



**BOARD OF ZONING APPEALS
MEETING MINUTES
NOVEMBER 3, 2022**

CALL TO ORDER/ROLL CALL

Chairman Jim Hrivnak called the Board of Zoning Appeals to order at 6:30 p.m. Board Member present included: Mr. Hrivnak, Randy Duncan, Janice Hitzeman and Ryan Brickner. Staff present included: Claudia Husak, Planning Director; Peyton Kaman, Development Technician; Pam Friend, Administrative Assistant, and interested parties.

APPROVAL OF MEETING MINUTES

October 6, 2022 Meeting Minutes
[10062022 BZA_Draft_Minutes.pdf](#)

MOTION: Board Member Duncan moved to approve the Board of Zoning Appeals meeting minutes of October 3, 2022. Board Member Brickner seconded the motion. Minutes approved.

VOTE: Y – 3 N – 0 Abstain – 1 (Hitzeman)

HEARING OF VISITORS FOR ITEMS NOT ON AGENDA

Chairman Hrivnak opened the floor for visitors to address the Board with issues not on the Agenda. Hearing none, Chairman Hrivnak closed the public comment portion of the meeting.

NEW CASES

VARIANCE REQUEST (2022-26V)

Applicant: Adrian and Jala Moore
Location: 9258 Advocet Drive
Zoning: PR - Planned Residence District
Request: Review and approval of a variance to Code Section 1147.06(b)(2) to reduce the required easement setback for swimming pools from 12 feet to 4 feet.

1. [Moore Pool- BZA Staff Report.pdf](#)
2. [MOORE_VARIANCE REQ.pdf](#)

Peyton Kaman, Development Technician, presented the Staff Report and reviewed the applicant's statements regarding the seven standards:

1. **Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property;**
Applicant Statement: The owner feels that the variance requested would make a better use of their property and without intruding in any way upon the drainage easement in question.
Standard Met: This proposal will yield a beneficial return for the property and the easement will be unaffected by the proposal.

2. Whether the variance is substantial;

Applicant Statement: The owners feel the variance requested is minor and not substantial.

Standard Met: The proposal is not substantial. There are many other improvements on various properties that are built within 12 feet of the drainage easements in Verona that have been approved.

3. Whether the character of the neighborhood would be adversely affected or whether adjoining properties would suffer an adverse impact as a result of the variance;

Applicant Statement: The property is in a new development area. Many of the finished residences currently occupied have had improvements made that have given a nice look to the area. These projects include fencing and patios similar to the proposed project. This variance is for a project that seeks to fit well with existing projects. This project will not negatively impact the character of the area and will use color, textures, and shapes that imitate existing landscaping and structures.

Standard Met: The proposed patio and in ground pool would not adversely affect the adjoining properties. The patio will look similar to patios that were approved in Verona. The in ground pool would still meet the 12-foot setback to the lot lines as required by code section 1147.06(b)(2).

4. Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);

Applicant Statement: The proposed project will not in any way interfere with any governmental services.

Standard Met: Delivery of governmental services will not be adversely affected. The pool is not encroaching the easement and the storm sewer running in the rear of the lot would be unaffected.

5. Whether the property owner purchased the property with knowledge of the zoning restriction;

Applicant Statement: The owner did not notice the restriction at time of purchase but admits that the information was available.

Standard Not Met: The applicant admits that the information was available, however, the easement will not be affected by this variance.

6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

Applicant Statement: There is no other course available. There is no other space on the property to place the pool. If the letter of the code is followed, the pool would be 6-feet wide. The side yards are minimal and the idea to place a pool in the front is as popular with the owners as it is with the zoning board.

Standard Met: As the applicant stated the drainage easement takes up a significant amount of the rear of the lot. If the pool were to be placed elsewhere it could encroach required side yard setbacks.

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance;

Applicant Statement: The owner has every intention of observing the spirit and intent behind the zoning requirement. The pool is in the center of a patio that is already authorized by code. Neither the patio around the pool nor the pool itself will intrude upon the easement line.

Standard Met: The spirit and intent of the zoning requirement would be observed and substantial justice done by granting the variance.

Staff recommends the Board of Zoning Appeals approve a variance to Code Section 1147.06(b)(2) to reduce the required setback of a swimming pool from 12 feet to 4 feet from the drainage easement.

Curtis Lynd, Envision Pools Construction, 3397 Rome Corners, Galena, contractor for the applicant's, gave a brief presentation.

Jala Moore, 9258 Advocet Drive, Powell, the applicant, gave a brief presentation about their property and the need for the request. She thanked the Board for hearing their request.

Gary Morches, 9324 Wilbrook Drive, Powell, testified in opposition to the variance stating there are already drainage issues in Verona. He is also concerned about his view of the retaining wall.

Eric Goodman, 9356 Wilbrook Drive, Powell, testified as a neutral party, he is concerned about Verona drainage issues, but is there to understand the variance and process better.

Ajay Dugar, 9316 Wilbrook Drive, Powell, testified as a neutral party regarding the variance.

Mr. Lynd responded to the public comment and addressed the concerns about drainage. He said his customers have reduced the size of the pool from 20 foot to 14 foot, so that it would not be in the easement and talked about the planned landscaping.

Mrs. Moore responded to comments from the public and said she is very comfortable with the planned design and that it would be something her neighbor Gary could be comfortable with. She also said though they have not been there a whole year, they were there during the spring months and did not notice a collection of drainage issues in the back nor the front of their property.

Board Member Hrivnak had staff review the east and west elevation. He asked if other members had questions or comments.

Board Member Hitzeman asked why the 12-foot setback for in-ground pools but not patios. Ms. Husak said she had discussions with the former City Engineer to try and understand the 12-foot setback from an easement for pools and frankly they could not determine why the requirement is there. She stated throughout her career she has not seen that distance of a setback from an easement.

Chairman Hrivnak said it is interesting that it says from a property line or easement. He said the property line makes sense, but not the easement. He asked about a sump pump indicated on the plans. Mr. Lynd explained the sump pump is used to keep the pool from overflowing. The water is directed to the sump pump and then to the existing drain, so there would not be an overabundance of water coming from the pool.

Board Member Brickner asked if the sump pump collects water from the pool deck and Mr. Lynd explained it is designed to prevent the pool from overflowing, so not from the pool deck but from the actual pool.

Board Member Duncan asked if it is directed to the existing storm sewer. Mr. Lynd said it is.

Chairman Hrivnak stated he appreciates fact the pool is placed as low as possible on the property with this elevation. He respects the fact that the size of the pool was reduced so that there is no hardscape in the drainage easement and feels it's a good proposal.

Board Member Brickner agrees with the staff's analysis of the criteria. He also agrees with the Chairman's points. With the sump pump testimony, he believes the pool will collect more water than the swale, so it may actually be beneficial from that standpoint.

Board Member Duncan said he agrees with what the Board has said. He asked if there is anything in the code that would prevent a retaining wall and Mr. Kaman replied there is not. Further, Ms. Husak stated that if it were a patio they would not be required to apply for a variance.

Board Member Hitzeman agrees with the other Board Members comments and she hears the concerns of the adjacent property owners, but also thinking about the optics and realizing the variance would not be needed if it were a patio or 6 foot pool, she doesn't think it's substantive enough to deny it.

MOTION: Board Member Brickner moved to approve a variance to Code Section 1147.06(b)(2) to reduce the required easement setback for a swimming pool from 12 feet to 4 feet. Board Member Duncan seconded the motion. Motion passed.

VOTE: Y – 4 N – 0 Abstain – 0

STAFF COMMUNICATIONS

2023 Board of Zoning Appeals Meeting Schedule
[2023 BZA Meeting Schedule.pdf](#)

Ms. Husak reviewed the 2023 meeting dates with the Board and informed them no applications were received for December.

ADJOURNMENT

MINUTES APPROVED: February 2, 2023

 4-5-23

Jim Hrivnak Date
Chairman

 4/5/23

Pam Friend, Date
Administrative Assistant