

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: AUGUST 20, 2008

CASE NO.: 8/20/2008-1

APPLICANT: JUSTIN E. AND CAROLYN F. BROWN
5 SADDLEBACK ROAD
LONDONDERRY, NH 03053

LOCATION: 5 SADDLEBACK ROAD, 6-13-7, AR-I

BOARD MEMBERS PRESENT: MARK OFFICER, CHAIR
YVES STEGER, VICE CHAIR
NEIL DUNN, VOTING MEMBER
BARBARA DILORENZO, VOTING MEMBER
VICKI KEENAN, NON-VOTING ALTERNATE
JIM SMITH, NON-VOTING ALTERNATE
MICHAEL GALLAGHER, NON-VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

REQUEST: AREA VARIANCE TO ALLOW A STRUCTURE (I.E. A SWIMMING POOL)
WITHIN THE PLANNED RESIDENTIAL DEVELOPMENT (PRD) PERIMETER
SETBACK.

PRESENTATION: CASE NO. 8/20/2008-1 WAS READ INTO THE RECORD WITH ONE
PREVIOUS CASE LISTED.

Due to a technical error, the first few minutes of this presentation were not recorded. During that time, Clerk Larry O'Sullivan read Exhibit "A" into the record, a letter of support from the owners of 3 Saddleback Road.

The applicant then introduced himself and explained that in trying to obtain a building permit for a 24 foot round above ground swimming pool, he was informed that his lot is located within a Planned Residential Development, meaning his proposed location for the pool was infringing on the 150 foot rear PRD setback line and could not be approved. He was then told he had the option of requesting a variance from the Zoning Board.

Mr. Brown gave an overview of the restrictions on his property, citing the constraints of the setback itself, combined with the water line running from the street along the northern side of his property, the garage and driveway on the southern side and the leachfield in the front of the lot. He addressed the remainder of the five points as written in his application.

The recording of the meeting began as Jim Smith asked Mr. Brown if he was aware his lot was in a PRD when he purchased the property.

JIM SMITH: When you bought the property, were you aware of this PRD setback requirement across the...?

JUSTIN BROWN: I didn't have any idea until I came down to get the permit.

LARRY O'SULLIVAN: Were you aware that you were in a Planned Residential Development?

JUSTIN BROWN: No, I don't even really know what that is.

JIM SMITH: The requirement of this is to provide a buffer zone between the PRD and the other normally zoned residential property which is to the rear of your property so that you're...by putting something into it, you're compromising that buffer zone.

LARRY O'SULLIVAN: From the way I understand the purpose of most PRD's is so that you have land that's uninterrupted by...that is useful for not just your family but visible for...I'm sorry, that it wouldn't be blocking...you wouldn't do anything with it to block anybody else's view or restrict anyone else from using it or going across it or...Actually, we do allow some fencing, I understand, in those areas, however, the structures are really what the consideration is, so...I would suspect also that in a PRD, the reason that you have no side lots or very small sides of your house, of your lot, is because there are allowances that are given for a Planned Residential Development which allow the builder and contractors and developers to put more houses in a smaller area because our current zoning is an acre with so many feet on each side of the house or the building or the structure. That's not the requirement where you are. You already have a special pocket of zoning, I guess, when you have a Planned Residential Development, the reason why the Town prefers to have that kind of development is so that it is more common, it allows more common areas for your neighbors and the Town is willing to take, you know, the additional housing and students and what have you because there's something that's given back by each of the property owners and what you're requesting from us is to take a little of what you gave us back, in effect. Not your neighbor, obviously, but your neighbors are the ones that would be the ones who would be the more obvious, I'd say, cost that would their costs, so, whether it be a disadvantage or a huge disadvantage for an above ground swimming pool, I think that's really what the discussion remains at.

MARK OFFICER: Yeah. I'm just gonna read it in, what the purpose is of the PRD. So, the purpose of a Planned Residential Development, PRD, is to "encourage the preservation of open space, encourage flexibility in residential development design, promote more efficient use of land areas and preserve the rural environment and open spaces of the community," so that's why the houses on Saddleback Road are closer together than typical neighborhoods in Londonderry because the houses are closer together but it's designed to have more open community space. So this...I just have a question here for my own...so, oh...I was looking at the wrong one, too, okay, yeah, never mind. Alright. Any other questions from the Board? Neil.

NEIL DUNN: If I may, I'm not sure on the map that the PRD setback isn't...the paperwork you submitted isn't really clear. It looks like we're looking at an old plan that was submitted and then

there's a line that curves through it, "three sixty two (362)," I mean, I'm having trouble determining that that encroachment would actually be ten (10) feet.

JUSTIN BROWN: Is that the document that I got from Jaye? Is that the Town...?

JIM SMITH: You're look at a septic plan?

JUSTIN BROWN: ...site plan?

NEIL DUNN: I'm looking at the one that has some pink highlighter on it with this...

JAYE TROTTIER: Yup, that...

MARK OFFICER: Yeah, it has a legend.

NEIL DUNN: Yeah...

JAYE TROTTIER: That was the original septic plan and where the house actually ended up being is what's in yellow.

NEIL DUNN: Right but I still...so I'm having trouble determining where the actual line would be for the PRD setback.

JAYE TROTTIER: That's the pink.

VICKI KEENAN: The pink.

NEIL DUNN: And it's a twenty four (24) foot diameter pool and over half of it's into the PRD, so it would be more than ten (10) feet would be into it, wouldn't it? I guess that's what I'm trying to get clarification, it looks like it'd be closer to...

MARK OFFICER: About ten (10), yeah.

NEIL DUNN: Well, fourteen (14) if it's a twenty four (24) foot diameter.

MARK OFFICER: Oh, yeah, fourteen (14), I see what you're saying. Yeah, 'cause it's a little more than a half.

JUSTIN BROWN: So I guess it would be closer to twelve (12) feet, I guess, half the diameter.

MARK OFFICER: Well, no, a little more than half is in the setback.

JUSTIN BROWN: Right.

MARK OFFICER: So it should be...it's more like...it sits fourteen (14) feet into the setback. Right?

NEIL DUNN: Well, that's what it looks like. That's why I was wondering if we had any other documentation that would...

MARK OFFICER: Okay. Can you bring this pool closer to the house or is that in violation of a...?

JUSTIN BROWN: I think that would encroach on the ten (10) feet required. I think it's a NEC requires a certain setback from the structure.

MARK OFFICER: Okay. Mm-hmm. Okay.

YVES STEGER: What...is it possible to put it at the end of the driveway?

JUSTIN BROWN: I think at the end of the driveway there's a grade there that...it's a two (2) car under home, so the grade there...I'd have to fill the site, I suppose, and I'm guessing some type of wall would have to be constructed and then the pool on top of it.

MARK OFFICER: That would put it into the side setback, right?

YVES STEGER: Not really...

MARK OFFICER: Oh, that side. Oh, I see.

YVES STEGER: See? I'm trying to look at here so that we can...[inaudible]

MARK OFFICER: Oh, I...I...think he misunderstood. I misunderstood, too. You were talking about the side where the driveway is, correct?

JUSTIN BROWN: Right...

MARK OFFICER: We were talking about the other side.

YVES STEGER: No. No, no, I'm talking about the side where the driveway. See, that one is incorrect. The driveway was never put there.

MARK OFFICER: Oh...oh yeah.

YVES STEGER: It's on the other side from the original plan.

JUSTIN BROWN: Right.

YVES STEGER: That's why I was confused, too.

JUSTIN BROWN: Yeah, facing the house, the driveway's on the left side.

YVES STEGER: So you're saying you could not put it within ten (10) feet of the house at the end of the driveway because of the grade?

JUSTIN BROWN: Right, the grade drops off pretty steep there and so I think that...I think I'd look at a fairly significant expense and really the spot on the other side of the house is the only flat spot of the lot as well.

NEIL DUNN: May I ask Richard a question, Mr. Chairman?

MARK OFFICER: Sure. Yup.

NEIL DUNN: Is there a ten (10) foot setback, Richard, for pools or any structure like this?

RICHARD CANUEL: To the structure? No, they can place the pool closer to the structure. You could place that pool within a few feet of the structure. You just need to maintain enough distance to maintain the pool.

NEIL DUNN: Thank you.

RICHARD CANUEL: The ten (10) foot issue is regarding any electrical receptacles and things like that and that distance to the pool, so, yeah, the pool could essentially go closer to the structure.

MARK OFFICER: Oh, so that's not a zoning requirement?

RICHARD CANUEL: No.

MARK OFFICER: Oh.

RICHARD CANUEL: Not at all.

MARK OFFICER: Okay.

JIM SMITH: In comparing the two (2) plans, one (1) of the septic and one (1) of the plan that you're showing the pool, you're showing the house absolutely parallel to the street and when you compare it, it really isn't. So, I think those dimensions could be a little bit off.

JUSTIN BROWN: Is that the diagram I submitted with...that shows...

JIM SMITH: Mm-hmm.

JUSTIN BROWN: I mean, I just took some estimates. I don't have the actuals.

MARK OFFICER: You're looking at the second diagram, Jim?

JIM SMITH: Yeah, I'm comparing the two. If you look at the as-built, the house is at an angle. Of course, the road has a curve to it.

MARK OFFICER: Mm-hmm.

JUSTIN BROWN: I think when I came in to originally submit, I came in with that package with the sketch that I had done and then I received after the plans that we had here at the Town, so, the two (2) may not exactly be coordinated.

MARK OFFICER: Okay. Alright, any other questions? Alright, I'm gonna open it up to public comment, then we'll bring it back. I think we'll have some more questions. Okay, anybody opposed to this? Alright, seeing none, those in favor or having questions? Ma'am?

FIONA MORAN: Hi, my name's Fiona Moran. My husband Michael with me.

MICHAEL MORAN: I'm Michael.

FIONA MORAN: We live at 7 Saddleback, which is right next door.

MARK OFFICER: Mm-hmm.

FIONA MORAN: And as we understand, we've walked the property that Justin has showed us where he plans on putting the pool. It's closest to our home. There already is an existing fence there. We have absolutely no problem whatsoever with him putting the pool where he's planning to put it. I think we would be the ones that would be most affected by it by anyone in the neighborhood and we're fine with it. We actually...they're a great couple, outstanding neighbors. Very happy to have them there and I think their kids and all the kids in the neighborhood would get a lot of enjoyment out of it, so we have no issue with that. In addition to that, I am also the president of the Saddleback Ridge Association, have talked to many of the members and other neighbors there. Everyone would be thrilled for them to have that pool and we have no problem with it. I think also, just in listening to what you were talking about, as I said, I think the people who lived in the house prior to Justin and Carolyn put a fence up around the yard. That pool is well within that fence that extends out to the back of the property there...

MICHAEL MORAN: Yeah, it's supposed to be the setback, if I'm not mistaken.

FIONA MORAN: Yeah, so...

MICHAEL MORAN: The tree line...

MARK OFFICER: Could you just move a little closer to the microphone, sir?

MICHAEL MORAN: I'm sorry. That should be approximately the tree line on the setback of the properties, the same as our yard and he's well away from that setback. I realize the setback that you have in your plan there. We were all under the impression that that was at that tree line when we bought the homes, see?

FIONA MORAN: Right, the builder, when we bought the house, the builder, Jeff Poitras, had told us that we could do it 'cause we talked about putting a pool in ourselves originally and he told us that that, right back to the tree line was where, you know, we could put anything back there. We just put

in an addition on our house last year and I think, I mean, you know, we certainly...I mean, we had the...everything done...

MICHAEL MORAN: We had...everything was on here.

FIONA MORAN: It was all fine and what have you but we were clearly under the impression that we could put anything in our backyard back to the tree line and again, because the other people had put that fence in there, it is back at that tree line and that...

MARK OFFICER: Mm-hmm.

FIONA MORAN: ...the pool, where they're talking about putting it, is, you know, well away from there and plenty of room between our yards, so...

MARK OFFICER: So, the fence was put to where the perceived setback line was.

FIONA MORAN: Correct.

MICHAEL MORAN: Right.

MARK OFFICER: Not the actual...

FIONA MORAN: Correct.

MICHAEL MORAN: It's a...yeah, short fence.

MARK OFFICER: Mm-hmm. Okay.

NEIL DUNN: Mr. Chairman, if I may? As President of the Association, how to people become aware or join the Association?

FIONA MORAN: When we all bought the houses, we were told you have to pay taxes on the common land, if you will, and that's the Association and we all, you know, pay whatever the nominal tax is.

NEIL DUNN: So, a new person moving in is made aware, I mean, it's on the deeds?

FIONA MORAN: At the...yes, it is.

MICHAEL MORAN: Yes, it is.

FIONA MORAN: Yes, it is.

NEIL DUNN: So they're made aware it's a PRD and there's common land?

FIONA MORAN: Yeah, I'm not familiar with the PRD terminology myself.

NEIL DUNN: Terminology.

MICHAEL MORAN: Right.

FIONA MORAN: But certainly there is common land, yes. Yeah, and we...the builder told us the common land was the wooded area around the property and that was, I think he called it "preserved land," or something to that effect.

MICHAEL MORAN: Right.

FIONA MORAN: Meaning that we couldn't do anything within the tree line behind the homes.

MARK OFFICER: Okay. Alright. Thank you.

FIONA MORAN: Thank you.

MARK OFFICER: Anybody else in favor or having questions? Okay, seeing none, I'm gonna bring it back to the Board. Richard, do you have any other comments on this?

RICHARD CANUEL: None for this one, no.

MARK OFFICER: Okay. Everybody understand the dynamics here? This being in the PRD, it's in the setback...

JIM SMITH: Well, I think the only thing that you really have to think about on this buffer zone. It's really to provide a buffer to the people who are to your rear. Not necessarily the people on either side of you because that's the piece of property which is of a different zoning situation, have different setbacks, different lot requirements, so forth and when you have a Planned Residential Development, you're allowed to have smaller lots with the idea that you're gonna reserve that land to provide that buffer, so I think the problem that we have is that the real estate people don't really make that clear to whoever's buying into these things.

JUSTIN BROWN: Right and I think...I was...I'm the newest, I guess, owner to the neighborhood when we bought the property off of the Nixons in 2003 and honestly, we didn't really know about it until closing, about the property, but even the folks that are behind us, I can't see them through the woods. I don't even know where they are and I was actually, when I filled out the abutters list, I didn't even know who they were on Pillsbury Road. So, I mean, I can say that I can't see the folks through all the trees that we have behind us.

MARK OFFICER: Okay.

BARBARA DILORENZO: Mark?

MARK OFFICER: Go ahead.

BARBARA DILORENZO: There's somebody in the back raising their hand.

MARK OFFICER: Oh, okay, yeah, you can come up.

ROY SHEADEL: Hi, Roy Sheadel, 184 Pillsbury...

LARRY O'SULLIVAN: I'm sorry, one more time?

ROY SHEADEL: And, yeah we're...

LARRY O'SULLIVAN: Excuse me?

KIMBERLY SHEADEL: We're at the back...the rear...

ROY SHEADEL: Yeah, we are the owners to the rear of the property.

MARK OFFICER: And we just need your name, please.

ROY SHEADEL: Roy Scheadel.

LARRY O'SULLIVAN: Thank you.

ROY SHEADEL: But yeah, I will attest that he is correct. Between our land and I guess the PRD buffer, really it's hard...we cannot see his property from ours unless we walk to the back end of our property line but from our proper backyard and our house, there's no visible connection to his current structure.

MARK OFFICER: Mm-hmm.

ROY SHEADEL: I personally haven't seen the plans of where the pool is gonna go but, you know, I will attest to him being correct that there is enough distance between us.

MARK OFFICER: So, you're not gonna fall into the pool?

ROY SHEADEL: No, no, definitely not.

[laughter].

MARK OFFICER: Okay.

ROY SHEADEL: And I know we came just to see, because we were under the impression that just from walking our property and, again, I'm not sure about his plot but we were under the impression that they had up to the tree line or into the tree line so that was our concern was cutting into the tree line coming up to our property but it does sound like there's a buffer for the community anyway...

MARK OFFICER: Right.

ROY SHEADEL: ...which we were not aware of until this meeting.

MARK OFFICER: Yeah, okay. Alright, thank you. Yves, can you just tell us what this is?

YVES STEGER: So, what I've been looking at is, obviously the intent is to preserve the green space. So, instead of looking at the aerial photo, I've just taken this view here and essentially, it shows that their property is smaller. Those that are in the backs are actually much, much, much longer and the property on 184 has a pool and the approximate distance between the two (2) pools will be about five hundred thirty (530) feet.

NEIL DUNN: What view are you looking at, please?

LARRY O'SULLIVAN: The neighborhood overview.

YVES STEGER: It's a neighborhood overview. So this is...

MARK OFFICER: Land base map.

YVES STEGER: ...the five (5). You go one land base map. But again, I mean, we have to concentrate on the five (5) points of law, essentially, I mean...

MARK OFFICER: Yeah. Okay. Alright, the only thing I'm unclear on, before we go into deliberation is...just some...the inconsistency with these diagrams, so, for all intents and purposes, it looks like where he would like to put his pool, it's gonna be about fourteen (14) feet into the setback. He could probably move it closer to the house but he'd still be in it, the setback, to some degree.

VICKI KEENAN: Mm-hmm.

MARK OFFICER: Okay? So, it's a question, in my mind, of, you know, whether or not the, it essentially turns into be three (3) or four (4) feet's gonna make a difference, okay? Alright, does anybody else have any questions? Alright, any other further comments, Mr. Brown?

JUSTIN BROWN: No, I don't believe so, I think, you know, just moving it, I mean, the intent is to not have it close to the house either.

MARK OFFICER: Mm-hmm.

JUSTIN BROWN: I mean, I had pools growing up at all my houses with my families and they were always further from the house and...

MARK OFFICER: Right.

JUSTIN BROWN: But I would prefer to keep it...

MARK OFFICER: Right.

JUSTIN BROWN: ...where we have it located.

MARK OFFICER: Yeah, I can see that. If anything, it's probably more of a safety hazard. Okay, alright, we'll deliberate now and we'll see how it comes out. So, at this time, we'll take no more further comment from the public.

DELIBERATIONS:

MARK OFFICER: As Yves says, we have to concentrate on the five (5) points of law, so, why don't we just walk through these five (5) points now.

YVES STEGER: I think a pool in this neighborhood definitely should not diminish the property value. That's probably clear.

MARK OFFICER: Right. Right. Does anybody have an issue with that, with diminishing property values?

BARBARA DILORENZO: No.

MARK OFFICER: Yeah, I don't think so. Contrary to public interest?

NEIL DUNN: I don't know, the ordinance, if you look at the ordinance itself, it kind of gets back to intent of the ordinance and public interest. The public interest on the PRD's were to maintain that open space, so, I mean, if every building, if everybody in that PRD decided to encroach on the public space, then is that the public interest? Or the common space? I kind of see it that way a lot of times. You know, one (1) little pool three (3), four (4) feet but then everybody in the development starts doing that, I...that's where I have trouble so I'm having trouble with supporting that and the way it was presented.

LARRY O'SULLIVAN: Well, the PRD's typically not one (1) side of the street, either, they're multiple sides of the street, at least two (2) and when there's intersections and what have you, those are included as well and everybody benefits and everybody pays. They pay their taxes on common area. All of them pay the taxes on common area and they all, therefore, should have access to it and the only I think that I would have an objection to about this is once you have that pool in place, typically, people will put up a larger fence. And then all of a sudden, with the larger fence, 'cause that's what I did, I've got a six (6) foot fence around my whole yard, so, I guess that would be my issue is that along with that pool, we're gonna be putting up a six foot fence and that six (6) foot fence...

MARK OFFICER: No, he already has a fence, which is...

BARBARA DILORENZO: There's a fence already...

LARRY O'SULLIVAN: It's not a six (6) foot solid wood that you get your privacy from, so, as far as I'm concerned, the...that would be the only issue that I have.

BARBARA DILORENZO: Wouldn't he have to come back for that, though? He'd have to come back 'cause that would be a structure...

MARK OFFICER: Mm-hmm.

LARRY O'SULLIVAN: Richard, would he have to...

[overlapping comments]

RICHARD CANUEL: If he puts up, like a six (6) foot tall stockade fence...

LARRY O'SULLIVAN: Yup.

RICHARD CANUEL: ...as long as he doesn't exceed the six (6) foot height, it's not considered a structure and he can basically put that right on the property line.

LARRY O'SULLIVAN: Okay.

MARK OFFICER: Oh, alright.

LARRY O'SULLIVAN: There you go.

VICKI KEENAN: Even within the setback?

RICHARD CANUEL: Right on the property line.

MARK OFFICER: Yeah. See, I mean, is this in the setback? Yes but is it realistic that people are gonna be using that twelve (12) feet closest to his house for common access? No. I mean, there's plenty of woods.

JIM SMITH: No, this isn't common land.

LARRY O'SULLIVAN: That's his land.

JIM SMITH: That's his land.

MARK OFFICER: Right.

JIM SMITH: The common land's in another part of the...

MARK OFFICER: Oh, okay.

JIM SMITH: ...tract.

VICKI KEENAN: 'Cause they're a buffer and it sounds like there's quite a buffer...

JIM SMITH: And again, it goes back to the idea of when you have a PRD, it's a differently zoned...and you have a different set of requirements as far as how the lots are laid out and the size of the lots so the Town has put it together, decided it wanted to have a buffer zone between that type of zoning and the regular zone.

MARK OFFICER: Mm-hmm. And in this case, for Mr. Brown, we can't take any comment now unless it's a...

LARRY O'SULLIVAN: A fact.

MARK OFFICER: ...a correction or a fact.

JUSTIN BROWN: I just had a question.

MARK OFFICER: I'll allow it. Go ahead.

JUSTIN BROWN: The area is like, it's my backyard. You know, it's grass.

MARK OFFICER: Mm-hmm.

JUSTIN BROWN: So, I guess I'm wondering about...I guess I'm just unclear about people using my backyard. I guess I'm just confused on what that is.

MARK OFFICER: Yeah, I misspoke. Jim is correct.

JIM SMITH: It's your property.

MARK OFFICER: Yeah.

JIM SMITH: And he was mixing two (2) different things together. When...You're paying taxes on common land but that's in a different area of that whole development.

MARK OFFICER: Where is that, is that towards the...?

JIM SMITH: I think if you look at the map, go down where it gets...

JAYE TROTTIER: Two (2) Saddleback.

JIM SMITH: I was trying to figure it out myself.

JAYE TROTTIER: Yeah, it's 2 Saddleback is the common area.

JIM SMITH: You go to about the first one and it looks like it's probably on the right side as you come in, there's a large tract that kind of goes behind the homes.

LARRY O'SULLIVAN: That rhombus shaped...large rhombus?

[overlapping comments].

JIM SMITH: It looks like it's...

MARK OFFICER: Oh.

JIM SMITH: ...thirteen dash four (13-4) maybe.

JAYE TROTTIER: Yup.

MARK OFFICER: Yup, I see.

JIM SMITH: That would be my guess. There's no homes on that piece.

MARK OFFICER: Yeah, so this is why I have the issue with PRD's, not to get off base but that sure looks like wetlands.

FIONA MORAN: It is.

MARK OFFICER: It's like, it's ridiculous, you know? Alright. Okay.

YVES STEGER: Well, essentially, what we try to preserve is not access to other people on private property, it's to maintain enough distance between other properties that are in that PRD.

JIM SMITH: No, no...

LARRY O'SULLIVAN: That's not it, no.

JIM SMITH: No. This buffer is between the PRD lots and the residentially zoned lots, the AR-I lots which are to the rear.

MARK OFFICER: Essentially Pillsbury Road.

LARRY O'SULLIVAN: That's the difference between industrial and residential, for example.

YVES STEGER: Yup.

MARK OFFICER: Even though this is, the PRD is residential, it's residential of a different nature.

JIM SMITH: Right.

LARRY O'SULLIVAN: Right.

MARK OFFICER: Closer houses and so forth.

JIM SMITH: And the common land, in theory, could be used for the people who are part of the PRD's use.

MARK OFFICER: Right.

JIM SMITH: It's not open to the general public.

MARK OFFICER: So, the spirit and intent here is to protect the folks on Pillsbury Road by ensuring that this setback exists so that they can encroach and then, therefore, impact the property values or the safety and so forth of people on Pillsbury Road in this specific interest but...Yeah, with that said, I still don't think it's contrary to the public interest but that's just my opinion. Does anybody else have a comment on public interest? Okay. And then the third one, which is...this is a...

YVES STEGER: Special conditions.

MARK OFFICER: ...right, the special conditions and this is an Area Variance, so they need to meet the two (2) pronged pieces of that. Let me go back to what he said...Alright, so for the first one, "the area variance is needed to enable the applicant's proposed use given the following special conditions. The property includes a building setback line. The pool location in the back of the property would slightly protrude on the setback by approximately ten (10) feet." Okay. And then the second prong is essentially why he has to place the pool there and not the other places of the property which he described, the falling off the land on the driveway side, the septic system and so forth. Okay, any comments on this, special conditions?

JIM SMITH: What do you think are the special conditions for...?

LARRY O'SULLIVAN: What makes this house any different than your neighbors?

JIM SMITH: Right.

LARRY O'SULLIVAN: They're all in the same boat.

JIM SMITH: Correct.

LARRY O'SULLIVAN: That's why they put a PRD, every house should be exactly in the same boat.

VICKI KEENAN: He spoke to special conditions about the grade near the garage and I don't know that we can verify the grade in other [inaudible] in terms of placing the pool elsewhere, you know, behind the garage.

YVES STEGER: So, I understand what you said about the others. We don't know that because we don't have any evidence here that shows me what are the PRD limits on all the other properties.

LARRY O'SULLIVAN: It's the same PRD, they're all in the same PRD.

YVES STEGER: I understand. Because of the PRD, there is a certain area where they can do anything they want and others where they can't. I'm not convinced that the location next to them doesn't have more room because they don't have a grade, because their driveway's in a different position or something like that where they could reasonably put a pool...

LARRY O'SULLIVAN: Mm-hmm.

YVES STEGER: ...without having to infringe on the PRD setbacks rules. I don't know that. There is nowhere in the documentation that I have seen here that shows that any of the others are the same compared to this one. I don't know...

LARRY O'SULLIVAN: That you're considering grade and what have you? We don't have any of that information.

YVES STEGER: Exactly.

LARRY O'SULLIVAN: We have the overview of all the lots that are in that development, though, and you can see from the overview that, this aerial photo, that all of the houses are close on both sides to their property lines and that was the whole point and purpose of having the PRD in the first place, was so that they can put more in there. But it isn't a reason to deny because as far as I'm concerned, that isn't a reason to deny this request.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: Because there are special conditions of the property. Vicki just brought up one in particular, there's a grade, and it would be too expensive for them to be able to build a wall on that graded side but at the same time, if all of the lots have the same requirements, what would preclude every one of those houses from doing the same thing? And, if, by the way, we did or if it was allowed, would it make a difference? What we're talking about at this point, in my opinion, is the spirit of the ordinance. It isn't about whether it's, you know, the special conditions of the property. It really is the spirit of the ordinance.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: This ordinance for a PRD was put together so that we would prevent the crowding...allow crowding in certain areas and protect non-PRD areas. So, going into a buffer area between any two (2) zones is really what the question is. Is it going to be intrusive enough that it would endanger our regard in our ordinance, not the neighbors, just this...why we're changing the rules for a good reason here because everybody else has the same requirement.

MARK OFFICER: But are we still, if this pool's allowed, are we still protecting the non-PRD abutters?

LARRY O'SULLIVAN: See, that's what the issue is, isn't it?

MARK OFFICER: I mean, it's five hundred (500) feet away.

VICKI KEENAN: And the trees are still there and...

LARRY O'SULLIVAN: The trees are there, right?

VICKI KEENAN: I mean, it's already open space, this land. The view [inaudible] doesn't change. I don't know that...it seems like if we're talking about substantial justice...

LARRY O'SULLIVAN: Well, we didn't...

VICKI KEENAN: ...it's really, you know, how are they impacted? What's more detrimental to the neighbors? I can't...I'm having a hard time understanding where they're, you know, have a negative impact. Particularly on Pillsbury Road.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: I guess that's why I'm stuck in the spirit of the ordinance because what we're doing, in effect, is we're saying the ordinance is ruined. This is a variance, it isn't just the above ground pool. This is anything that you'd like to put in that area. Any structure that you'd like to put in that area. If the neighbors...my neighbor just did it. Somebody else has a shed back there. You can see it. I don't know what kind of shed it is or if it's a, you know, a building with a foundation or what have you but you can see from the overhead that there are other structures back there. I guess my point is the spirit of the ordinance...the development was built, the rule put in place for a PRD for a specific purpose and the cost that's associated with that allowance that was at the beginning is 'leave this area blank between the residential areas, the pure residential areas, and the PRD.' That's all. If the planners were wrong, the people who put that in our Master Plan were wrong, well, this will be the exception. But, also, don't forget, that this is a variance. It goes forever. These folks are gonna leave here one day, their neighbors are gonna be gone one day, and the variance is still gonna be there.

YVES STEGER: Correct, but remember, the spirit of the ordinance is not for the neighbors, it is for the other ones on the other side, correct?

LARRY O'SULLIVAN: I'm sorry?

JIM SMITH: The neighbors to the rear.

YVES STEGER: It is to protect those that are in the rear and from the evidence I have here, the people in the rear are so far away that I believe that we are protecting their interest in the normal AR-I's because the twelve (12) feet or the five hundred thirty (530) feet, to me, is...

LARRY O'SULLIVAN: Immaterial?

YVES STEGER: ...is probably immaterial. But for that reason, I would feel that I'm not doing a disadvantage to the AR-I, specifically the persons that were just behind them who actually said they had no problem because they wouldn't even know that it's there.

LARRY O'SULLIVAN: Mm-hmm.

YVES STEGER: That's my view.

NEIL DUNN: My thought on that, Yves, would be that the intent or the spirit of the ordinance, they came up with a hundred and fifty (150) feet from the property line to...and they allow more dense development so that it still maintains an open feeling so if everybody starts encroaching on that...and like Larry's saying, it says "to allow a structure within the Planned Residential Perimeter setback." You give the variance, I mean, there's nothing, unless...and I don't even know where we would stand if we said, 'okay, he can go twenty (20) feet,' will that hold up? Are we allowing him to put a structure in the setback?

VICKI KEENAN: Well...

NEIL DUNN: So he could go back to the fifteen (15) foot, which would be the normal property line. The PRD, the reason they have all that one fifty (150) setback and let you put buildings on half acre lots is so that it looks open and natural.

VICKI KEENAN: Can you approve with conditions that the structure be identified as a pool in certain dimensions and...?

LARRY O'SULLIVAN: Sure. Absolutely.

VICKI KEENAN: You know, so that it doesn't become...

NEIL DUNN: So, I guess that's where I would be.

VICKI KEENAN: ...you know, an actual structure with lighting and...that shines through the trees, I mean, you can sort off...

BARBARA DILORENZO: Yeah...

LARRY O'SULLIVAN: You can get as detailed as you want but I don't think we want to go there. I think the limitations should be a distance thing as opposed to a...that's all.

NEIL DUNN: Yeah. That's...

JIM SMITH: I think one of the other things you have to realize, the lot to the rear of this could build within fifteen (15) feet...

LARRY O'SULLIVAN: Right.

JIM SMITH: ...of their rear property line.

LARRY O'SULLIVAN: They could cut every tree down on their property if they want.

JIM SMITH: I'm not saying they would but...

LARRY O'SULLIVAN: Mm-hmm.

JIM SMITH: ...there would be nothing to stop them.

BARBARA DILORENZO: But you'd still have a hundred and thirty four (134) feet or whatever.

VICKI KEENAN: Mm-hmm.

BARBARA DILORENZO: Of wooded area.

MARK OFFICER: Mm-hmm.

BARBARA DILORENZO: That basically can't be touched, correct? That has to stay intact.

MARK OFFICER: Okay.

LARRY O'SULLIVAN: Why?

BARBARA DILORENZO: Well, that's what I'm asking.

LARRY O'SULLIVAN: No...

BARBARA DILORENZO: ...that area...

LARRY O'SULLIVAN: Absolutely not. They can cut all the trees down there. Every single tree on that property could be cut.

MARK OFFICER: On what property?

LARRY O'SULLIVAN: Either. It's their property, they can do what they want the way the...the trees and what have you.

JIM SMITH: No, no. I'm having a hard time reading this...Richard, is that a conservation easement on the back of that?

RICHARD CANUEL: No, it's not. It's not a conservation easement, not that I could find. There is a drainage easement that goes along the back portion of the property there and then there is that woodland buffer that is within that hundred and fifty (150) foot which is significantly distanced back from that building. It's considered untouched, you know, natural woodland buffer. So you do have that. That sort of limits any structure within that area, too. That very back portion of that lot, as best as I can determine from the site plan, is that that's a drainage easement along there.

LARRY O'SULLIVAN: Richard, to follow up that question a little bit, is there any reason why anybody, the property owners, couldn't cut that?

RICHARD CANUEL: They cannot. They're restricted from cutting that woodland buffer. That's part of that open space requirement for the PRD.

LARRY O'SULLIVAN: Where is that, now? On this side of this road?

RICHARD CANUEL: Either...

LARRY O'SULLIVAN: Or the opposite side of the road?

VICKI KEENAN: Their land.

LARRY O'SULLIVAN: On this side of the road? There's nothing on...

RICHARD CANUEL: I don't know what you're looking at.

LARRY O'SULLIVAN: Same house...same as the property owner.

RICHARD CANUEL: If I could take a look at what you're looking at there...

BARBARA DILORENZO: Right there at the tree line.

RICHARD CANUEL: Ah, here you go.

LARRY O'SULLIVAN: I gotta see this.

RICHARD CANUEL: Yeah, see this? These are what are known as perimeter lots on the outside of that PRD subdivision so that one hundred and fifty (150) foot setback buffer is that perimeter buffer all along those outside perimeter lots. The other lots that are interior, I think these may be a couple of them that abut that common land, that are not subject to that one hundred and fifty (150) foot buffer because it does not back up to the regular AR-I.

LARRY O'SULLIVAN: So you're saying that in that zone, in that area...

RICHARD CANUEL: In that zone...

LARRY O'SULLIVAN: ...despite the fact that that person owns that land...

RICHARD CANUEL: Yes, they're...

LARRY O'SULLIVAN: ...they can't cut their trees?

RICHARD CANUEL: No, they are restricted from doing that, no.

LARRY O'SULLIVAN: I wonder if they knew that.

NEIL DUNN: Yeah.

[laughter]

JUSTIN BROWN: I like the trees.

RICHARD CANUEL: Well, it says [inaudible], but if you look on the subdivision portion...

LARRY O'SULLIVAN: See that's not the address...

RICHARD CANUEL: ...PRD...

LARRY O'SULLIVAN: ...we were talking about before 'cause this was the lot and that was supposed to be common? He's talking about all this back here. It's not...and it's not on my maps. Do you have the...?

MARK OFFICER: What, the overlay?

LARRY O'SULLIVAN: The hundred and fifty (150) foot. Yeah.

MARK OFFICER: How big is this property? Did someone say? Point eight five (.85) acres. It's almost the size of a...

NEIL DUNN: It's over a half which would be the typical limit, yeah.

MARK OFFICER: No, no...I thought it was one (1) acre.

NEIL DUNN: That would be a minimum. Not in a...oh, yes, no, but in a PRD, a half.

MARK OFFICER: Oh.

NEIL DUNN: Yeah, so it's larger than...

MARK OFFICER: Mm-hmm.

NEIL DUNN: Normal, you know, the...

LARRY O'SULLIVAN: We're looking at the overhead photos, the aerial photos of your neighborhood.

JUSTIN BROWN: Oh, really?

LARRY O'SULLIVAN: Where we...

YVES STEGER: The lot is about two hundred seventy (270) by a hundred and fifty (150).

LARRY O'SULLIVAN: ...the GIS system...put the property lines in place pretty accurately, too. And so we can see...it's not Google Earth or something but we can see the tops very well.

MARK OFFICER: Alright, so, it looks like the Board is split on diminishing property values, being contrary to public interest, not contrary to spirit of the ordinance and doing substantial justice. I don't know if there's anything more that we can say. But we did not really discuss the two (2) prongs of the area variance, so, the number two (2), can it be sought by achieving some other method, I think he addressed. I mean, the position of the pool...

LARRY O'SULLIVAN: I think so, too. I think it would be too expensive for him to do something else.

YVES STEGER: Yup.

MARK OFFICER: The first one, though, I'm not so sure he met that. The following...what is the special condition of this property? It's not that it's in the PRD, that doesn't make it special. 'Cause all the lots in this street are under the same restriction.

YVES STEGER: Mm-hmm.

MARK OFFICER: So that doesn't make it special.

JIM SMITH: It would have to be something different from the other PRD lots.

MARK OFFICER: Mm-hmm.

JIM SMITH: What is different.

VICKI KEENAN: Didn't he speak to the four sides of the property and the front is the leachfield, to the side is where the utilities come in...

LARRY O'SULLIVAN: Yeah.

VICKI KEENAN: ...and then in the area behind the garage, he said that the grade was different. Now, we don't know...I don't think anybody on this Board can tell us whether or not every other home in the PRD has the same grade behind their backyard.

MARK OFFICER: Mm-hmm.

VICKI KEENAN: We can't do that, so we sort of have to take his word on it that that's a special condition behind the garage that, without a method that's reasonably feasible, can't be achieved.

MARK OFFICER: Okay. Yeah, I mean, so what we do is we take people word, so...

VICKI KEENAN: Mm-hmm.

MARK OFFICER: Yeah. Yeah, these two (2) prongs are very similar anyway, so...

VICKI KEENAN: Yup.

MARK OFFICER: Alright, so is there anything more to be said? Does anybody have other additional comments? No? Okay, so the people voting on this will be the five (5) members and Jim, Mike and Vicki will be alternates...voting alternates. Jim, you've never filled out a sheet either, have you? Do you know how to do it? Barbara can show Jim and Mike.

JAYE TROTTIER: Actually, they'd be non-voting alternates.

LARRY O'SULLIVAN: Yeah, I want their sheets. Right?

MARK OFFICER: Non-voting, yes, I'm sorry. Non-voting alternates.

JAYE TROTTIER: Yes.

MARK OFFICER: Okay, would anyone like to make a motion?

LARRY O'SULLIVAN: Let me make the first one. I know there will be more than one. I make a motion to deny case, what is it...8/20/2008-1...dash two (2), I'm sorry.

JAYE TROTTIER: No, it's dash one (1).

LARRY O'SULLIVAN: It is dash one (1) anyway?

JAYE TROTTIER: Mm-hmm.

LARRY O'SULLIVAN: Oh, that's right, we did the other one. It would be contrary to the public interest and is not in the spirit of the ordinance. Let's see if we get a second.

MARK OFFICER: Okay. So, Larry made a motion to deny this case.

LARRY O'SULLIVAN: For two (2) reasons.

MARK OFFICER: Okay. So, we have the motion on the table. Do we have a second?

[no response]

MARK OFFICER: No second?

LARRY O'SULLIVAN: That's okay.

MARK OFFICER: Okay.

LARRY O'SULLIVAN: That's why I figured it would be the first one.

MARK OFFICER: At least now we know.

JIM SMITH: Who are you taking seconds from? The voting people?

MARK OFFICER: Yeah.

LARRY O'SULLIVAN: Yup.

MARK OFFICER: Yeah.

JIM SMITH: Just wanna be clear.

MARK OFFICER: Yeah.

LARRY O'SULLIVAN: That's okay.

MARK OFFICER: Okay. Alright, any other motion? So we know that one is DOA.

LARRY O'SULLIVAN: Okay. I make a motion to approve case 8/20/2008-1 with the restriction that the fence...any fencing be limited to the see-through fencing or...what would that be called, I'm not sure what that term would be for the restriction of visibility so that the sections beyond the fifteen (15) feet would be still visible for their neighbors. If you see what I'm getting at, is having the...

YVES STEGER: No, it's pretty unclear.

LARRY O'SULLIVAN: Pretty unclear?

[laughter]

MARK OFFICER: I'm lost, too, I have to admit.

JIM SMITH: A non-privacy fence, is that what you're talking about?

LARRY O'SULLIVAN: Yeah, a non-privacy fence, that's what it's called. 'Cause I suspect there would be a fence shortly thereafter and I would approve it on that basis.

MARK OFFICER: Okay, could you reword that just...?

LARRY O'SULLIVAN: Sure. I make a motion to approve the variance with the restriction that see-through...what was it called? The non...?

JIM SMITH: Non-privacy.

LARRY O'SULLIVAN: Non-privacy fencing be used...

JIM SMITH: Well, the other one gives privacy, so I guess 'non-privacy.'

LARRY O'SULLIVAN: Okay, non-privacy fencing be used around the pool.

MARK OFFICER: Be used around the pool. Okay. Alright, is there a second for this?

YVES STEGER: I'll second that.

MARK OFFICER: Okay. Alright, so let's have discussion on this. What...explain why you want...explain why you want that as a special condition.

LARRY O'SULLIVAN: Most of the time the reasons that the land is requested to be untouched and left alone and with no structures is, I believe, so that the senses won't be interfered with in that area. And one of them may be sound, which can be a pain in the neck at some times but it's also something that's very positive, so the intention would be so that it be as least intrusive in other people's restrictions to their visual senses or their hearing, or what have you, as possible. If you're gonna have a fence, it limits your access, which is the whole purpose and point of it and it isn't the pool as much as it is the fence that I had the objection to to begin with. Because there's gonna be a fence and having...

MARK OFFICER: For the...

LARRY O'SULLIVAN: For the...

MARK OFFICER: ...just a point, but does there...pools have to be fenced, right, Richard?

RICHARD CANUEL: Not above ground pools. As long as they...

LARRY O'SULLIVAN: Uh-uh.

MARK OFFICER: Oh, above ground no.

RICHARD CANUEL: No.

NEIL DUNN: As long as they have at least what?

RICHARD CANUEL: The pools have to be protected with a forty eight (48) inch high barrier. That's either the pool wall itself or for an inground pool, it would be a fence.

MARK OFFICER: Oh.

RICHARD CANUEL: You don't have to fence it.

MARK OFFICER: Okay.

LARRY O'SULLIVAN: So, I guess what the issue is gonna be is there's gonna be a fence. So, but at least make as least intrusive on your neighbors as possible as opposed to giving them the option of putting up a stockade fence, a six (6) foot high stockade fence. That's what I would object to in my...seeing out of my backyard, as opposed to just the pool. So, if we put a restriction on the fence that would suffice it for me that we could allow the intrusion of the fifteen (15) feet into the buffer.

NEIL DUNN: Do we have to specify that the intrusion can only be fifteen (15) feet?

LARRY O'SULLIVAN: Well, I don't think it's much of a difference if it's ten (10) feet or twenty (20)...fifteen (15) feet, frankly.

NEIL DUNN: Well, no, but...

VICKI KEENAN: But we should specify it's gonna be twenty five (25) or...

NEIL DUNN: ...he could also go...he could go to fifteen (15) feet from his property line at that point, then if we don't say within a fifteen (15) foot intrusion into the PRD setback...

LARRY O'SULLIVAN: Oh, okay. Okay, I understand.

NEIL DUNN: Do you follow what I'm saying?

LARRY O'SULLIVAN: Yes, I do.

NEIL DUNN: He could take that pool and put it right back to the edge of his property line.

VICKI KEENAN: And we can't dictate what the fence looks like within the allowable limits, so, I think we need to...

LARRY O'SULLIVAN: They can move it...

MARK OFFICER: I don't know what a non-privacy fence is.

VICKI KEENAN: Right.

NEIL DUNN: Yeah, true.

MARK OFFICER: What is a privacy...?

LARRY O'SULLIVAN: That light goes through it.

VICKI KEENAN: I don't know...

MARK OFFICER: So, it's not stockade, that's privacy.

LARRY O'SULLIVAN: Right.

MARK OFFICER: Something like a picket fence?

LARRY O'SULLIVAN: Light goes through. Yeah.

NEIL DUNN: Or chain link?

JIM SMITH: Yeah, it could be a chain link fence or you could take a chain link fence and turn it into a privacy by putting those plastic slots into it. So, if it was an open chain link fence, it would achieve what you're trying to say.

MARK OFFICER: Mm-hmm.

NEIL DUNN: But my bigger concern would be the location, not letting that pool go all the way back.

LARRY O'SULLIVAN: Okay, so then I withdraw my motion, if you'll withdraw your second and we'll put the restriction on it not to exceed fifteen (15) feet.

MARK OFFICER: Okay.

VICKI KEENAN: I think that makes sense.

MARK OFFICER: Or if you withdraw the motion and the second, it won't matter if we go, so...

LARRY O'SULLIVAN: Okay, then I withdraw the motion and then I would add to that motion the restriction of fifteen (15) feet.

JAYE TROTTIER: So, you're making a new motion.

LARRY O'SULLIVAN: New motion, same as before, with the restriction of fifteen (15) feet and...

JAYE TROTTIER: Could you...

LARRY O'SULLIVAN: ...that we have a non-privacy fence.

MARK OFFICER: The restriction of the pool...?

LARRY O'SULLIVAN: The pool fifteen (15) feet.

MARK OFFICER: Fifteen (15) feet into the setback and...or is that it?

LARRY O'SULLIVAN: That's all.

MARK OFFICER: That's it? Okay.

VICKI KEENAN: Can I ask just a question? If he didn't have the pool, could he put a six (6) foot privacy fence up beyond the setback?

RICHARD CANUEL: Yes, he can put a...

LARRY O'SULLIVAN: You can put a six (6) foot privacy fence up anywhere.

RICHARD CANUEL: ...yes, he can put a solid stockade fence up six (6) feet high right on the property line.

VICKI KEENAN: So then why would we think of...?

MARK OFFICER: Before...I wanna make sure we get a second on this before we get into discussion, so is there a second on this motion?

VICKI KEENAN: I'm sorry.

NEIL DUNN: I'll second that.

MARK OFFICER: Alright, so Neil seconded, okay, let's go. Okay, I just wanted to be official there. So, I'm sorry, so what did you say, Richard?

RICHARD CANUEL: Essentially, he could put a six (6) foot high fence along the property line the perimeter of his lot.

LARRY O'SULLIVAN: Everyone can.

RICHARD CANUEL: Yeah. With the exception of the front.

MARK OFFICER: But he can't cut the trees down.

RICHARD CANUEL: That's right.

[laughter]

RICHARD CANUEL: Exactly.

BARBARA DILORENZO: So...

JAYE TROTTIER: So you're requiring a non-privacy.

LARRY O'SULLIVAN: Requiring a non-privacy fence.

BARBARA DILORENZO: So if we can do that at any point, build a fence...

VICKI KEENAN: Giving a right to take away a right.

BARBARA DILORENZO: ...then why have an attachment...

VICKI KEENAN: That doesn't make any sense to me.

NEIL DUNN: That doesn't either.

VICKI KEENAN: No.

BARBARA DILORENZO: Why have an attachment to...my question is if he can put a fence up anywhere on his property, even within that hundred and fifty (150) feet, then why do we need to...

VICKI KEENAN: Restrict...

BARBARA DILORENZO: ...to have a condition...

YVES STEGER: A restriction.

BARBARA DILORENZO: ...on the pool?

LARRY O'SULLIVAN: Okay, I would...I'll vote no to anything other than that.

VICKI KEENAN: I don't think we're here to sort of grant a right and then take away another right that they already had.

MARK OFFICER: It's too messy, this fence stuff, I mean...

VICKI KEENAN: You know, it feels...yeah. It feels uncomfortable.

YVES STEGER: I think the restriction, the fifteen (15) feet restriction is reasonable...

BARBARA DILORENZO: Yes.

YVES STEGER: ...because that limits the position of the pool and it limits the intrusion into the PRD.

BARBARA DILORENZO: Yes.

YVES STEGER: That, I have no problem.

VICKI KEENAN: I think if you limit the pool...

YVES STEGER: Putting, you know, well, why not specify the color of the fence or, you know, the size or whatever. I mean, this goes well beyond what I think the role of this Zoning Board is.

LARRY O'SULLIVAN: Right now we're...

MARK OFFICER: Mm-hmm.

LARRY O'SULLIVAN: The intention, in my opinion is to limit the structures in the zone. When you add a six (6) foot high fence to the edge of your lot, you wanna tell...when I did it, I was separating my land from the road and, in my opinion, that was as good as I could get without having, you know, fifty (50) year old trees that were, you know, 'x' high and so long and what have you, thick. Because it blocks my view, it allows the...me all the options I want. So, what I'm thinking with the...this thing, this particular case, you put up a big blockade fence of some type, a stockade fence, some type or kind, or any other type of a structure in that...like that...you're really, really against the spirit of the ordinance by blocking off the lot.

YVES STEGER: He can do that today.

[overlapping conversation]

MARK OFFICER: The motion on the table...the motion you have right now, and it's been seconded, doesn't even talk about a fence.

LARRY O'SULLIVAN: Yes, I added the...

YVES STEGER: Yes, he kept the fence in there.

MARK OFFICER: Oh, you are?

VICKI KEENAN: He kept the fence, yeah.

YVES STEGER: Unfortunately.

MARK OFFICER: Alright.

YVES STEGER: I don't think it makes sense, you know, because he can build his fence today, he doesn't have to ask anybody.

LARRY O'SULLIVAN: Absolutely.

YVES STEGER: It is perfectly...it is right.

LARRY O'SULLIVAN: Yeah.

YVES STEGER: And then he can come...

LARRY O'SULLIVAN: But he can't do it in the buffer.

VICKI KEENAN: Yes...

NEIL DUNN: Yes he can.

VICKI KEENAN: Yes he can.

MARK OFFICER: Yeah, he can.

YVES STEGER: Yeah.

BARBARA DILORENZO: He can.

VICKI KEENAN: That's what he just said.

LARRY O'SULLIVAN: Well [inaudible]...that's true, that's true.

YVES STEGER: As long as he doesn't cut the trees...

LARRY O'SULLIVAN: As long as he doesn't cut the trees...

YVES STEGER: ...he can put his fence today...

LARRY O'SULLIVAN: Yup.

YVES STEGER: ...and then ask for the pool later and it doesn't change anything, so I don't think that we should request...

LARRY O'SULLIVAN: Restrict it that way?

YVES STEGER: ...restrict for the...

MARK OFFICER: Yeah.

YVES STEGER: ...the fence. The restriction of the fifteen (15) feet, to limit the intrusion in the PRD is perfectly reasonable and I will definitely support that. But the fence, no, is...

BARBARA DILORENZO: Could I make a motion or do we have to...?

VICKI KEENAN: We have a motion...

MARK OFFICER: Well, we still have a motion on the table.

BARBARA DILORENZO: We still have a motion on the table.

LARRY O'SULLIVAN: I can just withdraw it.

MARK OFFICER: Alright, so Larry withdraws the motion. So there's no motion on the table right now.

BARBARA DILORENZO: Alright, Mr. Chairman...

MARK OFFICER: Please don't say the word 'fence,' but I can't tell you what to...

[laughter]

BARBARA DILORENZO: Don't worry. I would like to make a motion to grant case 8/20/2008-1 with the restriction that it is not to be more than fifteen (15) feet within the PRD.

MARK OFFICER: "It" meaning the pool.

BARBARA DILORENZO: The structure is not to be more than fifteen (15) feet within the PRD.

MARK OFFICER: Alright.

BARBARA DILORENZO: Is that worded properly?

VICKI KEENAN: Do you want to identify that the structure has to be limited to the pool?

JIM SMITH: Not the PRD would be but the setback.

BARBARA DILORENZO: Setback, sorry.

MARK OFFICER: Setback. Within the setback, yeah.

BARBARA DILORENZO: Within the setback.

MARK OFFICER: Okay.

YVES STEGER: I will second that.

MARK OFFICER: Alright, so the motion is by Barbara, seconded by Yves. Any further discussion? Okay, no amendments for fences? Okay, good. Alright, all those in favor, say 'aye.'

NEIL DUNN: Aye.

MARK OFFICER: Aye.

YVES STEGER: Aye.

BARBARA DILORENZO: Aye.

MARK OFFICER: Those opposed?

LARRY O'SULLIVAN: Aye.

MARK OFFICER: Alright, so the motion carries, four (4), one (1).

RESULT: THE MOTION TO GRANT THE AREA VARIANCE WITH RESTRICTIONS WAS APPROVED, 4-0-1.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED SEPTEMBER 17, 2008 WITH A MOTION MADE BY LARRY O'SULLIVAN,
SECONDED BY NEIL DUNN AND APPROVED 5-0-0.