

# Board of Zoning Appeals

## Munson Township

Minutes of July 16, 2015

Chair Bobbie Nolan called the meeting to order at 6:30pm with Gabe Kezdi, Richard Wright, Alternate Danielle Pitcock, Secretary Paula Friebertshouser and Court Reporter Kim Geil present. Don Alexander, Michael Waclawski and Lucy Longo were absent. The Pledge of Allegiance was said.

Mrs. Nolan informed Mr. Petersen there were only four members present and asked if he would rather wait to have a full Board. Mr. Petersen said he was comfortable with the Board that evening. Mrs. Nolan confirmed that he knew that a tie vote is a no vote.

Mrs. Nolan explained that the Board of Zoning Appeals is a quasi-judicial Board which acts in the role of judges. They take facts as presented and apply certain standards of law to then make a decision. A court reporter is present so that anyone wishing to speak for or against the case must be sworn in for the record. The record is made up of testimony and evidence presented. If a case goes to court, decisions are based on what is presented the evening of the hearing. Anyone not in agreement with the decision of the Board could take the case to the Court of Common Pleas within 30 days after the minutes of the meeting are approved.

**CASE 15-10: Todd Petersen, 11579 Lake Rd., Chardon OH** – request to install an in-ground swimming pool with an automatic retractable safety cover in lieu of a fence. Violates SEC. 514.3 (in part) Private Swimming Pools – in ground swimming pools shall be walled or fenced prior to use in order to prevent uncontrolled access by children from any road or adjacent property.

Zoning Inspector Tim Kearns was sworn in and read the variance request and violation. Todd Petersen, Jerry Petersen and Terry Brennan, representative from High-Tech Pools, were all sworn in. Mr. Petersen explained that his lot consists of five acres and narrows down to where there is a 12 or 13 foot wide bridge with a gate. They built their residence and then moved in January of 2014. There is a pavilion and they are in the process of putting in a pool that sits between the home and the pavilion. The only access to the property is the bridge because the area surrounding it is swamp like. He explained that the regulation says there has to be a fence, but the irony is that in fencing off the pool the lake is right there equidistant. He added there is another opening off of Lake View that stops at the Smith's house. They are going to put a manual gate there at the request of the Fire Department. Theirs is not a situation where there is a standard home subdivision.

Mr. Petersen explained the ASTM standards and stated that the primary risk is not the neighbors. According to the ASTM, the pool cover can hold 475 pounds in combined weight. Mr. Petersen provided the example that a 220 pound male, a 110 pound female and a 50 pound child could easily be on the cover. The cover is made to accommodate parents running onto it and getting a child. He pointed out there is no deflection on the sides. He said they can leave for the weekend and not worry about the cover; there are rails on each side and with their own key the cover shuts and is locked. Mr. Petersen felt the cover is a better approach to the fence because it is solid and there is not a four inch

opening like a fence. He distributed pictures of the cover and mentioned that former NFL player Mike Babb used to lay on his cover like it was a water bed. He also pointed out that a fence requires a latch and that it be self-closing but not locking. He said kids could kayak over with the intent to get over their fence but they would not get in with a cover. He cited F1346-91 of the ASTM code which has standard performance specifications that intend to reduce the risk of drowning by inhibiting the access of children under five years of age to the water. It also talks about load and surface drainage and that the cover will not create a well of water; it is designed to deflect. Additionally, he explained that the cover acts like a garage door in that it will not shut on or over a person if they are in the way.

Mr. Brennan of HighTech Pools explained the company has been installing pools since the late 1950's. They did the YMCA pool and have worked in Strongsville and Solon. They own their own in-house service department and are trained to install the covers. He estimated they do about fifty percent of their pools with covers compared to ten percent fifteen years ago. When asked his position, Mr. Brennan responded that he is a sales manager. He gave his personal opinion that a cover far exceeds four feet of fence in regards to safety. Mr. Wright asked how many pools with covers have been installed without fences. Mr. Brennan said there is one in Waite Hill that is on five or ten acres, and Bentleyville used to do it but have recently changed. Mr. Wright commented that every picture he saw that had a cover also showed a fence. Mr. Petersen commented that if someone jumps a four foot fence they still would not be able to get in. Mr. Wright asked what would happen if a deer got on the cover and its hooves caused damage. Mr. Brennan replied that in his experience there was only one damaged and that was by a young deer. Mr. Wright asked what the life expectancy of the cover was. Mr. Brennan replied that the manufacturer says it is a year round cover, even in winter, but in most cases they retract the cover and put a winter cover on. The cover has an eight to ten year life expectancy.

Mr. Wright asked Mr. Petersen what his objection was to the fence. Mr. Petersen responded that he had never had a front yard growing up. When they lived on Sherman Road there were cherry trees; and on Woodiebrook, the front yard had a ravine. He has never had a wide open space. He explained that if a person went in from the edge of his property it goes ten feet higher and then there is minimal open space. He said living in that area is not like anywhere else in Munson. There is a 170-acre lake that protects a seventy percent radius – the rest would be difficult to walk through. The island is five acres, and he owns another fifteen plus and two and a half across from Rollin Cooke. They have one neighbor on Lake Road to the north and two on the south side. Mr. Wright asked Mr. Petersen, he being a lawyer, if the township had any liability. Mr. Petersen said if he needs to continue the case so the Board can confer with the prosecutor he would be fine with that, but he had never heard of this being a problem. Mr. Wright felt this case was different. Mr. Petersen felt it was not; a lot of the zoning code, setbacks etc. are based on safety. He felt no one cares more about his kids than his wife or himself. Mr. Petersen pointed out they live on a lake; he waited to move there until his child was five. He put in a \$25,000 fire suppression system not to save his house, but his kids. He commented that he would be sued first. He explained he has the cover, a gate on the driveway, and is surrounded by a lake and swamp. Mr. Petersen commented that based upon facts and weights he has not found anything in the zoning regulations that would trump ASTM's safety standards. He pointed out that self-latching gates can be opened, and if someone were to stand at a supposed fence they would be equidistant to the lake.

Mr. Kezdi asked how thick the cover would be and what it is made out of. Mr. Brennan explained it is made of vinyl and designed to walk on. He explained how it is installed and that it is hydraulic driven. In case of a power outage, Mr. Wright asked if he had a generator. Mr. Petersen responded no, and if there were a blackout, that would be all the more reason to be home and not swimming. Mrs. Nolan asked who writes the standards. Mr. Brennan explained that the American Society for Testing is kind of like an underwriter. Mrs. Nolan commented that the US Consumer Product Safety Commission in regards to pool safety (poolsafety.gov) states there are barriers, alarms, safety covers – and all are critical to use with parent supervision with none serving as a sole safety system. She thought covers were pretty new. Mr. Brennan said they have been around probably 20 to 25 years. Mr. Petersen responded that they are not talking about a new project; it is not experimental. There are safety tests, we know there is no deflection and it could hold his daughter's first grade class. He understands that people are used to having a fence and no one is going to say you have to have a cover because it's a \$15,000 option; they are going to say a reasonable measure. Nowhere does it say a fence is better.

Mrs. Nolan gave an example that years ago cars were dangerous and then they put in safety belts, anti-lock brakes, and air bags. She asked if that meant people do not need to wear their seatbelts. Mr. Petersen responded that the township has a right to put reasonable restrictions, but if they looked at the map you would not find a piece of property like his. They sit alone and he couldn't imagine any more layers of protection. Mr. Petersen provided an example of having a party where he is drinking and someone falls on the cover the person would be ok, but someone could have gotten over a fence and into the pool. When asked how long he planned to live there, Mr. Petersen said forever. Mrs. Nolan commented that his kids will grow up, they will have children, and if you have family gatherings one of the kids could get away and there would be no fence. Mr. Petersen responded that if there are people in the pool they would be there to see anyone.

Mr. Petersen pointed out that no neighbors were present; and there is no testimony that will show that a fence is more effective than a cover. Mrs. Nolan pointed out there is also no testimony to show that a cover is more effective than a fence. Mr. Petersen asked Mr. Brennan if he felt the cover was effective. He said yes for a 12-year old boy and thought a toddler would be equally safe. And then he asked if the cover was not covering the pool do you think a fence could protect. Mr. Brennan replied "yes".

Mr. Petersen showed the site plan with the existing residence and explained that he has a landscape plan that will have a fence from the patio from the front door that will attach to the pavilion so that if someone were to come down the driveway they would see the house, then the fence, and then this structure. When asked what a specific area was, Mr. Petersen identified it as a screened in porch with a hard cover spa. He drew on the site plan and submitted it as Exhibit A. He reiterated that he hears their concerns, but in his opinion it would be preposterous to build a fence around a lake and the lake is equally as close as the pool.

Mrs. Nolan commented that she has a pool with a fence, and when they have family gatherings they keep the fence and gate closed. Mr. Petersen said he wants kids to come to his home and felt she was assuming a lot. He felt he would have better safety than hers. He pointed out he had his 13 year olds phone with him because the kids are in the house and he did not want him to have it without him being home.

Mr. Wright commented that the variance stays with the property. He asked Mr. Petersen if he could show him any pictures with a cover and without a fence. Mr. Petersen responded if they continue the case he would bring ten pictures. Mr. Petersen quoted the zoning where it states "in order to prevent uncontrolled access by children from any road or adjacent property". Mr. Petersen said he has one adjoining property that is within 1,000 feet and he would have to go across the bridge. He felt they can't say he is not preventing access because there is already a barrier. The closest road is Bass Lake; he owns Lake Road, then there is a swamp and a lake. He said the code does not address resident's kids. Mr. Petersen asked Mr. Kearns if he put a fence there are there any other standards. Mr. Kearns said no, nothing specific. Mr. Petersen had no qualms that it is safer with the cover, but there is not a chance that the Zoning Commission had the ASTM standards in front of them; and no way they would put in a requirement for a \$15,000 cover because that would be unreasonable.

Mr. Brennan explained maintenance is key. He goes to many pools where the fences are run down and the latches do not hitch and are wide open. It all comes to maintenance regardless. Mr. Petersen said he is spending \$180,000 including the cover and he wondered what reasonable belief the Board would have that he would not maintain it.

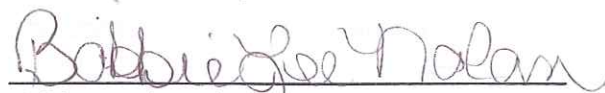
The Board recessed at 7:38pm for executive session. The meeting resumed at 7:49pm.

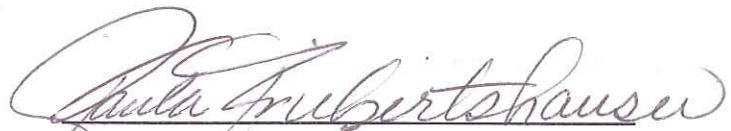
Mrs. Nolan said they would like to talk to the prosecutor. Richard Wright moved and Gabe Kezdi seconded to grant a continuance at no cost in order to talk to the prosecutor. The Board voted unanimously. Motion carried.

Richard Wright moved and Danielle Pitcock seconded to approve the minutes of June 18, 2015 as written. The Board voted unanimously. Motion carried.

Danielle Pitcock moved and Gabe Kezdi seconded to approve the findings of fact for Case 15-09 for John Ricci. The Board voted unanimously. Motion carried.

The meeting was adjourned at 7:51pm.

  
Bobbie Nolan, Chair

  
Paula Friebertshauser, Secretary