So if you want the variance request for the fence, then you stick with this request and
996 it would be better to have it after...

997

998 Ms. Everett: I just wondered how this request would change for the next meeting.

999

1000 Mr. Beard: This one won't but if you can't have a pool. then there's no point in approving the request for
1001 the fence because the fence would go with the pool.

1002

1003 Mr. Trefz: Do we need to include it in our continuance?

1004

1005 Mr. Beard: Since we just stated that the continuance would be for that application, both of those variance
1006 requests would be included.

1007

1008 APPROVAL OF MEETING MINUTES

1009

1010 Mr. Oster made a motion to approve the March 18, 2021 Orange Township Board of Zoning Appeals
1011 minutes for Variance Application/Conditional Use Application #VA-CU-20-29, Lifepoint Church, with
1012 the following corrections:

1013

1014 • Line 16: put space between "43035" and "and"

1015 • Line 15 should read: "The square footage....."

1016 • Line 22: remove "to"

1017 • Line 65: "22" should read "22 feet"

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1018 Seconded by Mr. Trefz

1019

1020 Vote on Motion: Mr. Trefz-yes, Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes

1021

1022 Motion carried

1023

1024 Mr. Oster made a motion to approve the March 18, 2021 Orange Township Board of Zoning Appeals
1025 minutes for Conditional Use Application #CU-21-02, Joshua J. Morgan, with the following corrections:

1026

- 1027 • Line 16: put space between “43035” and “and”
- 1028 • Line 91: “include” should read “includes”
- 1029 • Line 194: remove extra comma
- 1030 • Line 195 should read: “...on what’s presented to us...”

1031

1032 Seconded by Mr. Trefz

1033

1034 Vote on Motion: Mr. Trefz-yes, Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes

1035

1036 Motion carried

1037

1038 Mr. Oster made a motion to approve the March 18, 2021 Orange Township Board of Zoning Appeals
1039 minutes for Variance Application #VA-21-03, Jeffrey Heckman, as written; seconded by Mr. Trefz

1040

1041 Vote on Motion: Mr. Trefz-yes, Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes

1042

1043 Motion carried

1044

1045 Hearing adjourned at 8:30 p.m.

1046 Minutes prepared by Cindy Davis, Zoning Secretary

1047

1048 On May 20, 2021, Mr. Trefz made a motion to approve the April 15, 2021 minutes of the Orange
1049 Township Board of Zoning Appeals for Variance Application #VA-21-04, Sheryl and Donald H. Everett,
1050 with the following corrections:

1051

- 1052 • Line 198: “Mfr.” Should read “Mr.”
- 1053 • Line 659: ??? should read “...wood stoop step off...”
- 1054 • Line 797: ??? should bread “.....only putting 3’ around the pool...”

1055

1056 Seconded by Mr. Miller.

1057

1058 Vote on Motion: Mr. Miller-yes, Mr. Oster-yes, Mr. Shipley-yes, Mr. Trefz-yes, Ms. Sundar-yes

1059

1059 Motion carried

1060