

**DANBURY TOWNSHIP BOARD OF TRUSTEES
SPECIAL MEETING MINUTES
MAY 10, 2017**

The Special Meeting of the Danbury Township Board of Trustees held at the Danbury Township Hall on May 10, 2017, was called to order at 6:00 p.m. by President Charles B. Scott.

The pledge of allegiance was recited.

At the conclusion of pledge of allegiance, the roll was called and the following members were present: Mr. Charles B. Scott, Ms. Dianne M. Rozak, and Mr. David M. Hirt.

Also present were, Fiscal Officer Shelley Seamon and Zoning & Planning Administrator Kathryn A. Dale. Visitors in attendance were Ritchie Adams, John Paul Dress, Sherry Roberts, Vito Kaminskis, Rob Harrison, John Corsi, Mike & Catherine Hubbs, and Mike Kerr.

Mr. Scott announced that this public hearing was for the following zoning case.

ZC-2017-020

Text Amendments to Article 5, Section 5.8 to allow a pool safety cover system in lieu of fencing around new pools. Ritchie Adams, Applicant.

Mr. Scott asked Mrs. Dale to give an overview of the case. Mrs. Dale said she provided to the Board in their packets upon receipt on the Zoning Commission's recommendation for these proposed Text Amendments to our zoning text specifically Section 5.8. Mrs. Dale said she wanted to give the Trustees a little bit of background regarding how we ended up to today. In August of 2016, this particular subdivision (Bayview Shores Subdivision), a property owner in this subdivision wanted to put in a pool and wanted to put in this pool safety cover system in lieu of a fence because their Homeowners Association stated that property owners could not have a fence more than 24" high. The homeowner in that case was willing to put in a glass fence. The Association said no. So the property owner then applied for a variance, so that he could put in this pool safety cover system instead of providing a fence. Mrs. Dale shared that this BZA meeting lasted well into the night and ultimately it came down to this is our requirement; it was only one of means for safety around pools. Mrs. Dale indicated that the Board of Zoning Appeals (BZA) ultimately said no to the variance.

Mrs. Dale said now we have Mr. Adams who is another property owner in this same subdivision who would also like to put a pool in and these particular properties front Sandusky Bay. Mrs. Dale shared that instead of trying to go through the BZA to get a variance in part because Mr. Adams knows what the outcome was from his neighbor, Mrs. Dale indicated that Mr. Adams has decided to go this route and try to amend our zoning resolution so that you have the option of either a pool safety cover (manual or automatic) or a fence. Mrs. Dale said that somebody that has an in-ground pool below 48" would have to provide one of those 3 options based on the proposed language.

Mrs. Dale said typically an above ground pool is over 48" tall, so a lot of times there not required to fence in the yard, however a lot of people do for added safety. Also with above ground pools if they have a stair case leading to it, they will put in a gate across the entrance, at the top of the steps so that they are not having to remove their steps all of the time. Mrs. Dale stated that primarily the focus here tonight was for in-ground pools.

Mrs. Dale reported that the Ottawa County Regional Planning Commission (OCRPC) held a hearing on March 21, 2017 and recommended approval with some modifications in the language to insure that pool covers shall be closed & secured/locked when the pool is not in use. Mrs. Dale shared that the way OCRPC worded that language, had we adopted it, the concern she had was that it became an enforcement matter on our part. Mrs. Dale said she expressed this concern during the Zoning Commission hearing. Mrs. Dale said also at the Zoning Commission hearing a lot of questions came up about liability. Would the Township be held liable if we required these things versus a fence? Would the Township be held liable if we required nothing at all?

Mrs. Dale reported that she reached out to the County Prosecutor and provided his comments regarding liability in the Boards packets. Mrs. Dale stated that the Ottawa County Prosecutor does not feel the Township would be held liable with or without some type of protective barrier to a pool. Mrs. Dale acknowledged that the Ottawa County Prosecutor also reviewed her comment about tweaking that language that the OCRPC has suggested. So that if falls back on more to the responsibility of the property owner, as opposed to being an enforcement matter for the Township.

Mrs. Dale shared that the Zoning Commission (ZC) ultimately agreed to approve these proposed changes and indicated the ZC recommended scratching what the OCRPC had recommended because of the concern of enforcement. Mrs. Dale indicated that because she had spoken with the Ottawa County Prosecutor to get his opinion on liability & that language, she put the language back into the text amendments because she believes it addresses the ZC concern that it does not become an enforcement matter for the Township anymore.

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Mrs. Dale referred to the proposed text amendments she provided to the Trustees in their packets, which were color coded. Mrs. Dale said that the items in blue were the recommendations the ZC made. Mrs. Dale shared that the ZC wanted to make it clear these options (fencing, a manual or automatic pool cover) primarily applies to residential pools below 48" in height. Mrs. Dale reported that there were some minor language adjustments, which were to remove the address of the ASTM headquarters because if the address changes, than we would have had to pursue a text amendment to correct an address, correcting the transposition error made by the applicant to ASTM F1346-91 from ASTM F1346-19 and setting the fence height standard for in-ground pools and commercial pools to 48", which is the industry standard as opposed to 42".

Mrs. Dale acknowledged that Zoning Commission Chairman, John Paul Dress was in attendance, if the Board had any questions about the Commission's recommendations.

Ms. Rozak said she wanted to be clear regarding pools; they can be connected to the house or not connected and stated it doesn't matter. Mrs. Dale responded that was correct, just that they have to be set back a certain distance from the property lines.

Ms. Rozak asked if the Village of Marblehead had any restriction on fencing or pool covers. Mr. Scott said he spoke with Mr. Hruska at the OCRPC meeting, and the Village does have the in lieu of clause. Mr. Scott explained that Mr. Hruska informed him that they also have that the control switch for the pool cover is located inside the house. Mr. Scott also explained that there are fence restrictions at Baypoint also.

Mike Kerr, 825 Ford St. Suite 4, Maumee, Ohio said those switches are supposed to be, like you have to be able to visually to see the pool, so normally they are mounted outside and it's a switch you have to hold open or if it is a key code, you have to punch in the key code and hold your finger on it. Mr. Scott said he was relaying what the Zoning Inspector of the Village of Marblehead had stated to him.

Mr. Hirt asked how substainal are the covers and stated now the reason was are putting the covers on pools in lieu of a fence is for safety. Mr. Hirt questioned if a person can fall into a pool that has a cover on it.

Several visitors responded, and Mr. Scott reminded everyone that they needed to stated their name and address for the record prior to speaking.

Ritchie Adams, Applicant, 16265 Euler Road, Bowling Green, Ohio spoke to the Trustees about the weight limits for the pool covers and had a photo showing a 1,700 pound ATV on the pool cover as well as a brochure showing the pool cover partially open with children on it. Mr. Hirt acknowledged that what he was looking at, that it not only covered the pool, it covered the concrete around it. Mr. Adams said in his particular case the cover would be on a track that would be held across the pool and provided a sample of the material for the covers to the Board. Mr. Ritchie explained that the ASTM standard has weight limits and standards of what the material needs to be.

Ms. Rozak asked if this is all electric. Mr. Adams stated the one he is looking at install is all electric. He explained that as Mr. Kerr was trying to describe is that the button is held down in order to open or close the cover so no one trapped inside and to make sure it fully closes. Mr. Scott said he would open the floor to those in attendance to speak. Mr. Adams came forward. He shared they proposed the ASTM standard for this proposed language because there is criteria, a specific requirement and the covers themselves have to be labeled so it is easy to see whether the cover meets the standard or not. He said as it was eluded to earlier, the association does not allow fencing and he has John Corsi, Vice-President of the Association is present to be able to answer questions as is Catherine Hubbs, Secretary of the Association and Mike Harrison and Vito Kaminskas who are homeowners in support of this requested change. Currently, there is no requirement or regulation in Ottawa County or the State of Ohio regarding safety barriers on pools for residential. They really only require electrical inspections. The cover is a continuous barrier between the pool and the deck. There is a static load of 275 pounds for a width of less than 8 feet, or 485 pounds for a width over 8 feet. Manual covers must be secured and locked, and power covers cannot be retracted without the use of a key, or key & switch, or touch pad with personal access code. The reason for this is so that a child is not capable of doing it and ensuring there is adult oversight. Mr. Adams stated he personally likes the idea of a safety cover because they would have a lot of children around, 5-10 children under the age of 10. He stated a fence is nice, but a fence doesn't protect the kids or the pool when the kids are already in the back yard or inside the fence or leaving from the home to the outside. Mr. Adams shared where other safety pool covers are permitted meeting this ASTM requirement he is proposing. He stated that areas such as this with water-views, the cover system allows a safe alternative without infringing on those views. Mr. Adams reviewed the decision criteria for a text amendment reading from his written response submitted with this application.

Mr. Hirt asked what the longevity is on one of these safety covers. Mr. Kerr said it's improved over the years and they tell their clients the cover can last 9-15 years, which is all dependent on the upkeep and maintenance.

Sherry Roberts, 5465 E. Constitution Blvd, Marblehead. As a resident and not a BZA member, and here as a mother. She can agree with 99% of what they want to do and what they had to say, but the part she has a real issue with and it's not the safety of this product, but it's the people who are responsible for these covers. She has a pool and she knows what happens when you play around pools. Owners who have pools will go into the house and leave guests unattended or the pool is left open. Then a neighborhood could come in and drowns while the owner was in the house.

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That's her concern. She's heard the excuse that we live around water and don't fence or cover docks, harbors, etc. but obviously the State and communities have not looked at the idea that this is a safe alternative or they would have adopted it. Parents who take their kids to an open body of water know what to expect, but parents whose kid may wander, doesn't expect their kid to drown in a pool next door. She stated she will respect whatever decision the Board makes, but hope they take that aspect into consideration.

Mr. Kerr said what he sees, after installing these for 25 years is that, in reality there are fences that aren't kept up. 25% of the yards he goes into do not have a self-closing, self-latching gate. Whether it's a cover or a fence, there is still a responsibility on the property owner to maintain and there is always that human risk. Just because there is a code doesn't always mean the barrier is up to code. Ms. Roberts stated she understood, but Danbury also doesn't need to be a trend-setter in this field either.

Mr. Adams stated the greatest risk in this area are the channels and harbors because if someone falls in, there typically is no ladder or way out. He said we would all like to wish there is no risk with anything, but he's not sure any world exists without risk.

John Corsi, 6978 E. Longpointe Circle. Mr. Corsi questioned Ms. Roberts previous comments and said even with the current standard of having only a fence, a kid can still wander in and there is no pool cover. Ms. Roberts said that a fence deters a neighbor kid from entering, a parent is responsible for their own kid or grandkid. Mr. Corsi asked if a neighbor is responsible for their own kids. Ms. Roberts said "you bet", but as a township, we don't need to change the requirement to accommodate one association's rules. Everyone knew that when they bought their properties that fences weren't allowed and with all due respect, the association rules need to change, not the zoning language. Mr. Corsi stated this is a modern technology and the language needs to keep up with the times.

John Paul Dress, Zoning Commission Chair, 4755 Port Clinton Eastern Road. Mr. Dress shared that his thought on this when it came before the Zoning Commission was that the reason we have the requirement in the zoning resolution on fences is for safety and this proposal is just another tool to use. He thought it might help and this lists exact standards that the cover has to meet. There are not those same standards for a fence, only a height. He said there are a lot of homemade fences and these covers would have to meet an industry standard. He said he thinks it's an over-and-above safety option than what we have now. Ms. Roberts said she would agree with Mr. Dress if it were a tool in addition to a fence. But this language is proposing to substitute one option for another option.

Mr. Kerr said for years the Township has had a 42" barrier code which isn't even the industry standard and is substandard. Mr. Kerr said the national standard is 48" high fence, self-closing, self-latching with no openings larger than 4".

There were no further comments from the public. Mr. Scott asked to close the public comment portion of the hearing.

Ms. Rozak stated she has had limited experience with both a pool cover and a fence at her husband's former business. She stated that the pool cover system they had in place was truly a wonderful product, and many of the employees walked on it. To address Ms. Roberts, she stated she understands what she is saying and agrees that a cover with a fence is a good idea, but she thinks it's a safe alternative and allowing a property owner the choice is a good idea. Ms. Rozak introduced the following resolution and moved its adoption:

The Board of Trustees of Danbury Township, County of Ottawa, Ohio, met in special session at 6:00 p.m., on May 10, 2017, at the Danbury Township Building, 5972 E. Port Clinton Road, Marblehead, Ohio 43440, with the following members present: Ms. Dianne Rozak; Mr. Charles Scott; Mr. David Hirt.

Ms. Rozak introduced the following resolution and moved its adoption.

RESOLUTION NO. 09 - 2017

A RESOLUTION ADOPTING TEXT AMENDMENTS TO THE DANBURY TOWNSHIP ZONING RESOLUTION

WHEREAS, Ohio Revised Code section 519.12(A)(1) authorizes amendments to the zoning resolution initiated by the filing of an application by one or more of the owners or lessees of property within the area proposed to be changed, and

WHEREAS, Ritchie Adams, the owner of property in Danbury Township, filed on March 6, 2017 a request for a Text Amendment to Article 5, Section 5.8 of the Danbury Township Zoning Resolution, to remove Section 5.8.1.C and create a new subsection 2 for the purpose of creating language that offers an alternative restricted access method to residential swimming pools by means of a fence or power safety cover; and

WHEREAS, said text amendments were forwarded to the Ottawa County Regional Planning Commission (OCRPC) March 6, 2017 and considered by the Ottawa County Regional Planning

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Commission (OCRPC) on March 21, 2017 where the Commission recommended unanimous Approval of said text amendments with minor modifications; and

WHEREAS, the Danbury Township Zoning Commission held a public hearing on April 5, 2017 and by motion and vote, the Zoning Commission unanimously recommended Approval of said text amendments with modifications; and

WHEREAS, the Board of Trustees held a public hearing on May 10, 2017 and, at the conclusion of the public hearing, voted to accept the recommendation of the Zoning Commission as set out in Exhibit A as attached hereto.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees at the conclusion of the public hearing, by motion and vote, voted to accept the recommendation of the Danbury Township Zoning Commission and that the application for a Text Amendment be approved as presented, finding that the Decision Criteria "ii, iii, & iv" of Section 7.6.7.A of the Danbury Township Zoning Resolution is satisfied and that the amendment would be in the best interest of the Township and the public, and is in keeping with good land use planning.

BE IT FURTHER RESOLVED by the Board of Trustees of Danbury Township, Ottawa County, Ohio:

- 1) The Board does hereby adopt the amendment to the Danbury Township Zoning Resolution attached hereto as Exhibit A; and
- 2) That it is hereby found and determined that all formal actions of this Board concerning and relating to the passage of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Board and of any of its committees that resulted in such formal action were taken in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code; and
- 3) That this Resolution shall be effective at the earliest date allowed by law.

Mr. Scott seconded the Resolution, and the roll being called upon the question of its adoption, the vote resulted as follows: Vote Record: Ms. Rozak – Yes; Mr. Scott – Yes; Mr. Hirt yes. Motion Carried.

There being no further business before the Board, Ms. Rozak moved and Mr. Hirt seconded the motion to adjourn at 6:32 p.m. The vote was unanimous and motion carried.