

MINUTES

**THOMAS TOWNSHIP ZONING BOARD OF APPEALS
PUBLIC SAFETY BUILDING, 8215 SHIELDS DRIVE, SAGINAW, MI 48609
April 10, 2018 - 4:00 P.M.**

1. The Board of Appeals meeting was called to order at 4:00 p.m. by Chairman Steve Witt.

Present: Rod Iamurri, Don Milne, Steve Witt, and Rene DeSander. Also present were Dan Sika, Community Development Director and Connie Watt, Planning Assistant/Code Enforcement Officer, Steve Persyn, and several interested parties

Absent: Mike Thayer

2. **Pledge of Allegiance.**

3. **Approval of the Minutes.**

Motion by Iamurri seconded by DeSander to approve the minutes of the February 27, 2018 meeting as presented. Motion carried unanimously.

4. **Hearings:**

A. Mr. Stephen Persyn of 4560 Lone Road, Freeland, Michigan is seeking a variance to Ordinance Section 3.2, subsection (i), 1.), which specifies a requirement for the installation of a four foot (4') high fence around in-ground pools along with a self-closing, self-latching device for keeping the gate or door securely closed at all times when not in use.

Sika explained that the packets given to the members contains lengthy information regarding the specific case. It also has background on the Building Code as well. He went on to say that the Township Zoning Ordinance requires

that type 1 swimming pools, or in-ground pools, are required to have a four foot (4') high fence with specific widths of boards and specifications as to gate requirements as well. He added that the Building Code also has requirements for pools in the code which are somewhat similar with specific fencing requirements along with height and gate requirements. The exception to the Building Code specifications is (a tested exception; in lieu of doing a fence you can do this) a type of cover that would protect people if they stood on the cover it wouldn't allow them to go in. It is strong enough for them not to. He added that the two issues here is that the Building Code is separate from the Zoning Ordinance. Sika noted that the Building Inspector had written a memo explaining that he would not require fencing around it because the Building Code gives him that exception. Separately the Zoning Ordinance is what the ZBA deals with and it still requires a fence and this is what this hearing is for. I ask that you listen to all the facts and go through the checklist and make your decision. I did ask the Township Attorney to look at this. He said his opinion is based on the fact that the Building Inspector says it does not need a fence. He would concur. Above and beyond that it is your decision based on the Zoning Ordinance which is totally separate. He did not give a specific opinion on that. Witt questioned if this was something that should go before the Planning Commission in order to change the Ordinance. Sika stated there is no reason to do that at this point. This is the first variance request we have ever had regarding this. If it was a recurring request then that would indicate a problem with the ordinance that needs to be addressed. He felt it was a ZBA issue at this time. Stephen Persyn of 4560 Lone Road spoke regarding the variance he is requesting. He presented a brochure to the members of the "Coverstar cover". DeSanders asked if this cover met the 485 lb. requirement. Sika answered that it did meet the ASTM 1346 requirement. Persyn continued that their former home had a pool which had both a fence and a "Coverstar cover". At that time the children were younger and they were less confident then they are at their current home. He had problems with the fence around their former pool due to the Michigan freeze and thaw causing the latches to not line up. The cover gives them a sense of safety. They know it is shut and there is no way a child could venture out and stumble into it. Persyn pointed out the property set-up on an overhead map. Showing the home, out building, proposed pool and 1 acre pond. He noted that the neighbors (Chad and Dave) would not even be able to see the pool from their properties. Iamurri questioned the depth of the proposed pool. Persyn stated it will have a diving board so nine feet (9'). Iamurri then questioned the pond depth. Persyn noted 20-30' approximately. Iamuuri stated there are many ponds in the Township but no requirement to fence them whatever the depth. Sika did note that there is a slope requirement in the Ordinance regarding ponds. Milne questioned if the Township had adopted the Michigan Building Code which allows these covers. Sika stated that the State of Michigan adopts the code, we enforce all codes and exceptions based on that. Persyn did state he had checked on pool regulations with Midland

and did present a copy which shows the cover as mentioned allowed in lieu of fencing. He also presented a copy of the Michigan Building Code page showing the exception. (Items attached) Milne did state that the fence will always be there but the pool cover would only be if it is closed. Persyn stated that there is a keycode to open the cover as well as alarms associated with it. Christa Persyn of 4560 Lone Road spoke. She stated that at their last home they were very careful about safety. If a life jacket came off the cover was closed. Mr. Persyn added that it is a matter of good discipline. He furthered that Mrs. Has a lot of experience as she works at Covenant in the Emergency Room and has seen the worst of what can happen. Witt opened the meeting up for public comment. Dave Pasterz of 4520 Lone Road spoke. He said his property abuts the Persyn property. Persyn is a great neighbor and he is present to support him with any decision he makes. William Stein Jr. of Cherokee Pools spoke. He stated that the pool will be equipped with full automation. The owner will know anytime the pool cover is opened via the internet and connection to their phones. In winter a different cover will be used. It will be a safety cover. He did also mention he has three other bids for this cover in the area right now. Dr. Tiffany Weiss of 7 Hearthstone stated she is also considering this cover in lieu of fencing for her pool. Milne questioned that if you can use the internet to see if the cover is closed might there not be the same thing available for fencing. Stein stated it is possible there is a lot you can do with wi-fi capabilities. Public comment was closed at 4:21 p.m.

At this time the ZBA members answered the questions as listed under “Basic Conditions” and “Special Conditions” of the Zoning Board of Appeals Checklist. The results were as follows:

ZONING BOARD OF APPEALS CHECKLIST

(A variance will only be granted if all of the following Basic Condition questions are answered "yes")

BASIC CONDITIONS

The Zoning Board of Appeals shall have the power to authorize, upon an appeal, specific variances from such requirements as lot area and width regulations, building height and bulk regulations, yard and depth regulations, and off-street parking and loading space requirements, provided that all of the Basic Conditions listed below are answered "YES" and one (1) of the Special Conditions listed thereafter can be satisfied;

1. Has the Applicant demonstrated that this variance is not contrary to the intent and purpose of the Zoning Ordinance? Explain.

YES 4 NO _____

2. Has the Applicant proven that a variance will not adversely impact adjacent properties? Explain.

YES 4 NO _____

3. Has the Applicant proven that a variance would not produce a nuisance condition to nearby premises? Explain,

YES 4 NO _____

4. Is the basis for the proposed variance unique and not shared by other properties in the same Zoning District throughout the Township? (If the Board of Appeals finds that the hardship is not unique, but common, then an amendment to the zoning ordinance or a re-zoning should be pursued.)

YES 4 NO _____

5. Has the Applicant shown that a variance will not otherwise impair the public health, safety, or general welfare of the residents of Thomas Township?

YES 3 NO 1

(Yes-Iamurri, Milne, DeSander) (No-Witt)

SPECIAL CONDITIONS

When all of the foregoing Basic Conditions can be satisfied, a variance may be granted when any one of the following Special Conditions can be clearly demonstrated:

1. Are there non-economic practical difficulties or unnecessary hardships, which prevent carrying out the strict letter of this Ordinance? Explain.

YES 2 NO 2

(Yes-lamurri, DeSander) (No-Milne, Witt) DeSander felt that the cover is as good or better than anything else; we are not up with the Building Code.
lamurri felt this is no different than a pond. Milne did not see the practical difficulty.

2. Are there unique or extraordinary physical conditions that do not apply to other property or uses in the same zoning district and were not caused by and act of the applicant? Explain.

YES 3 NO 1

(Yes-lamurri, Milne, DeSander) (No-Witt) lamurri felt that based on the number of ponds around the home which are not fenced this provides a unique situation.

3. Is the variance necessary to preserve a substantial property right possessed by other properties in the same zoning district? Explain.

YES _____ NO _____

Motion by Iamurri, supported by DeSander to approve a variance for Stephen Persyn of 4560 Lone Road to allow the use of a “Coverstar Automatic Cover” for his proposed in-ground swimming pool in lieu of the fencing requirement as detailed in Section 3.2(i) 1) of the Thomas Township Zoning Ordinance. Vote was as follows:

Yes-Iamurri, Milne, DeSander

No-None

Abstain-Witt

Motion passed.

6. **Old Business** – None

7. **New Business-None**

8. **Adjournment**-a motion was made by DeSander and supported by Milne for adjournment of the meeting at 4:25 p.m.

Respectfully submitted by Connie Watt, Planning Assistant/Code Enforcement Officer.

SWIMMING POOL REQUIREMENTS



Requirements for swimming pools are outlined in the 2015 International Swimming Pool and Spa Code. The following is a short list of requirements most residential pools will need to satisfy before the pool may be put into use. These requirements apply to both above-ground and in-ground pools, unless specifically noted. This list is meant to be a helpful guide to assist you in the basics of erecting a safe and secure pool, but is not meant to be an exhaustive list. For requirements on specific materials and methods, please contact the City of Midland Building Department.

Building permits are required for any pool meant for swimming that are designed and manufactured to be connected to a circulation system regardless of the depth.

Permit fees are as follows:

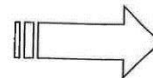
Above-ground pools: \$20.00

In-ground pools: *Project valuation. Refer to the City of Midland Building Permit Fee Schedule for cost.*

BARRIER/FENCE REQUIREMENTS

- All in-ground pools require a fence/barrier
- Above ground swimming pools with walls that are 48" or greater for the entire perimeter of the pool, no barrier is required if the pool wall meets all the requirements for a barrier and the pool manufacturer allows the wall to serve as the barrier.
- Barriers/fences shall be placed to prevent climbing of permanent structures and equipment.
- All horizontal rails shall be placed on pool side. Where the barrier is composed of horizontal and vertical members, the horizontal members shall be located on the swimming pool side of the fence.
- Barriers with horizontal and vertical members shall be spaced a maximum of 4" for vertical members and 1 ¾" for horizontal members.
- Chain link mesh fencing shall have a 1.75" maximum opening.
- Lattice fencing shall have a 1.75" maximum opening.
- The top of the barrier shall be 48" above grade measured on the side that faces away from the pool for a distance of 3', with a maximum of 2" between grade and the barrier.
- If a dwelling is part of the barrier, all doors and windows leading into pool area shall be equipped with an alarm.
- Swimming Pools with a powered safety cover are exempt from the barrier requirements.

Continued on back



ACCESS GATE REQUIREMENTS

- Must meet the same height and opening requirements as a fence or barrier.
- Access gates shall open outward from the pool and be self-latching and self-closing.
- The latching device must be on the pool side and at least 3" below the top of the gate.
- A-frame type ladders shall have a physical barrier that prevents a small child from swimming through the risers, or behind the frame, or provide a Certificate of Compliance with Ladder Entrapment Test.
- When the pool is not in use, all access ladders must be secured as to not allow access to the pool from the outside of the pool.
- All safety signage provided by the ladder or pool manufacturer shall be in place per manufacturer instructions before inspection.

ADDITIONAL REQUIREMENTS/RESTRICTIONS

- Swimming pools can only be located in side or rear yards.
- Swimming pools located in rear yards are required to be placed at a minimum of 3 feet from property lines, and a minimum of 6 feet from other structures.
- Swimming pools located in side yards are required to be placed at a minimum of 6 feet from other structures, and must meet side yard setback requirements as per Section 26.2 of the City of Midland Zoning Ordinance.
- Swimming pools cannot be located in easements.
- Overhead wiring must be at least 22.5 feet above pool water, measured in any direction.
- In addition to a building permit, electrical and mechanical permits may be required for installation.
- For pool decking requirements, please refer to the City of Midland Decks Handout

If you have any questions regarding the installation of swimming pools please contact the City of Midland Building Department.

City of Midland Building Department
333 West Ellsworth Street – Midland MI 48640
Phone 989-837-3383 www.cityofmidlandmi.gov/building Fax 989-835-2378
rev. 6/17

GENERAL COMPLIANCE

permanent *residential* spas shall be controlled in accordance with the requirements of APSP 15.

SECTION 304 FLOOD HAZARD AREAS

304.1 General. The provisions of Section 304 shall control the design and construction of pools and spas installed in *flood hazard areas*.

[BS] 304.2 Determination of impacts based on location. Pools and spas located in *flood hazard areas* indicated within the *International Building Code* or the *International Residential Code* shall comply with Section 304.2.1 or 304.2.2.

Exception: Pools and spas located in riverine *flood hazard areas* that are outside of designated floodways and pools and spas located in *flood hazard areas* where the source of flooding is tides, storm surges or coastal storms.

[BS] 304.2.1 Pools and spas located in designated floodways. Where pools and spas are located in designated floodways, documentation shall be submitted to the code official that demonstrates that the construction of the pools and spas will not increase the design flood elevation at any point within the jurisdiction.

[BS] 304.2.2 Pools and spas located where floodways have not been designated. Where pools and spas are located where design flood elevations are specified but floodways have not been designated, the applicant shall provide a floodway analysis that demonstrates that the proposed pool or spa and any associated grading and filling, will not increase the design flood elevation more than 1 foot (305 mm) at any point within the jurisdiction.

[BS] 304.3 Pools and spas in coastal high-hazard areas. Pools and spas installed in coastal high-hazard areas shall be designed and constructed in accordance with ASCE 24.

[BS] 304.4 Protection of equipment. Equipment shall be elevated to or above the design flood elevation or be anchored to prevent flotation and protected to prevent water from entering or accumulating within the components during conditions of flooding.

304.5 GFCI protection. Electrical equipment installed below the design flood elevation shall be supplied by branch circuits that have ground-fault circuit interrupter protection for personnel.

SECTION 305 BARRIER REQUIREMENTS

305.1 General. The provisions of this section shall apply to the design of barriers for pools and spas. These design controls are intended to provide protection against the potential drowning and near drowning by restricting access to such pools or spas. These requirements provide an integrated level of protection against potential drowning through the use of physical barriers and warning devices.

Exceptions:

1. Spas and hot tubs with a lockable *safety cover* that complies with ASTM F 1346.

2. Swimming pools with a powered *safety cover* that complies with ASTM F 1346.

305.2 Outdoor swimming pools and spas. Outdoor pools and spas and indoor swimming pools shall be surrounded by a barrier that complies with Sections 305.2.1 through 305.7.

305.2.1 Barrier height and clearances. Barrier heights and clearances shall be in accordance with all of the following:

1. The top of the barrier shall be not less than 48 inches (1219 mm) above grade where measured on the side of the barrier that faces away from the pool or spa. Such height shall exist around the entire perimeter of the barrier and for a distance of 3 feet (914 mm) measured horizontally from the outside of the required barrier.
2. The vertical clearance between grade and the bottom of the barrier shall not exceed 2 inches (51 mm) for grade surfaces that are not solid, such as grass or gravel, where measured on the side of the barrier that faces away from the pool or spa.
3. The vertical clearance between a surface below the barrier to a solid surface, such as concrete, and the bottom of the required barrier shall not exceed 4 inches (102 mm) where measured on the side of the required barrier that faces away from the pool or spa.
4. Where the top of the pool or spa structure is above grade, the barrier shall be installed on grade or shall be mounted on top of the pool or spa structure. Where the barrier is mounted on the top of the pool or spa, the vertical clearance between the top of the pool or spa and the bottom of the barrier shall not exceed 4 inches (102 mm).

305.2.2 Openings. Openings in the barrier shall not allow passage of a 4-inch-diameter (102 mm) sphere.

305.2.3 Solid barrier surfaces. Solid barriers that do not have openings shall not contain indentations or protrusions that form handholds and footholds, except for normal construction tolerances and tooled masonry joints.

305.2.4 Mesh fence as a barrier. Mesh fences, other than chain link fences in accordance with Section 305.2.7, shall be installed in accordance with the manufacturer's instructions and shall comply with the following:

1. The bottom of the mesh fence shall be not more than 1 inch (25 mm) above the deck or installed surface or grade.
2. The maximum vertical clearance from the bottom of the mesh fence and the solid surface shall not permit the fence to be lifted more than 4 inches (102 mm) from grade or decking.
3. The fence shall be designed and constructed so that it does not allow passage of a 4-inch (102 mm) sphere under any mesh panel. The maximum vertical clearance from the bottom of the mesh fence and the solid surface shall not be more than 4 inches (102 mm) from grade or decking.