

**ZONING BOARD OF APPEALS
MONDAY, JUNE 24, 2014**

Members Present: Susan Marteney, Scott Kilmer, Mario Campanello, Ed Darrow, Deborah Calarco, Matthew Quill, Stephanie DeVito

Staff Present: Andy Fusco, Corporation Counsel; Brian Hicks, Code Enforcement

APPLICATIONS APPROVED: 105 Grant Ave, 49 Capitol St., 78 Franklin St., 12 McMaster St.

APPLICATIONS TABLED: 56-58 Clark St., 127 Chapman Ave

Scott Kilmer, acting Chair: We will forego voting on last month's minutes as we just received them. The first order of business is 105 Grant Ave

105 Grant Ave

Scott Kilmer: Please approach the podium and tell us what you'd like to do.

John Gotsis, 105 Grant Ave: From the past we were here and tried to put a cooler in the back of the building. We were granted a variance for that. We have the permit but haven't installed them yet. I would like to have the coolers enclosed. Put a roof over them. So that's why we are here tonight, to discuss this.

Scott Kilmer: Is there anyone here wishing to speak on behalf of the applicant?

Yes sir?

Dana Botindari: I'm a contractor in Auburn. He got approved for a concrete pad which is going to have coolers installed. Basically all he wants to do is put a roof over and enclose the whole pad. We're going to put the coolers inside, same cooler, same system, same everything. It'll add more storage to his building and look nice. A lot nicer than the coolers sticking out. It gives him a good doorway in, if you looked at it you'd know what I mean. It's nothing real major but it would be a little structure out back.

Scott Kilmer: Are you going to be doing the work, Dana?

Dana Botindari: Yes.

Scott Kilmer: Is there anyone else wishing to speak for the applicant? Is there anybody who would wish to speak against the application? Hearing none, seeing none we'll close the public hearing and discuss it amongst ourselves.

Any comments?

Deborah Calarco: I think it looks neater, cleaner.

Ed Darrow: I realize I wasn't here for the beginning of it, I apologize for being late, I'm working out of town. One thing I noticed when inspecting the property that what he's looking to do is increase it to his parking lot lines. It's not like he's increasing it to another boundary line. I can understand what he's looking to do and why to create that space.

Scott Kilmer: Anybody else? I'll entertain a motion.

Susan Marteney: I'd like to make a motion for Ioannis Inc. of 105 Grant Ave for an area variance to increase storage area to one side of a previously approved 12x14 cooler, requesting a 21.5 of the required 30 foot rear yard set-back because:

- The area variance will not produce an undesirable change or detriment to the character of the properties in the neighborhood, and;
- The benefit sought cannot be attained by any other method other than an area variance, and;
- The variance is not substantial, and;
- The area variance will not produce an adverse impact on the environment of or physical conditions in the neighborhood, and;
- The applicant's difficulty was not self-created.

Scott Kilmer: We have a motion, is there a second?

Ed Darrow: Second.

Scott Kilmer: We have a second. Roll call, please.

All members vote approval.

Scott Kilmer: Your application has been approved. Good luck.

Ed Darrow resumes Chair duties.

Andy Fusco: Why don't we go down to number 5, they're only looking for an adjournment.

56-58 Clark St.

Ed Darrow: Please approach. And I'll remind all board members to please speak into the microphones so we can get it on the cassette tape.

Joe Pettigrass: Thank you, Mr. Chair. I'm here representing the applicant and I respectfully ask for an adjournment in this matter for additional time to speak to Mr. Fusco in regards to the matter.

Andy Fusco: Mr. Pettigrass has raised a legal issue that he spoke about to Mr. Rossi that quite frankly I wasn't aware of until now. If we can carry it over until next month it would be better.

Ed Darrow: Any opposition from board members for an adjournment? All those in favor?

Adjourned until the next regularly scheduled meeting.

127 Chapman Ave

Ed Darrow: Please approach and tell us what you'd like to do please.

Andy Fusco: Were you in here to speak in favor or against the 56-58 Clark St. matter? In favor? Would you like to put that on the record right now so you don't have to return next month or you could return next month and do that, too.

Ed Darrow: If we're going to open the public hearing then we need to have his Counsel here. Obviously there is an element of the law that I'm not familiar with unfortunately and our Corporation Counsel is unfamiliar with.

Andy Fusco: There's a legal question that came up, literally five minutes ago. As a matter of convenience what we do sometimes when we have adjournments to not have to keep coming back month after month, we allow you to speak and put your observation either for or against the project on the record. If you want to come back next month you're more than welcome to do so. If you want to speak now I think we should entertain it.

Ed Darrow: May I see a show of hands of anybody here for 56-58 Clark St. whether it be for or against? Just you two. If you don't mind sitting down. May the record show that this is for 56-58 Clark St. Please state your name and address for the record.

Jonathan Cramer, 126 Osborne St.: I grew up in that neighborhood so I kind of was, my mother still lives as 13 James St., a couple houses down. I came to help Joe out, I know she certainly didn't mind me having a car lot down there. I used to rent from Joe. I just left as of April 30th this year and I actually had my car dealer's license down there. It was until recently, sometime mid-April, I spoke with Brian Hicks at the codes office, he said that somebody else was applying for a repair

shop and he explained to me how it would work and technically I shouldn't have had my dealer's license down there that the state issued to me three years ago and so I was looking at a different spot at the time. I didn't want any issues and I moved to a different spot. Joe asked me because I'm from that neighborhood and because I did have a car dealer's license there the last three years just to come and kind of answer any questions you might have and speak on behalf of him

Ed Darrow: Unfortunately I don't know if there's any questions right now due to the fact we haven't heard the applicant's presentation but thank you very much for your time and your statement is a matter of record.

Yes, sir, please approach and give your name and address for the record.

David Warrick, County House Rd., landlord for 35 years: I own three houses in that neighborhood, we tore one down a couple years ago that was the fourth house. You ripped out over 4,000 dollars of black top on my properties down there to put your new sidewalks in under that federal beautification plan. There was over 35 families living within that block area down there and this property borders on mine with less than 20 feet from the back of the property to my four unit with small children in it and all around it borders on back yards with children in them as well. The problem I have is that if this is an auto service center now we're talking gas, oil, antifreeze, liquids being stored or kept temporarily in that back yard which borders on all of our properties. I've had no problem with the people coming in and out of there the last few years. Joe, when he takes care of it takes care of it but when it's rented it's not the same. I'm concerned at this point is there going to be storage of liquids, broken parts, gas tanks thrown in that back yard and I'm going to be told to deal with it.

Ed Darrow: I can understand where you're coming from, sir, unfortunately we have heard his presentation so we really don't know what's going on. That's why generally I don't like to do this but upon advice of our counsel I'm doing it.

David Warrick: We ran into a similar problem years ago with Camardo. They rezoned the area into a different area next to one of my properties so they could run a body shop in it. It's worked out fine. But I'm questioning the C2 zoning on the property to start with. If that's C2 can he run a business in there of that sort without going through zoning or anything else that would be my main concern.

Ed Darrow: There are but there are specific ones. There's a specific list of businesses that can be run in a C2.

David Warrick: My question still comes out, can he still do repairs, automotive, with the liquids and all in that area at present without a variance?

Ed Darrow: That I would ask Mr. Hicks.

Andy Fusco: Mr. Warrick wants to know if Mr. Calcagno can run a service station without the benefit of a use variance at 56-58 Clark St.

Ed Darrow: In a C2.

Brian Hicks: Not without the variance. That's why it's here.

Ed Darrow: There you go.

David Warrick: Thank you.

Ed Darrow: That will conclude 56-58 Clark St. for C2 zoning district for Joe Calcagno.

At this time I will ask 127 Chapman Ave please re-approach. Give your name and address for the record and tell us what you'd like to do.

Justin Huffman: I'm here on behalf of Mike and Diane Thurber. Mike is here also. They are looking to replace their old pool. Here are a couple pictures of the old pool and what had happened was the inside of the pool started rotting out and developed a hole near the bottom and started leaking out. Mike could've simply replaced the liner but thought it would make more sense to put in a new pool in the same spot. He pulled out the old pool and this is what it looks like right now. Nothing is being done with the deck, it's remaining in place, no changes are being made with it. All that the Thurbers are looking to do is reinstall the pool exactly where the old one was. The Thurbers have already spent about 1500 dollars in supplies in order to reinstall the pool and when he went to get a building permit he was told a variance would be needed even though the original pool was approved and installed in 1991, about 23 years ago. This pool has been there about 23 years and the Thurbers moved in about 2009. They're just looking to reinstall the pool exactly where the old one was.

Andy Fusco: This question has been raised as to why, since this pool has been there 23 years, is there a need for an area variance?

Brian Hicks: My understanding that the original pool did not have a permit for installation otherwise we would have had a standing area variance for that property which would run with the land. That was the information given to me. I see in the application that the applicant has mentioned that Code Enforcement at the time in 1991 had granted approval for the pool and the deck. The information given to me prior to this was that the permit for the pool was never issued and the deck also might have been a permit process but does not meet the side line setback requirements that would request an area variance. I can check into this further but from my documents it shows there was no permit granted for that pool. We've had this all along the aspect of ten feet from the property lines.

Ed Darrow: Please continue.

Justin Huffman: Beyond that all we are looking for is reaffirmation that Mike can reinstall his pool exactly where the old one was.

Ed Darrow: Any questions from board members?

It is my understanding then that you maintain a permit was pulled?

Mike Thurber: [inaudible – not at mic]

Ed Darrow: You say you understand. Are you the original property owner or did you buy the property with the pool there?

Mike Thurber: [inaudible – not at mic]

Ed Darrow: So when you purchased the house, it had the pool and it had the deck already built, you did not install that yourself.

Mike Thurber: No, I did not.

Ed Darrow: Okay. Are there any other questions from the board? You may be seated but we reserve the right to recall you.

Is there anyone wishing to speak for or against please come forward. Give your name and address for the record.

Thomas Salva, 30 Willard St.: I've had constant problems with their pool. First thing is they drain their pool one night, they do everything at nighttime, under cover, and they drained their pool because they couldn't get it cleaned and I let my dog out one morning, my yard is fenced in, chain link fence. I went back in the house and when I went back upstairs I saw a lot of water in my yard and my dog was back there. Consequently my dog got sick and died. And it was from ingesting some of, because I went over to see Mike and I says, 'Mike, did you drain your pool on to my yard.' He says, 'Yes'. I says, 'Why would you do that in my yard. Did you have much chemical in it?' And he says 'Loaded, and I couldn't get it cleaned.' And there it was in my yard and the dog got sick and it cost me plenty of money and finally the dog died. I've had constant trouble with them. He's even got an eye in back of the garage looking in my yard and I believe that's an eye. On May 20th I look in my yard and there's about ten inches of water in my yard. I didn't see him for three or four days. Our yards butt together. It took a while, because we're a little lower, as I say, there was about ten inches of water and finally I saw him and he says it wasn't his fault. I told him he could have come over and knocked on my door to apologize but you never did, you ran into the house. And I'm against them with the pool there. And another thing, I don't know they call it skimming the pool. The back

end of my yard, when I mow the grass, it's always muddy there and I couldn't figure out why it was muddy. I don't see him do it but as I say they do everything under cover of night and it goes onto the back end of my yard.

Ed Darrow: Mr. Salva, what goes out the back end of your yard, the water?

Thomas Salva: It's muddy.

Ed Darrow: So like the pool was leaking onto your yard?

Thomas Salva: For two or three years now. I'll tell you what kind of people they are. Two of my neighbors walk their dogs and his wife came out and she didn't want them walking the dogs in front of their house. I walked my dog in front of the house. But this is why I'm against that pool because I've had problems with the water twice and then the leakage with the mud at the back end of my yard.

Ed Darrow: Do you think a new pool and line might help the leakage and water problems?

Thomas Salva: I don't know but they do things to irritate you. They probably would do the same thing. A new pool they would have to skim or recycle the water with a sand filter or whatever they have on a pool.

Ed Darrow: I understand perfectly. Do you have anything else you'd like to add?

Thomas Salva: I probably should have written it down. It's been a constant...

Ed Darrow: I think it's fair to say we get your sentiments very well.

Thomas Salva: Stella Chalanuk called once to ask me to mow Mike's lawn as his mower was broken. He wanted to know why and I told him I was asked to and was trying to be a good neighbor and they trashed me for that. And another thing, of course I did the same thing, but I used to weed eat around the other side of my fence and I would ask the neighbors before to go on their yard and weed eat and everybody was okay with it. I asked him a couple times and he said as long as I didn't step on anything. The second time it was the same thing and I said I'll never do it again. Then they put up a No Trespassing sign up facing me. After about a year I've made two big signs to face them to retaliate.

Ed Darrow: I think we understand where you're coming from sir. Thank you very much.

Sir, did you want to be recognized. Please give your name and address for the record.

Bill Stoddard, 215 Dunning Ave: I know Uncle Tommy got a little bit off base but his problem is he doesn't understand pools and I know you do, Ed. I think they're backwashing or leaking or whatever but everything from their yard goes into his and they have no qualms about it. I mean they just, doesn't bother them a bit. It's aggravating to everybody around them what they're doing. They have to do something different. If they're going to put a pool in I don't care but they better take care of it. They better backwash it somewhere else, do something. They can't be doing it to everybody else, that's not right.

Ed Darrow: Yes, thank you. Yes, please approach and give your name and address for the record.

, 129 Chapman Ave: I live next door to the applicant. I have problems, same thing as gentleman that spoke. My back yard totally with water, muddy, man say people cannot walk on that part. They scream at me. I live there since 1995. I have no problems with neighbors, just him. If they skim the pool, it's up to them, but they need to drain the pool somewhere else, not in my back yard. It's been three years I put up with that. This year I call the police and I don't say anything to him. I sent the police over to see.

Ed Darrow: Thank you very much. Is there anyone else wishing to speak for or against this application?

Thomas Salva: I've been at my house since 1937. This is the worst problem I've ever had.

Ed Darrow: Thank you, Mr. Salva. Anyone else wishing to speak for or against this application? If the applicant could please re-approach, or his attorney? I have a couple questions.

Your filtration system; earth, sand, cartridge filter, what are you using?

Mike Thurber: Sand

Ed Darrow: The new filter will be sand also? Where do you backwash the water?

Mike Thurber: First off for many years I've been having a hose when I backwash, it goes around my side door down into my basement into the drain.

Ed Darrow: Do you realize that's illegal?

Mike Thurber: No one told me. What happened was when Tom first came over, 2009, I didn't load it with chemicals. I just put the standard shock in it. The water was too muddy so I didn't know, I'd never had a pool in this area, so I drained it. He came running over yelling at me and telling me...first off I never knew it was at an angle. I wouldn't have done that. At that time I put the drain in and ran it to the

basement. By the way his dog died 14 months after that incident. All the time we were friends, we traded tomatoes and stuff, because he wants to attack me. My question is, if I can't put it in the drain in my basement, how do I backwash?

Ed Darrow: You bring it to the curb, sir.

Mike Thurber: I had someone tell me that would be illegal to do just like you can't put snow at the curb.

Ed Darrow: Brian?

Brian Hicks:

Ed Darrow: Where's it go then?

Brian Hicks:

Ed Darrow: There you go.

Mike Thurber: Then I'll get in trouble. The neighbors will complain water is going in their yard because it's at an angle.

Ed Darrow: Your entire rear yard slopes to the back.

Mike Thurber: Yes, sir.

Ed Darrow: What about your front yard?

Mike Thurber: Drain it to the front yard? It will go into our basement.

Ed Darrow: Maybe your yard isn't one meant for a pool. You either have to come up with a compromise because you have many neighbors aggravated.

Mike Thurber: I haven't snuck out at night and drained the water. It's natural when the water fills up when it rains, not only do all the yards get filled with water but if it rains too much it's going to spill out of the pool.

Ed Darrow: I understand completely. We had a very wet spring. The yards are like sponges, they can only soak up so much water and it gets to a point that it stands.

Mike Thurber: When I opened up the pool this spring on May 12th, and when this incident happened, I had opened up the pool, it was running fine and clear and we were going to Wal-Mart to get a few more shocks in case we needed it. She looked down and said the water level is low. I went out and looked and saw down by the in-let about an inch and a half hole and about a half inch in height. I went and got a patch and as I was approaching it bubbles were coming in my face, I stopped

and backed up and the liner blew. It wasn't my fault. And then when I went to inspect underneath and I saw there were holes in the wall I decided not to replace it with a liner.

Ed Darrow: That's understandable. Accidents do happen. If there are holes in the liner, whether it's aluminum or steel, you're probably doing the right thing by replacing the whole pool itself rather than taking a chance of that wall itself going at some point in time. If it was already leaking, particularly if someone could have been in it when it went. You're probably doing the right thing, the only problem is being a good neighbor with the pool handling your backwash water, maybe you need to think about a different type of filtration system where you don't have to waste so much water, where you don't have to get rid of the water onto the yard.

Mike Thurber: What other type?

Ed Darrow: An earth filter system or a cartridge filter system, that way you're not constantly backwashing water.

Mike Thurber: Okay, then I'll do that then. But I wasn't deliberately trying to just pour the water out all over the place. That's why I put the drain in the basement. But I didn't know that was illegal. Someone told me you can't run it to the road, they said that's illegal. So how do other people do it that have pools in Auburn, how do they backwash without getting in trouble.

Ed Darrow: Yards.

Mike Thurber: They drain it in their yards?

Stephanie DeVito: I just want to make a statement. You talk about your yard being at an angle. A lot of people build those retaining walls in back so it makes it all level and you wouldn't have that problem

Mike Thurber: A retaining wall?

Stephanie DeVito: Yes, a retaining wall at the end of your yard. A lot of people with pools do that that have drainage problems.

Mike Thurber: So what happens? The water hits the wall?

Stephanie DeVito: It becomes level and sinks down into the ground vs. filtering off into other people's yards.

Mike Thurber: I didn't know that.

Stephanie DeVito: That's a possibility.

Susan Marteney: You fill in the space of the retaining wall. You don't just put a wall in and have that catch the wall. You raise the level of the dirt.

Mike Thurber: You mean I have to get a retaining wall and then have dirt?

Stephanie DeVito: Have dirt fill it all in and it becomes level and you've raised the back of your yard.

Susan Marteney: It would be like a big sponge then, to catch the water that comes out of your pool.

Stephanie DeVito: Then it's not going to be running into everybody else's yard.

Mike Thurber: I don't want to do that, I mean running water everywhere.

Stephanie DeVito: It's just a possibility.

Mario Campanello: Mr. Thurber, what are your plans if you do not get the variance this evening?

Mike Thurber: I don't know. We put a lot of money into the pool because we bought a new pool and we have a deck. I don't know.

Scott Kilmer: I'm a little confused on the chronology of the water issues. Apparently there was an issue when Mr. Salva's dog died a few years ago, that must have been a fairly big discharge of water? When you were trying to clean the pool. Then there was a more recent one where there was a hole in the pool? So from what the neighbors are saying there seems to be more of an ongoing issue with that and so I'm assuming that is a backwash issue?

Mike Thurber: No.

Scott Kilmer: My question would be, if it is a backwash issue how much are you backwashing to create floods in your neighbors' yards?

Mike Thurber: That's what I don't understand because it's not a backwash issue. For years, since 2009 when Tom came over for that first time when we moved in, I bought a 100 foot house, inch and a half, put it on the outlet and I brought the house all the way down to the drain in my basement every time I backwashed. So it's not a backwash issue. What it is, is when it rains heavy and I have my water high in the pool you have pool over-run but that's natural, how are you going to stop it when it rains for two or three days?

Scott Kilmer: Could you have had an on-going leak before that big leak happened?

Mike Thurber: No. I'd been watching it.

Scott Kilmer: I'm just having a hard time explaining the issues the neighbors had, that's a substantial amount of water from backwash.

Stephanie DeVito: How often are you backwashing?

Mike Thurber: I backwash generally when it goes below 17 psi or when you put your hand on the inlet there's not much power. But like I said, I backwash into the drain down in the basement, I'm not putting that water anywhere in the yard. I've been doing it since 2009. I vacuum, I don't know what you call skimming, I vacuum and the water goes through the filter back into the pool. You don't pour the water out when vacuuming.

Scott Kilmer: Do you have an explanation as to why the neighbors have an issue with water in the yard?

Mike Thurber: No but I know when it rains a lot for days and days our yard is saturated all the time, for days. The only thing I can think of that they're talking about, if you have two or three days of heavy rain my water level on the pool is high, you're going to have over-run, that's natural on any pool.

Scott Kilmer: Can I ask Mr. Selvek a question?

Ed Darrow: Sure. Mr. Selvek could you please approach?

Thomas Salva: [inaudible]

Ed Darrow: I'm sorry sir you need to come back to the podium so your comments are part of the record.

Thomas Salva: My next door neighbor, Eric Wink, 32 Willard St., now he's got a double lot, 32 and 34, but he's got a play thing for his kids and he's got it there by the corner of his yard and now his yard gets loaded with water the other day. The kids can't play out there.

Scott Kilmer: Mr. Salva, I have a question. Mr. Thurber has been there since 2009 and there was a pool in there since 1991, did you have these issues with the prior owners?

Thomas Salva: No.

Scott Kilmer: Not at all?

Thomas Salva: No. This is the first time. And there's mud always there. When I mow the lawn and by the fence and go...how bad a neighbor he is, when I mow

the lawn he comes out and watches me so I don't shoot the grass on his side. I always shoot it to the inside.

Scott Kilmer: Just to be clear, these issues are just since Mr. Thurber's had the pool.

Thomas Salva: That's right. It's been there since 1991 did you say?

Scott Kilmer: Yes.

Thomas Salva: I don't think this thing is being taken care of properly.

Susan Marteney: Mr. Salva, you said this happened the other day. When was it the other day?

Thomas Salva: May 20th.

Susan Marteney: May 20th. Which was the day that, was that the day that the pool flooded?

Mike Thurber: I'm not sure but the pool's been dismantled for weeks, for over a month.

Thomas Salva: It was May 20th the police came down.

Mike Thurber: It was May 20th but it wasn't my fault...

Thomas Salva: And told me to call the next day, he says call the Code Enforcement which I did and the Code Enforcement never came down.

Ed Darrow: Mr. Thurber, is it your testimony then that on May 20th that pool wasn't even erected?

Mike Thurber: If he says that, I didn't write the day when it happened. May 20th, it was about a month, the pool's been down for over a month.

Thomas Salva: I know it was May 20th because the cop asked me and he asked me my date of birth and I said, "5/21/28" and then I said "That's tomorrow. Today is May 20th."

Mike Thurber: So that's the time it blew in front of me, when I was in the water, that's when the hole came in the liner. I was in the pool at the time going down to put the patch in.

Ed Darrow: Okay.

Thomas Salva: There was at least ten inches of water in my yard because we go downhill. Chapman Ave is a little higher than Willard St.

Ed Darrow: Any other questions from board members?

Stephanie DeVito: Mr. Thurber, you said you backwash every day.

Mike Thurber: Well not every day. When I put my hand on the outlet and realize the pressure is low it's time to backwash.

Stephanie DeVito: In my mind as a prior pool owner, I generally only backwashed once a week or when I felt like it was dirty enough to backwash. Could it be possible, because you're backwashing every single day it's not being properly taken care of and you have an excess amount of water which is then going into all their yards? I've never backwashed that much before in my life.

Mike Thurber: No. I keep the level on the skimmer probably half way at all times. And I don't backwash every day. I backwash like I said, when the pressure is real low and hardly coming out. But like I say, I take the house, I have the house set, and I bring it right down in the basement to the drain and I backwash. None of the water when I backwash is going on the ground. Incidentally I just found out it's illegal though.

Thomas Salva: When I went over and asked him, "Mike, did you have much, any chemicals?" And he says, "Loaded." Now he says, "I didn't say that." He'd said "Loaded with chemicals because I couldn't get it clear." And that's when my dog got into it.

Ed Darrow: Mr. Salva, we understand your position and we don't need to rehash things you've already into the record.

Thomas Salva: No, but I just want to make that clear.

Ed Darrow: Trust me. You're clear with us so you can be seated please. Do any board members have any more questions for the applicant? Is there anybody else present wishing to speak for or against this application? Is there anyone else who hasn't spoken who has something to add, wishing to speak for or against this application? Hearing none, seeing none I will close the public portion so we can discuss it amongst ourselves.

Thoughts? Considerations?

Mario Campanello: I have a few thoughts. It just seems like if we grant this variance tonight that we are just condoning the issue that is going on. Apparently there's a problem with the pool or the way the pool's been run. I think if we grant this

variance we're just rubber stamping it without any system of checks or balances on the other underlying issues.

Ed Darrow: I couldn't agree more. That is the whole problem when a pool infringes on that ten foot property line. The left side, the right side, the back. That is the whole purpose of getting a variance and the whole purpose of the public hearing to see how the neighbors feel. I kind of understand where he's coming from, he bought the house, the deck was there, the pool was there. It was not permitted property so he's kind of caught in a Catch-22 in that aspect. But unfortunately we all know there is that buyer beware but how as he to know. But there's the problem of handling the pool properly, being neighborly with the runoff water and what not. Anybody else's thoughts?

Scott Kilmer: I think it's interesting from 1992 to 2009 there was no issues and I think that's where good neighbors come into play, but, and we can't legislate good neighbors, but as you said it's a small yard, you didn't say that but it is a small yard and there's a reason why you have to come before us to get a variance and it's apparently not working out too well.

Ed Darrow: Before we go any further I'd like the record to show I have been in the swimming pool industry, in sales and service, since 1975 and I am not abstaining because I do not sell nor service above ground swimming pools so I feel there is no conflict of interest in this matter.

Susan Marteney: I have a questions. Could we possibly look at there being an adaptation to this saying they have to get a different type of filtration system that would not require a backwash? To be able to say that.

Ed Darrow: I guess that is within our right but then again if he's only backwashing when the pressure goes high on his pressure gauge and the flow diminishes in his pool, that is all you really need to do it.

Scott Kilmer: The other thing, we're required to give the minimum variance. A small pool would keep him off the boundaries

Ed Darrow: Right. And I believe this is and 18 round. The only thing small is a 15.

Andy Fusco: The only problem with that, Dr. Kilmer, is realize the deck is already there and all he's looking to do is drop the same size pool in same size hole.

Ed Darrow: It truly is a Catch-22 for everybody; the neighbor, the applicant.

Scott Kilmer: I just mentioned that because it would be an option.

Ed Darrow: Right. Although he would still need a one foot variance. One foot, eleven inches.

Any other thoughts?

Susan Marteney: Where's the setback? I think the setback is to the west but we don't have measurements in here.

Andy Fusco: Let me do this. Mr. Huffman, obviously you sat through all this. One of the issues for this board tonight is undesirable character changes in the neighborhood. We obviously have a neighborhood problem here. I'm wondering if there is a methodology by which you could sit down with your client and, I know nothing about swimming pools, but it's clear there's a problem here, and I'm wondering if we could adjourn this for one month and you could come up with a methodology whereby the concerns of the neighbors who have testified could be addressed. Now that's not to say that you can solve every water problem in the neighborhood but we are hearing testimony that this wasn't a problem until 2009 and it has become a problem since and I'm wondering if there's some type of condition that we could attach to give your client relief but also address the concerns of the neighbors.

Ed Darrow: Ms. Marteney, to answer your question yes, it is the west side.

Justin Huffman: Yes, he's willing to adjourn it for another month to figure out how to best address the concerns.

Ed Darrow: Are all members in favor of an adjournment for a month?

Matt Quill: As long as it's understood that it's not automatic that the variance will be granted.

Andy Fusco: Nor do I begin to suggest that. One of the inherent abilities you have as a zoning board is to set conditions. I know nothing about swimming pools. If there is a way for Mr. Thurber and Mr. Huffman to come up with some type of game plan that we can set as conditions, if you are inclined to grant a variance, that would satisfy or at least help the neighborhood issue that would be something I think we ought to pursue. It's clear listening to the neighbors there may be something more at play here than a swimming pool.

Ed Darrow: Mr. Quill, what I would be looking for next month is that the neighbors feel proper steps are going to be taken and I'm assured that's what the applicant's counsel is going to try and do. Try to do the neighborly thing, get it right and hopefully go from there. If not then either way we're still where we are.

Are all members okay with that? All in favor of adjourning until the next regularly scheduled meeting? All vote 'aye'.

You are scheduled for the next meeting the fourth Monday of next month. Thank you.

49 Capitol St.

Ed Darrow: Please give your name and address and tell us what you'd like to do.

Sarah Holmes: I'm looking to add a shed to the property. An already assembled shed.

Ed Darrow: You are seeking an area variance, you're seeking two area variance.

Sarah Holmes: Yes, from the back fence in the back yard and from our house.

Ed Darrow: One is for one foot from the rear property line of the four foot required and one variance is seven foot of the ten foot from the primary structure required.

Sarah Holmes: Yes.

Ed Darrow: Any questions from the board members?

Scott Kilmer: Ms. Holmes? You have your property buttoned up pretty tight so I couldn't really see onto the property. On the end of the driveway I see on your map here there is a building that is x'd out; is there a shed there now that you will remove and put this shed in?

Sarah Holmes: No. That x'd out is when I first picked up the application and the woman working there, we were trying to figure out placement and she just drew that, so there is nothing there.

Ed Darrow: So there's only going to be one shed?

Sarah Holmes: One shed.

Susan Marteney: Will you be able to get into the rest of your back yard if you put it there?

Sarah Holmes: We will. There is a slight opening, I'm not going to lie, our back yard is absolutely useless, we have no back yard. We actually don't go back there. We have no use, right now this is where we do have a four wheeler and a bicycle, really we're just looking to place it into the shed. The back yard is useless.

Mario Campanello: I have a question. I wasn't able to see back there either but looking at the layout of the map that we have and since you say there is virtually

no use of the back yard anyway, would it make more sense to maybe move that shed ot the other side of the yard?

Sarah Holmes: That is something that we had wanted to do, the problem is because of the driveway and the narrowness between the two houses, how would we get the delivery driver to swing it to get there?

Mario Campanello: They're pretty amazing, they're drives actually turn.

Sarah Holmes: If that was a possibility we would actually prefer it to probably be more...

Susan Marteney: Over in the western corner. That is exactly what I was thinking when I was there.

Mario Campanello: I think if you explored that option this might not even be an issue.

Sarah Holmes: It would still be the house, the neighbor and the back yard.

Susan Marteney: But then I said at least you'd have a little, you could come out your back door and not hit the shed.

Sarah Holmes: Yes, unfortunately with this house there is absolutely no space. We have dealt for years with not having a back yard. We don't have a front yard either. So we dealt with that, our major issue at the moment is that we have some expensive items that are in the elements and we've already had some issues with some things.

Susan Marteney: Is there some way we can make it so they can have the same...if you could put it over there...

Sarah Holmes: If we could put it over where it would need to be and we meet the requirements you require of us we are willing to do what we need to do to get a shed.

Ed Darrow: By the looks of it no matter where they put it they would need the three foot rear yard setback. I don't see that going away. Going further to the, if I'm looking at it correctly, the west, they could probably meet the side yard setback.

Susan Marteney: What kind of fence is on the west side?

Ed Darrow: Stockade it says here on the drawing.

Susan Marteney: On the back and that one side.

Sarah Holmes: Yes.

Ed Darrow: A wire fence on the rear and a stockade on the west.

Susan Marteney: Stockade in the back now.

Sarah Holmes: Yeah, there's no wire fence.

Mario Campanello: Have you talked with the delivery people, seeing if it was a possibility putting it where you originally wanted it?

Ed Darrow: Please give your name as well for the record.

Corey Bacon: I spoke to the delivery service, they said they're extremely well how they get the vehicle, how they can get it in there. We're very open to where it can go. There is no, I mean it would be nice to utilize the yard, just wherever it can be, it can be. Either way it's going to take up the majority of the yard. That's not a concern for us. It's more of the fact of needing it versus not having it. We have had at least one item come up missing from the back yard. I mean a small item, a gas can, but...

Ed Darrow: So then I would have to believe then one of your items in here is a four wheeler. The location to your driveway is preferential anyway so that you're straight down the driveway to put your four wheeler away and not go all the way across your back yard anyway with your four wheeler.

Corey Bacon: Right. We're talking four wheeler, motorcycle...

Ed Darrow: Okay. So this is the best location for that equipment anyway.

Corey Bacon: What about, there is a tree at the end of the driveway. It's not our tree. The shed I'm looking at is only 8 x 10 and I don't think even with the height of it it would be an issue if it was slightly to the west. It would clear no problem and if the tree were to come down it wouldn't come near the shed whatsoever.

Sarah Holmes: It's really, we're just more looking to get the shed wherever it's placed we would be extremely happy. Driving the four wheeler in the back, that's where it's being driven now to get where it's going. Would it be best to be toward the end of the driveway so we can just drive things in and out? Obviously. But right now we're trying to store things in the back yard so it's already being done that way. However we can make it happen.

Ed Darrow: I'm a little confused. Where would you like the shed?

Sarah Holmes: Probably...

Corey Bacon: I don't have much of a preference. Wherever is the least obtrusive for other people.

Sarah Holmes: Yeah. We've gone both ways, it being more towards the back yard and then it would be out of the way and we could move things. We've gone putting it toward the end of the driveway because it's easy access to get things in and out. But it's closer, we're trying to meet whatever requirements we best can. It seems like the best way is to have it more toward the end of the driveway.

Corey Bacon: We don't really care.

Ed Darrow: You just want to be able to put your shed there and put toys away.

Sarah Holmes: Yes. We want to get everything put away.

Ed Darrow: Any other questions from the board members? Is there anyone present wishing to speak for or against this application? Anyone present wishing to speak for or against this application? Seeing none and hearing none I shall close the public portion so we can discuss it amongst ourselves.

Questions? Comments?

Susan Marteney: It's a small, tight back yard.

Scott Kilmer: I don't see where anyone's going to see it anyway because it's all buttoned up.

Ed Darrow: Chair will entertain a motion.

Susan Marteney: Are we doing exactly what they say?

Ed Darrow: If they want to slide it over then they just don't use the other. But they're going to need the three foot rear anyway.

Susan Marteney: Okay. I move to approve an area variance for Sarah Holmes of 49 Capitol St. for two variances for the placement of an 8 x 10 shed in the rear yard. One, one foot from the rear property line of the required four foot setback and an area variance of seven feet of the required ten feet from the primary structure because the applicant has proven the following five elements: The area variance will not produce an undesirable change or detriment to the character of the properties in the neighborhood, and;

- The area variance will not produce an undesirable change or detriment to the character of the properties in the neighborhood, and;
- The benefit sought cannot be attained by any other method other than an area variance, and;
- The variance is not substantial, and;

- The area variance will not produce an adverse impact on the environment of or physical conditions in the neighborhood, and;
- The applicant's difficulty was not self-created.

Ed Darrow: We have a motion do we have a second?

Scott Kilmer: Second.

Ed Darrow: Roll call please.

All members vote approval.

Ed Darrow: Congratulations your area variance has been approved. Please see Code Enforcement for any necessary permits.

78 Franklin St.

Ed Darrow: 12 McMaster St.?

Steve Selvek: There's actually two items here tonight. 78 Franklin St. as well as 12 McMaster St.

Ed Darrow: We just accidentally tabled 78. Sorry. Let's go with 78 Franklin.

Steve Selvek, City Planner and staff to the Planning Board: 78 Franklin St. has come before the Planning Board for site plan review to reconstruct Tinkers and also will be going before the Council for zone changes associated with the parking lot. The site plan as presented to the Planning Board will likely require a variance. What I'm asking on behalf of the Planning Board is that the ZBA concur with the Planning Board's intent to be lead agency to conduct the environmental review. Quite honestly it's a procedural step. There's a 30 days' time frame if this board concurs with the planning Board's desire to do the environmental review, Planning Board will be able to complete that review at the July 1 meeting and then it will be back before this board at the July meeting for consideration of whatever area variance they may need.

Ed Darrow: What variances do you see that might be needed?

Steve Selvek: I anticipate them needing a rear yard and side yard buffer variance. The code is set forth such that between a commercial use and a residential use there needs to be a 60 foot separation that's heavily planted. As most of you may be familiar with the existing Tinkers lot, that would render their entire parking lot unusable. So I would assume that based upon their desire to use the parking lot they will be seeking that particular use buffer. It's not a use variance, it's an area variance but it's a buffer between residential and commercial uses.

Ed Darrow: Okay. That's the only one.

Steve Selvek: Yes, it'll be for the rear yard and the side yard.

Ed Darrow: Okay, thank you.

Steve Selvek: There is a draft resolution for the board's consideration.

Ed Darrow: Sue, if you want to take care of that, you have a copy? You want to make that motion, or read it?

Susan Marteney: Just start at the top?

Ed Darrow: Yes.

Susan Marteney: I make a motion that the ZBA resolves that the board has no objection to the City of Auburn Planning Board acting as lead agency for the SEQR and direct staff provide applicable board comments to the City Planning Board for consideration in their environmental review of the proposed project. Reads resolution into the record.

Ed Darrow: We have a motion, do we have a second?

Scott Kilmer: Second.

Ed Darrow: Roll call please.

All members vote approval.

Ed Darrow: That has been taken care of. Now shall we move on to 12 McMaster St.?

12 McMaster St.

Steve Selvek: 12 McMaster St. poses a similar situation as to the one we just discussed for 78 Franklin St. 12 McMaster St. borders the rear of Community Computer Services. They are desirous of expanding their parking onto this particular lot. It would share a common entrance with their existing lot. Once again because of its proximity to an adjacent residential property they will be coming before this board the same exact use buffer variance for the adjacent use buffer. Again I don't want to confuse that with a use variance. If the board has questions I'd be happy to answer them.

Ed Darrow: Do you foresee any other variances that may be need by them?

Steve Selvek: Not for this one.

Ed Darrow: And theirs is strictly for parking?

Steve Selvek: Correct.

Ed Darrow: Any other questions? Board members? Sue, if you would make the motion please.

Susan Marteney: Reads resolution into the record.

Ed Darrow: We have a motion, do we have a second?

Mario Campanello: Second.

Ed Darrow: Roll call please.

All members vote approval.

Ed Darrow: That's all taken care of?

Andy, do we have to affirm last month's meeting on Perrine St.? Do you put a motion forward?

Andy Fusco: Now that I've had the opportunity to read the minutes, they stand. They have not been adopted yet. I'm satisfied with these minutes and we'll approve them next month.

Ed Darrow: Anything else under housekeeping?

Motion to adjourn? So moved by Matt Quill.

Meeting adjourned.

Recorded by Alicia M^cKeen