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BEFORE THE JACKSON TOWNSHIP BOARD OF ZONING APPEALS
APPEAL NO. 2023962

TRANSCRIPT OF PROCEEDINGS

The following Board of Zoning Appeals Hearing was taken before me, the undersigned, Deanna Gleckler, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of Ohio, at the Jackson Township offices, 5735 Wales Avenue, N.W., Massillon, Ohio, on Thursday, the 14th day of December 2023, at 5:40 p.m.

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APPEARANCES:

BOARD OF ZONING APPEALS

JARED SINGER - CHAIRMAN

EDWARD MCDONNELL

PATRICK SNYDER

RANDY ALEXANDER

STEVEN GOSNEY

DEBORAH BUSBY

JONI POINDEXTER - ZONING INSPECTOR

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MR. SINGER: All right. The application is 2023962. The date filed with the zoning inspector 11/3/2023. The applicant is Andy Ginella, located at 4096 Holiday Street, N.W., Canton, Ohio, 44718. Property owner is Andrea Ginella, Trustee, 7970 Weston Place, N.W., North Canton, Ohio, 44720. Premises affected, one in the same, at 7970 Weston Place, N.W., North Canton, Ohio, 44720, parcel number 1627813. Zoning district R-R, quarter section 04 southeast. The application is for: Requests a variance to not install a fence around an in-ground swimming pool where an in-ground swimming pool on less than 5 acres is required to be enclosed with a wall or fence to prevent uncontrolled access from adjacent properties per section 401.12(B) as in boy, of the zoning resolution. Hearing date/time is 12/14/23, that's today at 5:15. The time is currently 5:43. Comments in the application, exception to fence requirement.

All right. within the packet we should have the cover sheet, as well as the application. we should have a set of, it looks like a

1 chronological written history titled 7970 weston
2 Place. It's a summary regarding violation of a
3 fence not being installed around an in-ground
4 swimming pool where a fence is required for
5 in-ground swimming pools on less than five acres.
6 You should have one sheet that, second sheet of
7 that. We have the zoning permit from 11/21/2022.
8 We should have a sketch of a pool and the house.
9 At the bottom of the sketch it's labeled 7970
10 weston Place. We should have a fence permit that
11 was filed with the zoning inspector, or filed on
12 11/21/2022. Another, it looks like a similar
13 aerial sort of drawing of the house and the pool
14 titled 7970 weston Place. We should have a
15 violation notice that indicates a case number of
16 2023268 dated 7/27/2023 to Trevor and Alyssa Rice.
17 There is an additional, next page, final notice of
18 violation, case number 2023268 dated 8/25/2023.

19 We should have a letter on Jackson Township
20 Zoning Department letterhead on September 18, 2023
21 to Trevor and Alyssa Rice from the zoning
22 inspector. We should have a Jackson Township Board
23 of Trustees letterhead, letter dated October 4,
24 2023 to Mr. and Mrs. Trevor Rice about the apparent
25 violation signed by Mr. Vaccaro that's shown as

1 Exhibit 6 at the bottom. I should have clarified.
2 I indicated with exhibit numbers, 1 through up to
3 6. Now we're at 7 here on the next page.

4 We should have an email on Friday October
5 13, 2023 at 8:07 a.m. from the zoning inspector to
6 Andy Ginella. Next page we should have Jackson
7 Township Zoning Department letterhead dated October
8 13, 2023 to Andrea Ginella, Trustee from Joni, the
9 zoning inspector. Next page, notice of violation,
10 Jackson Township Zoning letterhead. This is case
11 number 2023268 dated 7/27/2023 to Trevor and Alyssa
12 Rice from Cliff Meidlein, the zoning investigator.
13 Final notice of violation, case number 2023268
14 dated 8/25/2023 to Trevor and Alyssa Rice, signed
15 again by Cliff, the zoning investigator.

16 Next page should be a screenshot in Adobe
17 Acrobat Pro of Jackson Township Zoning Department
18 letterhead with the October 13, 2023 date to Andy
19 Ginella, Trustee from the zoning inspector.

20 Exhibit 8, indicated on the bottom right of the
21 next sheet, should be from Andy Ginella to Joni
22 Poindexter, zoning inspector, with a snippet from
23 Andy Ginella dated October 13, 2023 at the top to
24 Joni, and that email continues to the next page.

25 Exhibit 9 is from Joni Poindexter, zoning

1 inspector, to Andy Ginella dated November 6, to
2 Andy from Joni. The following page is the previous
3 email as well, it's the bottom footer.

4 Exhibit 10 marked on the bottom right, we
5 should have Andy Ginella sending an email to Joni
6 Poindexter, Zoning Inspector, November 6, 2023.
7 Again dated in the body of the email November 6,
8 2023 to Joni from Andy Ginella. Next page, email
9 from Joni Poindexter, Zoning Inspector, November 6,
10 2023 to Andy Ginella from Joni. The next page
11 looks to be a screenshot, or this is from USPS
12 Informed Delivery indicating that apparently this
13 letter would be delivered USPS and it's dated
14 November 6, 2023. Please see attached. So that is
15 proof USPS delivery on that date, looks like USPS
16 delivery date October 27, 2023 down below in the
17 bottom portion of that page. Next page is a scan
18 of the envelope from the Zoning & Planning
19 Department to Andrea Ginella, Trustee at 7970
20 Weston Place, N.W. It looks like a remainder of
21 the previous email or scan. There's a date on
22 there Friday, October 27th, and then continuance of
23 that to the final page, looks like a similar thing
24 with USPS for Informed Delivery.

25 I know that was a lot. Does everyone on

1 the board have those items? Yeah. So there's, at
 2 least in the first stapled packet, we should have
 3 an additional small packet of information. It's
 4 all on letterhead from Andy Ginella, Attorney at
 5 Law, at 4096 Holiday Street, N.W., Canton, Ohio,
 6 44718, it's a letter to the Jackson Township Board
 7 of Zoning Appeals, dated November 2, 2023, signed
 8 by Andy Ginella, Attorney at Law. We already have
 9 that, and the following one satellite photo and two
 10 quarter section snip in that packet. Does everyone
 11 have that?

12 MS. BUSBY: Yes.

13 MR. SNYDER: Got it.

14 MR. SINGER: All right. So let's get
 15 going. All right. Who is here to speak in favor
 16 of the appeal?

17 MR. GINELLA: Good evening.

18 MR. SINGER: Good evening. If you could
 19 please raise your right hand.

20

21 WHEREUPON,

22 ANDY A. GINELLA,

23 who, after being first duly sworn,
 24 testified as follows:

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MR. SINGER: Thank you.

MR. GINELLA: My name is Andy Ginella. My address is 4096 Holiday Street, N.W., Canton, 44718. For clarification purposes, my legal name is Andrea Ginella, so you're reading Andrea Ginella. I go by Andy. It's a little easier to be recognized that way, so --

MR. SINGER: I apologize for that.

MR. GINELLA: No, please don't. I've had it my entire life, so it's okay, but just for clarification so you understand the correlation between the names. So on behalf of, I am the trustee of the property, the tenants, the people who live there, for the benefit of them, is Trevor and Alyssa Rice.

Just a little brief background. So when you're taking a look at this, of course, when they first started this project, like a lot of projects begin, they want to put a pool in. Then you start thinking about, okay, where are we going to place it? Let's get a permit. Let's go ahead. And what they didn't expect after they started construction back in November, they didn't realize the amount of deer that travel right through their yard. And

1 when they were digging just the rough area for the
2 pool that was going to be installed, the deer that
3 would come through there and actually go into the
4 hole and then come out of the hole. So initially
5 when they thought a fence would be the idea, they
6 actually then put a construction fence up around
7 the area that, of course, would go into the
8 springtime. The animals were clearly just jumping
9 right over the construction fence. And some of the
10 problems were continuing that way with animals in
11 this rural area. So that's where it quickly
12 changed from a fence to what is a better securement
13 of the pool area. And then in looking at the
14 regulations, of course, I think the township
15 trustees and the board did a great job in amending
16 the regulations and allowing five acres or more,
17 but that just really looks at just one factor of
18 that. Clearly, there's an ongoing safety issue and
19 what is a better safety issue. Clearly, on these
20 pools, we know that a fence is one of the area, but
21 a fence only creates a perimeter securement, where
22 a pool, secured pool cover of certain
23 specifications, create a complete perimeter
24 securement of the pool itself, which that's what
25 the issue was becoming clearly with the animals,

1 deer coming through.

2 One of the other things that was really
3 kind of interesting when I was doing more research
4 on this, it clearly was coming down to when you're
5 doing five acres. So you clearly know that all
6 parcel lands, five acres is not dimensional always,
7 and you could actually have a residential property
8 on a small lot, but long and narrow, which is five
9 acres. So your neighbors could actually be closer
10 for the property itself, but you'd still be
11 qualified to not have a fence up, which then, you
12 know, those could be considered, if you have a
13 fence up, attractiveness of a pool, I get all that.
14 I mean, I do. I don't take this issue of not
15 securing a pool lightly. But what I started
16 checking into, again, what I thought was really
17 interesting, I represent a number of different
18 developers in the area, especially Jackson
19 Township, you know, we've always had this question
20 with regards to retention basins and retention
21 ponds, you know, there's no requirements for
22 fencing or around certain acreage of retention
23 ponds of less than five acres.

24 In addition to that, I thought it was
25 another interesting factor is that the neighbor to

1 the north of this property has a large playground
2 equipment area and, you know, there's another issue
3 that, of course, doesn't have any regulations with
4 regards to protection for those types of things.
5 Children, of course, climb up these. He has a
6 climbing wall, he has all kinds of things on this
7 thing and someone could fall and get hurt just as
8 easily as in this kind of setting.

9 so in looking at these things, some of
10 the other factors that I saw that was really
11 interesting, you know, technology has changed
12 drastically and it is constantly changing. There
13 are currently ten states that are mandatory
14 adoption of a secured pool cover of this factor.
15 of this nature. Ten states. There are ten other
16 states that are adopting the new pool covers
17 securing type of this nature. So, clearly, this is
18 becoming more recognized, because, clearly, the
19 fence with a secured gate is a securement, but as I
20 said, it's more of a perimeter as opposed to the
21 area or areas, meaning perimeter, physical barrier
22 meaning the pool. That is definitely the pros and
23 cons of the different fencing requirement, but the
24 issue coming down to what is the better securement.
25 Better securement is not to have a pool, if that's

1 what the issue is. That's really what it comes
2 down to, but then you might as not even have
3 playground equipment, retention ponds and
4 everything else.

5 But where is it really -- where is it in
6 this particular case? What's different and unique
7 here? And what it is, really comes down to, is
8 exactly how the guidelines are designed for appeal
9 purposes, you know, the nine factors that you look
10 at, and the nine factors, my client meets five of
11 those nine factors.

12 Is the circumstances peculiar? It is,
13 because in normal residential, this is more of a
14 rural area, the larger development. This is a very
15 large development. It's surrounded by another
16 farm - again, larger parcels - so it's not a small
17 developed neighborhood, as a lot of them are in
18 Jackson Township. They do own 2.5 acres. The
19 other particular, which is my client has an option
20 to purchase an additional 2.5 acres directly behind
21 it from the farmer. So that coupled with the 2.5
22 obviously gives them the five acres, but the
23 farmer's still not done farming and he still wants
24 to continue farming, but when it's time to sell,
25 then my client will purchase that other 2.5 acres.

1 And then it continues with what are the other
2 areas.

3 It doesn't interfere or does not create any
4 adverse effect of governmental services. It does
5 not affect that at all. The situation on this one,
6 while we're looking at it, the services will not be
7 affected from the township section. Does the
8 spirit and the intent behind the zoning
9 requirement, will it be substantially justified by
10 bringing the variance? And here in this case it
11 would, because, again, there's a uniqueness to this
12 parcel of land. And it is not that it should not
13 have a fence. It is secured with a secured
14 structure, lock key code system that is in place.
15 So it's not giving this homeowner a benefit or more
16 of a benefit than someone else.

17 And then the really one that was really
18 kind of interesting is the cost factor. Clearly,
19 if an individual wanted to put just a fence up, it
20 would be less expensive. My clients paid \$25,000
21 for this secure pool cover. It's not just the
22 cost, it is clearly what is a better securement for
23 this pool, in-ground pool area. So those factors
24 are clearly some of the requests or some of the
25 reasons for the request for the variance.

1 I found a similar case. It was out of the
2 Seventh District of Ohio, that there was a pool
3 cover requested and the Board of Zoning Appeals
4 denied the request. They, of course, took it up on
5 appeals, and they were reversed saying that the
6 zoning board, it was unreasonable or unsupported by
7 a preponderance of substantial, reliable, probative
8 evidence to not grant the variance. And in this
9 case that they talked about, again, I found it was
10 interesting because it was similar. The technology
11 has changed quite a bit, and the securement by a
12 pool cover of this nature would definitely lend to
13 a better securement of those pools when you're
14 looking at the benefit that it is for.

15 One of the other things that the clients
16 were not completely decided on was, after they put
17 the pool in, how the yard was going to be
18 completed. So after the pool is in, of course,
19 then you start looking at what other things can
20 happen and what other areas can be protected, or
21 how else can affect the area around the pool and,
22 of course, it takes just a little bit of time to do
23 that. To put a fence up, you know, to spend that
24 money just to put a temporary fence up or just to
25 comply with the regulations is not the goal. That

1 wasn't what they wanted to do. They wanted to at
2 least get it to where it's going to be a good
3 looking structure. And that's what they're trying
4 to accomplish. So they thought for the safetiness,
5 they do have a child, a two-year-old and, of
6 course, they're concerned about their own child,
7 and this was a better securement as well.

8 So except for any rebuttal, I'll be glad to
9 answer any questions from the board.

10 MR. SINGER: Does the board have any
11 questions for Mr. Ginella at this time?

12 MS. BUSBY: I have a question.

13 MR. SINGER: Yes, Deb.

14 MS. BUSBY: I'm somewhat confused as to the
15 ownership of the property. You referred to the
16 Rices as tenants and property owners both in the
17 same, and I saw on the auditor's site that it was
18 sold from them to you in 2022.

19 MR. GINELLA: As a trustee, yes.

20 MS. BUSBY: So they are the tenants? How
21 is it you're saying that they can purchase two and
22 a half acres next-door or, you know, the farm
23 next-door? would they be doing that as owners of
24 the property not tenants of the property?

25 MR. GINELLA: The trust is for their

1 benefit, so they are the beneficiaries of the
2 trust. So therefore, when the trust decides to
3 purchase that initial 2.5 acres, it will be myself
4 as a trustee purchasing it for their benefit.

5 MS. BUSBY: Okay.

6 MR. ALEXANDER: Mr. Chairman.

7 MR. SINGER: Yeah, go ahead.

8 MR. ALEXANDER: Mr. Ginella, just a couple
9 questions here. Off the top of your head do you
10 know approximate distance between that playground
11 and that pool? I know it looks like the
12 playground's fairly close to the property line.

13 MR. GINELLA: It's approximately 55 feet.

14 MR. ALEXANDER: Do you happen to know the
15 life expectancy of that pool cover, the warranty?

16 MR. GINELLA: The one that they purchased,
17 it says eight years.

18 MR. ALEXANDER: Eight years?

19 MR. GINELLA: Yes, sir.

20 MR. ALEXANDER: Do you have any idea of how
21 much weight that that can hold? I don't know right
22 offhand. I can look in here. The size of the
23 swimming pool is how big? I don't know if I have
24 that.

25 MS. BUSBY: It is 44 by 18.

1 MR. MCDONNELL: I'm sorry. I didn't hear.

2 MR. SINGER: 44 by 18.

3 MR. ALEXANDER: So in the paperwork that
4 you have there, information about the company that
5 manufactured that pool cover, do they have a weight
6 rating on that?

7 MR. GINELLA: They do and, you know, I know
8 it meets with all the specifications as outlined in
9 the zoning regulations. I don't have that. It
10 gives me all the other specifications.

11 MR. ALEXANDER: Okay. And I know there's
12 different styles in covers and everything else, so
13 it obviously is going to be a little different. Do
14 you know offhand, does that cover have to be
15 physically opened and closed; in other words, an
16 individual has to go over - you said it had a
17 locking device on it - I believe that individual
18 has to go over there and set a code or type a code
19 in to get that pool cover to open?

20 MR. GINELLA: Correct.

21 MR. ALEXANDER: And then same thing to
22 close it?

23 MR. GINELLA: Same thing to close it and
24 to -- you have to enter the code and then lock it.

25 MR. ALEXANDER: So to properly and safely

1 operate that pool cover, it takes an individual to
2 physically do that?

3 MR. GINELLA: Yes.

4 MR. ALEXANDER: All right. Thank you, sir.

5 MR. SINGER: Mr. Ginella, you indicated
6 that their pool cover, I believe, and I'll have you
7 confirm this, but their pool cover that they
8 currently have installed does meet the ASTM listing
9 F1346-91 indicated in the zoning resolution; is
10 that correct?

11 MR. GINELLA: It does, yes.

12 MR. SINGER: Thank you.

13 MR. ALEXANDER: I'd like to clarify one
14 more thing.

15 MR. SINGER: Yes, please.

16 MR. ALEXANDER: when you were talking here,
17 you were talking about the deer, and I have a lot
18 on my property, too, and I can appreciate that part
19 of it. So when you pulled the permit to put a
20 fence up - so I guess my question is kind of
21 two-part - was there really any intention of
22 actually ever putting the fence up? And, hey,
23 there's some deer there and they did jump over the
24 construction fence and that, not to say they would
25 actually jump into the pool, or is this -- I guess

1 what is the real reason for not putting that fence
2 up? Is it solely because of the deer, or that just
3 kind of helps with saying, well, we got this issue
4 as well? I'm a little confused there, because they
5 did pull the permit for it.

6 MR. GINELLA: And actually, they were
7 ready, they've already met with the contractor.
8 They actually moved forward for the fence. It was
9 going to be more of a decorative aluminum style
10 fence. So it wasn't going to just be -- so when
11 they started to look at that, when the deer and the
12 animals were really coming in, they actually had a
13 temporary, the pool installer had a temporary cover
14 on it. Just a cover that was put down by I think
15 boulders or blocks to hold it down to keep things
16 from -- and they tore through that. The deer tore
17 through that temporary cover that was there. So
18 when they looked at this, because the fence was
19 there, they tore through the fence -- jumped over
20 the fence, then they tore through this cover,
21 that's when they finally said, look, is this fence
22 really going to prevent the animals and then is it
23 going to be a better securement? That's when they
24 actually talked to the pool company and said, Hey,
25 look, is there a better system out there? And

1 that's when they then went ahead and went with the
2 pool cover.

3 MR. ALEXANDER: Thank you, sir.

4 MR. SINGER: Mr. Ginella, the zoning
5 resolution indicates that the cover should always
6 be closed when pool is not in use, and I think
7 Mr. Alexander alluded to this. Can you confirm
8 again the operation of the pool cover -
9 automatic/manual - how we know or how someone is to
10 know it's not in use, a little bit on that, can you
11 speak to that.

12 MR. GINELLA: Sure. For in order to
13 install, to be in compliance, they have specific
14 requirements of the height requirement as well as
15 the location and key. And they met with those and
16 those are installed. It's outside right by the
17 heater pool area, the locking mechanism is right
18 there. That's where it's at. Again, it's always
19 secured right there in that area. So it's not like
20 hidden away or it's not in a garage where you can't
21 see it. It's right there, so when you get out of
22 the pool area, it's right within probably less than
23 five feet to where that mechanism is at.

24 MR. SINGER: To close the pool cover, is a
25 key required or is it just a simple push button;

1 are you aware?

2 MR. GINELLA: There's a outer shell
3 structure that has a key. You open that and then
4 the key -- and then the push button code.

5 MR. SINGER: Okay. So for all intents and
6 purposes, the control method for actuation for
7 closing and/or opening the pool cover could be left
8 unlocked, the cover could be left unlocked to close
9 and/or open the pool via push button; is that
10 correct?

11 MR. GINELLA: No. The locking mechanism
12 just ensures that no one will just punch it, knows
13 the code to punch the pool cover open.

14 MR. SINGER: I see.

15 MR. GINELLA: Okay. So the locking
16 mechanism prevents anybody who may saw somebody,
17 the code to get in. So that's what prevents it.
18 So if somebody does pay attention to what the
19 homeowner's doing, and pushes the code, recognizes
20 the number - okay, I'll remember that - they still
21 have to get access to that by opening up with a
22 key.

23 MR. SINGER: Are there any safeties
24 installed around the pool, like any like laser or
25 liner curtains or anything of that sort that would

1 automatically shut this cover if anyone from an
2 adjacent property would approach the pool itself?

3 MR. GINELLA: No, there's not, but I know
4 there's current technology in place to try to
5 create that. I don't think they have done that
6 yet. With some of the electronic pool covers, I
7 know they're working on that. I spoke to one of
8 the representatives of the pool cover, and they
9 would definitely say that that's one of the up and
10 coming technology things that they're trying to do.

11 MR. SINGER: Fair enough. Thank you. Any
12 other questions from the board for Mr. Ginella?

13 MR. MCDONNELL: Mr. Chairman.

14 MR. SINGER: Yes, sir.

15 MR. MCDONNELL: Just to clarify, first of
16 all, it was the Rices who, they had the authority
17 to contract for the pool in the first place?

18 MR. GINELLA: Correct.

19 MR. MCDONNELL: And it was the Rices who,
20 and I'm talking about Trevor and Alyssa, who
21 stopped the contractor from putting up the fence;
22 is that correct?

23 MR. GINELLA: I don't think they actually
24 stopped anybody. I think it was a matter of what
25 was the better system to put in place.

1 MR. MCDONNELL: Well, they either stopped
2 him, because they took out a permit to build a
3 fence, so they told him not to build a fence; is
4 that correct?

5 MR. GINELLA: If you want to look at it
6 that way. That's not the case.

7 MR. MCDONNELL: Well, how would you look at
8 it?

9 MR. GINELLA: I would look at it they made
10 a better decision by going with the pool cover.
11 They still took the permit out because that's what
12 they thought would be a better system to do. So it
13 wasn't like they didn't take the permit out for the
14 fence.

15 MR. MCDONNELL: You also mentioned, you did
16 mention that the property is 2.5 acres?

17 MR. GINELLA: Yes, sir.

18 MR. MCDONNELL: Okay. The auditor shows
19 that it's 2.49. Is it 2.5 or 2.49?

20 MR. GINELLA: I would not dispute what the
21 auditor's card says, but I did not have it surveyed
22 either.

23 MR. MCDONNELL: Well, I just looked at the
24 auditor's site because I was looking for another
25 overhead, a better overhead view, and it did show

1 2.49.

2 MR. GINELLA: Okay.

3 MR. MCDONNELL: 2.49. So and that 2.5
4 acres is to the north of your property? Or excuse
5 me. It would be to the east of your property,
6 because it's the rear lot, off the rear lot; is
7 that correct?

8 MR. GINELLA: It would be to the east of
9 the property, yes, sir.

10 MR. MCDONNELL: And I do appreciate you did
11 point out one of the fallacies or one of the
12 weaknesses of the section for the five-acre
13 section, because just like you said, you've got a
14 play set, the neighbor's play set, within, you said
15 within 55 feet.

16 MR. GINELLA: Yeah.

17 MR. MCDONNELL: And so that section does
18 not, makes no mention of where the pool is actually
19 located. And again, you have not purchased that,
20 that option has not been exercised, and you have no
21 idea when it will be exercised; is that correct?

22 MR. GINELLA: There's no time frame on the
23 exercising, but they do have an option on it.

24 MR. MCDONNELL: When was that pool filled
25 with water by, do you happen to know?

1 MR. GINELLA: I do not know.

2 MR. MCDONNELL: So it's been probably quite
3 a while. And just taking a look at, I'm just kind
4 of curious, and you don't have to answer the
5 question, but this whole thing started back in
6 June. Well, the permit was pulled in November last
7 year, but then the construction was done in June
8 and then the letters started going out in June, let
9 me see, and in July letters started going out, and
10 they were ignored. What was the rationale for just
11 kind of ignoring the township and the violation
12 letters until it looks like maybe October, November
13 of this year?

14 MR. GINELLA: I can only speak on things
15 from my behalf. I don't think it was any intent to
16 ignore the township. I know I was out of the
17 country for the better part of June and part of
18 July. I was not able to -- I was overseas, so I
19 was not able to get my documents and no one else
20 could get those in my office. So when I got back,
21 when I finally got the letter, I know the Rices
22 were not also in the area, so when we finally
23 started to get the information, I immediately
24 contacted Mr. Vaccaro and spoke with him, and then
25 immediately contacted Joni, even in getting back to

1 Joni, because I was away for so long, I even take,
2 you know, the responsibility of the fact that I
3 didn't get back to Joni initially. So it's not a
4 matter of ignoring anyone. No disrespect. I know
5 it may seem that way, but no one was trying to
6 ignore anyone.

7 MR. MCDONNELL: And again, it's your
8 testimony that there is an automatic pool cover on
9 it?

10 MR. GINELLA: Absolutely.

11 MR. MCDONNELL: Is there a cover on top of
12 that automatic cover now; are you aware?

13 MR. GINELLA: I don't know if there's
14 another cover on top of the cover or not. I don't
15 know if there is or not. I don't believe so.

16 MR. MCDONNELL: Because when I went out to
17 take a look at it yesterday, that's not an
18 automatic pool cover.

19 MR. GINELLA: There probably is one on top
20 then, because I know there is -- that's an enclosed
21 keyed system. When you walked up, just so I know,
22 when you walked up to the pool, where you saw the
23 pool pump and everything, did you see the key pad?

24 MR. MCDONNELL: I didn't look for the key
25 pad. I looked at the pool. I looked at the swing

1 set next to it.

2 MR. GINELLA: Okay.

3 MR. MCDONNELL: And then I know you touched
4 on it. What is, in your opinion, what is the
5 practical difficulty that prevents you, either the
6 trust or those installing a fence, to meet the
7 regulation?

8 MR. GINELLA: The practical difficulties
9 weren't that a fence is not needed. It's just what
10 is a better securement of the pool. So the
11 practical difficulty, just like when the township
12 trustees changed that regulations, they thought
13 that there was a practical difficulty. They
14 recognized that there is a better system out there
15 that's moving that way. This is just one of those
16 better systems. So it wasn't a practical
17 difficulty for the fence. Just like how you're
18 indicating with regards to the securing of the
19 pool, your regulations state basically it just
20 needs to have a fence with a separate gate that
21 locks. Who's to say that someone doesn't lock the
22 gate, or doesn't latch the gate? And with regards
23 to your fence requirement also, it doesn't say what
24 type of fence is better for a pool area. It just
25 says a fence for the intended purpose.

1 So you could do a split rail fence with a
2 chain link securement on the outside. Doesn't mean
3 that it can't be climbed. Easily climbed. So
4 there's different variations here. And again,
5 we're looking specifically to this area where the
6 residence is at compared to a neighborhood area
7 which are closer homes in the area. So that's why
8 it's a case by case situation, given the factors of
9 this particular property.

10 MR. MCDONNELL: Thank you, Mr. Ginella.

11 MR. GINELLA: Thank you.

12 MR. MCDONNELL: That's all I have.

13 MR. SINGER: Any additional questions from
14 the board? All right. Anything else you'd like to
15 add?

16 MR. GINELLA: No. I'd be glad to answer
17 anything else.

18 MR. SINGER: Thank you.

19 MR. GINELLA: Thank you.

20 MR. SINGER: Is there anyone else that's
21 here to speak in favor of the appeal? By your
22 silence, I take that as a no. Is there anyone here
23 to speak in opposition to the appeal? By your
24 silence, I take that as a no. Mr. Ginella, you can
25 approach again if you'd like to add anything else,

1 but there is nothing, like I stated, in between, so
2 if nothing additional, you can rest.

3 MR. GINELLA: I rest.

4 MR. SINGER: Mr. Ginella's selected to rest
5 at this time. All right. With that, we will close
6 the public input, and are there any questions for
7 Joni, the zoning inspector? None, okay.

8 MR. SNYDER: No.

9 MR. SINGER: All right. So with that,
10 we'll go ahead and discuss amongst ourselves.

11 MR. ALEXANDER: Okay. I'll start. You
12 know, it's just a lot of reading here, and looking
13 back at some other appeals and everything, and Ed
14 touched on something right off the bat. The way I
15 look at, there's a lot of problems with
16 communication. One of the things I first see is if
17 you pull the permit to dig a pool, and you put the
18 pool in, then you pull a permit to do the fence,
19 and I can't get past the part that we're okay with
20 putting the fence in, but then we have some deer
21 that jump over, and nobody said how tall the
22 construction fence was, and we all know that
23 construction fence is not going to be expensive or
24 real secure or anything. It's simply very
25 temporary. So we have some deer running around,

1 which is very common in the Jackson Township area,
2 for sure. And then all of a sudden we just,
3 there's no more fence. And I can't help but think,
4 okay, at some point in time, did the Rices contact
5 the township and say, Hey, we're not going to put
6 that fence up. This is what we want to do. And I
7 don't see anything where that happened. Many times
8 trying to contact, I don't see anything where they
9 notified Mr. Ginella that, Hey, we've got this
10 letter here, what should we be doing about this?
11 And it kind of seemed to kind of go on and on and
12 on with no resolution whatsoever. It's kind of
13 like their mind was made up, let's put the pool
14 cover in and well, if somebody says something, then
15 I guess we'll have to go to plan B. I mean, on
16 paper it kind of looks that way to me.

17 There's a place close by, and I get that
18 there can always be an argument for different
19 things like that. In my lifetime I have seen a lot
20 of pools that were close to lakes and things like
21 that where that area's made them still put up a
22 fence regardless, and there was like nothing
23 around, but they had their zoning and that type of
24 thing.

25 Nothing is 100%. This pool cover, be it

1 very expensive, obviously. It's got an eight-year
2 warranty on it. Once that warranty, if a deer
3 jumps into it with its hoof, cut kit. I mean, I
4 guess I can use that as an argument. There's just
5 a lot of different things here that could happen.
6 You have to physically open and close that cover.
7 Yes, you have to physically open and close a gate.
8 So there's always going to be that little bit of
9 contention in there. Weight rating, I'm sure it
10 meets whatever the ASTM requirements are, but my
11 thing is, if we start allowing different technology
12 to change things like this, and maybe it is better,
13 I'm not 100% sure that anything's 100%, but in my
14 mind, if we start changing that, set the
15 precedence, then everybody that says, I just don't
16 want a fence put around my pool, I want this, I
17 think we're going to cause more of an issue with
18 that. So those are kind of my feelings about it.

19 MR. SINGER: Thank you, Randy.

20 MR. MCDONNELL: Mr. Chair.

21 MR. SINGER: Yes, Ed.

22 MR. MCDONNELL: First of all, I concur with
23 Mr. Alexander with regards to the automatic pool
24 versus the fence. The automatic pool cover. First
25 of all, there's nothing automatic. It requires

1 activation and requires intervention by an
2 individual to close and to open. And I understand
3 people can be very conscientious, but it does
4 require, first of all, intervention, whereas a
5 fence is, for the most part, is a passive system.
6 It provides protection just because it's there.
7 And as opposed to the entire pool being open,
8 perhaps a gate might be left open, but, again,
9 there are locking devices. As soon as you shut
10 that gate, it automatically locks. There's that.

11 The other thing is, this particular
12 variance is very significant. It's over 50%. The
13 regulation talks about parcels greater than five
14 acres. And I'm looking at section 401.12
15 subsection B4(c), For parcels five acres or
16 greater. This parcel is 2.49, and they have the
17 option to buy additional five acres, or 2.5.
18 That's down the road. Who knows if that's ever
19 going to happen? But again, this is significant.
20 It's over 50%. And I will say the applicant did
21 indicate one of the fallacies of that subsection,
22 that 5 acre exemption, in the fact it does not
23 address where the pool be placed. This pool will
24 still be within 55 feet of a child's play set. And
25 those are all contributing factors.

1 Again, I go back to section 803.5,
2 subsection B, item 1, whether special circumstances
3 exist which are peculiar to the land or structure.
4 There's nothing peculiar about that property. You
5 may talk about deer out there, but I've got deer in
6 my back yard and I'm a lot more populated than they
7 are. There's deer all through Jackson Township.
8 So protect deer or prevent deer, I don't buy that.
9 And again, but there's nothing that is physically
10 special about that piece of property.

11 Whether a property will yield reasonable
12 return. Of course, it will. It already has.
13 That's going to have reasonable return with a fence
14 on it. In fact -- well, will have reasonable
15 return. Whether the variance is substantial. It's
16 over 50%, when you take a look at that. And
17 whether the essential character of the neighborhood
18 would be substantially altered by or suffer
19 substantial detriment as a result of the variance.
20 I think it will. I think it's a safety factor for
21 that situation without a fence there.

22 The applicant is correct, I don't see how
23 it's going to adversely affect government services.
24 Do special conditions or circumstances exist as a
25 result of actions of the owner. Yes, they do.

1 They installed a pool and it's unsafe without the
2 fence, or requires a fence for the township to
3 ensure safety. Whether the property owner's
4 predicament feasibly can be obviated through some
5 method other than the variance. Yes, they can
6 solve that same issue when they install a fence,
7 required by the township. Whether the spirit and
8 intent behind the zoning requirement would be
9 observed and substantial justice done by granting a
10 variance. I think just the opposite. It is not
11 being observed and it is in violation of the spirit
12 of the resolution. And will confer on the
13 applicant any special privilege that is denied by
14 this regulation to other lands, structures, or
15 buildings. Of course it will. Everyone is
16 required to put a fence up, unless you meet the two
17 exemptions in the previous subsection.

18 So overwhelmingly we've got 8 out of 9 that
19 they do not meet. I don't see any way that this
20 board member can vote for it.

21 MR. SINGER: Thanks, Ed.

22 MR. SNYDER: Jared.

23 MR. SINGER: Yes, Patrick.

24 MR. SNYDER: There was just two things
25 that Ed touched on with the practical difficulty.

1 There's no practical difficulty proven by
2 Mr. Ginella for not putting the fence up. Is there
3 a gas line running through there stopping the
4 fence? No. Is there an easement? No. No reason
5 not to put a fence up. Nothing peculiar about the
6 property. So there's no practical difficulty
7 proven by his testimony or any exhibits.

8 Second thing that Randy touched on, setting
9 a precedent. I don't think there's any reason to
10 agree to this and set a precedent, whereas somebody
11 in the future says, you know, I don't really care
12 to put up a fence, for whatever reason they don't
13 want to put it up, and then suddenly we allowed
14 this and then we have future woes. So I agree with
15 both Randy and Ed here.

16 MR. SINGER: Okay. Thanks, Patrick.
17 Anything else from the board?

18 MR. SNYDER: I should add, I appreciate
19 that the cover is as good as it sounds like it is,
20 but that's just an additional safety feature to the
21 pool, you know, the zoning regulations state that a
22 fence is required. So I appreciate that the pool
23 cover is safe, but it's just an additional safety
24 feature. The fence is the first layer of safety
25 per the zoning code, you know.

1 MR. SINGER: Thanks, Patrick. I guess in
2 addition to everybody else's comments, which I tend
3 to agree, I think from a board member of the Zoning
4 Board of Appeals, we're here to interpret the
5 resolution, we're not here to change the
6 resolution. So I think the way that I interpret
7 the resolution based off of testimony tonight from
8 Mr. Ginella, I think I am not in favor of this
9 request for this variance. So that's my thought.
10 Any other comments?

11 All right. With that, do we have a motion
12 for appeal number 2023962?

13 MR. SNYDER: Motion to approve appeal
14 number 2023962.

15 MR. ALEXANDER: I'll second the motion.

16 MS. POINDEXTER: Mr. Snyder?

17 MR. SNYDER: No.

18 MS. POINDEXTER: Mr. Alexander?

19 MR. ALEXANDER: No.

20 MS. POINDEXTER: Mr. McDonnell?

21 MR. McDonnell: No.

22 MS. POINDEXTER: Ms. Busby?

23 MS. BUSBY: No.

24 MS. POINDEXTER: And Mr. Singer?

25 MR. SINGER: No. With that, Mr. Ginella,

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if anyone impacted by the decision of the board
disagrees with the decision, they have a right to
appeal the decision within thirty days in the Court
of Common Pleas. All right.

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(Hearing adjourned at 6:34)

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C E R T I F I C A T E

STATE OF OHIO)
STARK COUNTY)

I, Deanna Gleckler, a Registered Professional Reporter, Certified Realtime Reporter, and Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within Hearing was by me reduced to Stenotypy and afterwards transcribed upon a computer, and that the foregoing is a true and correct transcription of the Proceeding so given.

I do certify that this Hearing was taken at the time and place in the foregoing caption specified. I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Salem, Ohio on this 9th day of January, 2024.

DEANNA GLECKLER, RPR-CRR, Notary Public
My commission expires 1-6-25.