



BOARD OF ZONING APPEALS STAFF REPORT

To: Members of the Board of Zoning Appeals

From: Tom Vander Woude, Planning Director

Meeting Date: September 14, 2021

Agenda Item: BZA Docket No. 21-010

Hearing: **PUBLIC HEARING**

Application Type: Variance

Summary: Kyle and Jennifer Dempsey requesting approval of a variance from the fence requirement for a residential swimming pool at 9745 Laurel Court.

Applicant: Jared Tauber on behalf of Kyle and Jennifer Dempsey

Property Address: 9745 Laurel Court

Current Zoning: CD-3.R2 60' Lot One Family Residence District

Adjacent Zoning: North: CD-3.R2
South: CD-3.R1
East: CD-3.R2
West: CD-3.R2

Action Requested: Approve variance

Additional Actions Required: Findings of Fact

Staff Recommendation: Schedule public hearing

Attachments: BZA 21-010 variance application
Applicant provided slideshow

BACKGROUND

Kyle and Jennifer Dempsey have submitted a building permit application for an in-ground swimming pool to be installed in the rear yard of their single-family home at 9745 Laurel Dr. The rear yard is fenced on three sides. The applicants are requesting a variance from the requirement that the entire yard be fenced.

The requirement for fencing is found in Munster Municipal Code Sec. 26-159. - Enclosures.

(a) Except as to a type I pool, every outdoor swimming pool or entire yard area shall be completely surrounded by a fence or wall six feet in height, which shall be so constructed as not to have openings, holes or gaps wider than four inches, except for doorways and gateways. A type II or type III family pool may have an approved rim-attached enclosure which shall serve as compliance with this section in place of the fence height requirements. All gates or doors opening through such enclosures shall be equipped with a self-latching device for keeping the gate or door securely closed. At all times when the pool or yard area is not in actual use, all doors and gates to the pool shall be locked. These requirements shall be applicable to all such existing outdoor swimming pools and to all outdoor swimming pools hereafter constructed. No person in possession of land within the town, either as the owner, purchaser, lessee, tenant or licensee, upon which is situated an outdoor swimming pool shall fail to provide and maintain such fence, wall or rim as provided in this section.

The applicants are proposing the installation of an electronic pool cover as a substitute method of preventing access to the pool when not in use.

DISCUSSION

The swimming pool ordinance is not part of the zoning code, but it provides that the board of zoning appeals may grant variances that do not conflict with the purpose of the article. This is a lower bar than a zoning variance.

Sec. 26-102. - Purpose of article.

- (a) The purpose of this article is to create a legal framework for a comprehensive town policy on the construction, operation and maintenance of swimming pools. With this concept in mind, this article is adopted for the following purposes:*
- (1) Preserve, protect and promote the public health, safety and welfare.*
 - (2) Protect the general public from damage and/or injury which may be caused by the faulty and uncontrolled construction or maintenance of swimming pools.*
 - (3) Preserve the value of adjoining private property.*

- (b) It is the intent of this article that the board of zoning appeals may permit individual variances when the request for variance from this article is not in conflict with this statement of purpose.*

(Code 1985, § 25-2)

In addition, Sec. 26-159. – Enclosures allows for substitute protective devices or structures.

(b)The board of zoning appeals may make modifications in individual cases, upon a showing of good cause, with respect to the height, nature or location of the fence, wall, gates or latches, or the necessity therefor, provided that the protection as sought under this section is not reduced thereby. The board of zoning appeals may permit other protective devices or structures to be used so long as the degree of protection afforded by the substitute devices or structures is not less than the protection afforded by the fence, wall, gate and latch described in this section.

Staff notes that the State of Indiana Residential Building Code permits automatic pool covers as a substitute for fencing.

SECTION R326.27.3. Access to residential pools shall be restricted by one (1) of the following means:

1. Walls or fencing not less than four (4) feet high and completely surrounding the pool and deck area with the exception of self-closing and latching gates and doors, both capable of being locked.
2. Other means not less than four (4) feet high and deemed impenetrable by the enforcing authority at the time of construction and completely surrounding the pool and deck area when the pool is not in use.
3. A combination of item 1 and item 2 that completely surrounds the pool and deck with the exception of self-closing and latching gates and doors which are capable of being locked. This applies to item 1, item 2, and this item only.
4. A power safety pool cover that:
 - 4.1. shall provide a continuous connection between the cover and the deck, so as to prohibit access to the pool when the cover is completely drawn over the pool;
 - 4.2. shall be mechanically operated such that the cover cannot be drawn open or retracted without the use of a:
 - 4.2.1. key; or
 - 4.2.2. key and switch; or
 - 4.2.3. touch pad with a personal access code;
 - 4.3. is installed with track, rollers, rails, guides, or other accessories necessary to accomplish item 4.1 and item 4.2, in accordance with the manufacturer's instructions; and
 - 4.4. shall bear an identification tag indicating that the cover satisfies the requirements of ASTM F 1346-91 (2018), Standards Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas, and Hot Tubs, as published by ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428-2959 for power safety pool covers.

RECOMMENDATION

Motion to approve BZA Docket No. 21-010, permitting Kyle and Jennifer Dempsey to install an automatic pool cover as a substitute protective device for a fence, wall, gate, and latch for the in-ground swimming pool located 9745 Laurel Court.



PBZA
Petition BZA 21-010
Date: 7/23/21
Application Fee: \$ 450
Sign Fee: \$ _____

Town of Munster Board of Zoning Appeals Petition Application

OWNER INFORMATION:

Kyle & Jennifer Dumpsey

Name of Owner

9745 Laurel Ct, Munster, IN 46321

Street address, City, ST, ZIP Code

219.845.6666 219.845.1571

Phone Number

jtambor@tamborlaw.com

Email address

APPLICANT OR PETITIONER INFORMATION (if different than above):

Jared Tambor

Name of Applicant/Petitioner

1415 Eagle Ridge Dr, Scher IN 46375

Street address, City, ST, ZIP Code

219.845.6666

Phone Number

jtambor@tamborlaw.com

Email address

PROPERTY INFORMATION:

Business or Development Name (if applicable)

9745 Laurel Ct, Munster, IN 46321

Address of Property or Legal Description

CD-3-R2

Current Zoning

APPLICATION INFORMATION:

Please select what this Application is for:

- ☒ **Variance** If yes, select one of the following: ☐ Use ☒ **Developmental Standards**
- ☐ **Conditional Use**
- ☐ **Administrative Appeal**

Brief Description of Project and List of Variances or Conditional Uses Being Requested (if applicable):

Under Section 26-159, any outdoor swimming pool or entire yard area shall be completely surrounded by a fence or wall. The Petitioner is requesting that no fence be required as the Petitioner will have an electric cover on their pool that will remain closed when not in use.

N/A

Name of Registered Engineer, Architect or Land Surveyor

Phone Number

Street address, City, ST, ZIP Code

Email address



Petition BZA _____ - _____

Town of Munster Board of Zoning Appeals Application Signature Page

I hereby authorize Jared Tanber to act on my behalf as my agent in this petition and to furnish, upon request, supplemental information in support of this petition application.

Jennifer Dempsey
Signature of Owner

7/21/21
Date

JAMA
Signature of Applicant

7/16/21
Date

REQUIRED ATTACHMENTS

Required Attachments for Board of Zoning Appeals Applications

To ensure that adequate information is provided to the BZA, please check off each of these items and provide documentation to the Community Development Department at the time of submittal of the application.

ALL APPLICATIONS	Included	N/A
Narrative statement describing project	✓	
Property owner consent (Signature page)	✓	
Proof of Ownership (e.g. copy of tax bill)	✓	
Plat of Survey depicting current conditions		
Site Plan containing the following:		
Boundary identification		
Fire hydrant locations		
Accessory structures		
Parking lot design		
Utility location		
Building footprints		
Proposed curb cuts		
Drainage/detention plans		
Traffic circulation		
Ingress/egress locations		
Major topographic information		
Infrastructure improvements		
Conditions of Approval Form (Note: complete the form specific to your petition)*	✓	✗
Any other information that the BZA may find useful in determining whether the application is merited.		

* Unique conditions have been established for special use permits for public garages, gas filling stations, used car lots, garden centers, massage parlors, adult bookstores, tattoo parlors, adult cabarets, and outdoor dining areas. Community Development staff will advise potential applicants of these at the pre-application meeting.

NOTE: If you checked any exhibits "N/A", please explain:



GLENN KRACHT ASSOCIATES

314 FAIRFIELD DRIVE

CROWN POINT, IN 46307

PHONE: (219) 663-8623

FAX: (219) 663-8945

E-MAIL: GKRACT@COMCAST.NET

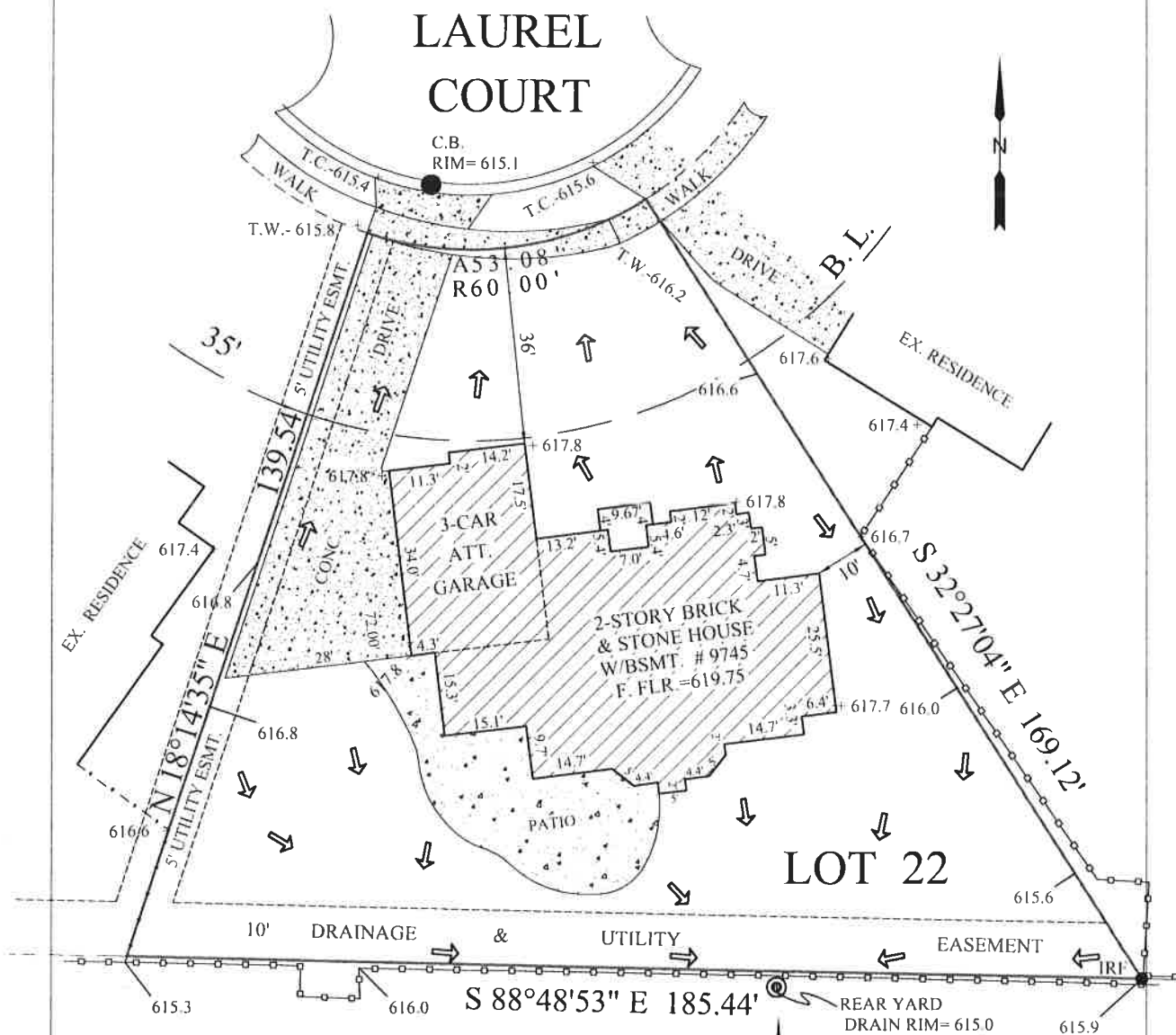
PLAT OF SURVEY

PROPERTY ADDRESS: 9745 LAUREL COURT

MUNSTER, IN 46321

LEGAL DESCRIPTION:

Lot 22 FIRST METROPOLITAN ESTATES of WHITE OAK, as per plat thereof recorded in Plat Book 92 page 99 in the Office of the Recorder of Lake County, Indiana.



CLIENT: DUTKO
CONSTRUCTION, INC.
DATE: OCT. 11, 2014
JOB NO.: 141911



SCALE: 1" = 20'

Property is located in Flood Zone "X UNSHADED" FIRM Town of Munster per Community Panel No. 180189C0136E, Effective Date JANUARY 18, 2012.

I hereby certify that the property herein was surveyed under my supervision on or about the date indicated for the purpose of positioning a residence with offset stakes on the property which has been subdivided and surveyed according to TITLE 865, ARTICLE 1, CHAPTER 12 of the Indiana Administrative Code by previous Surveys, and that plat hereon drawn represents said survey. No dimensions should be assumed or scaled. Title policy, local building codes and further Recorded Easements & restrictive covenants should be investigated prior to making improvements to said property.

Glenn H. Kracht

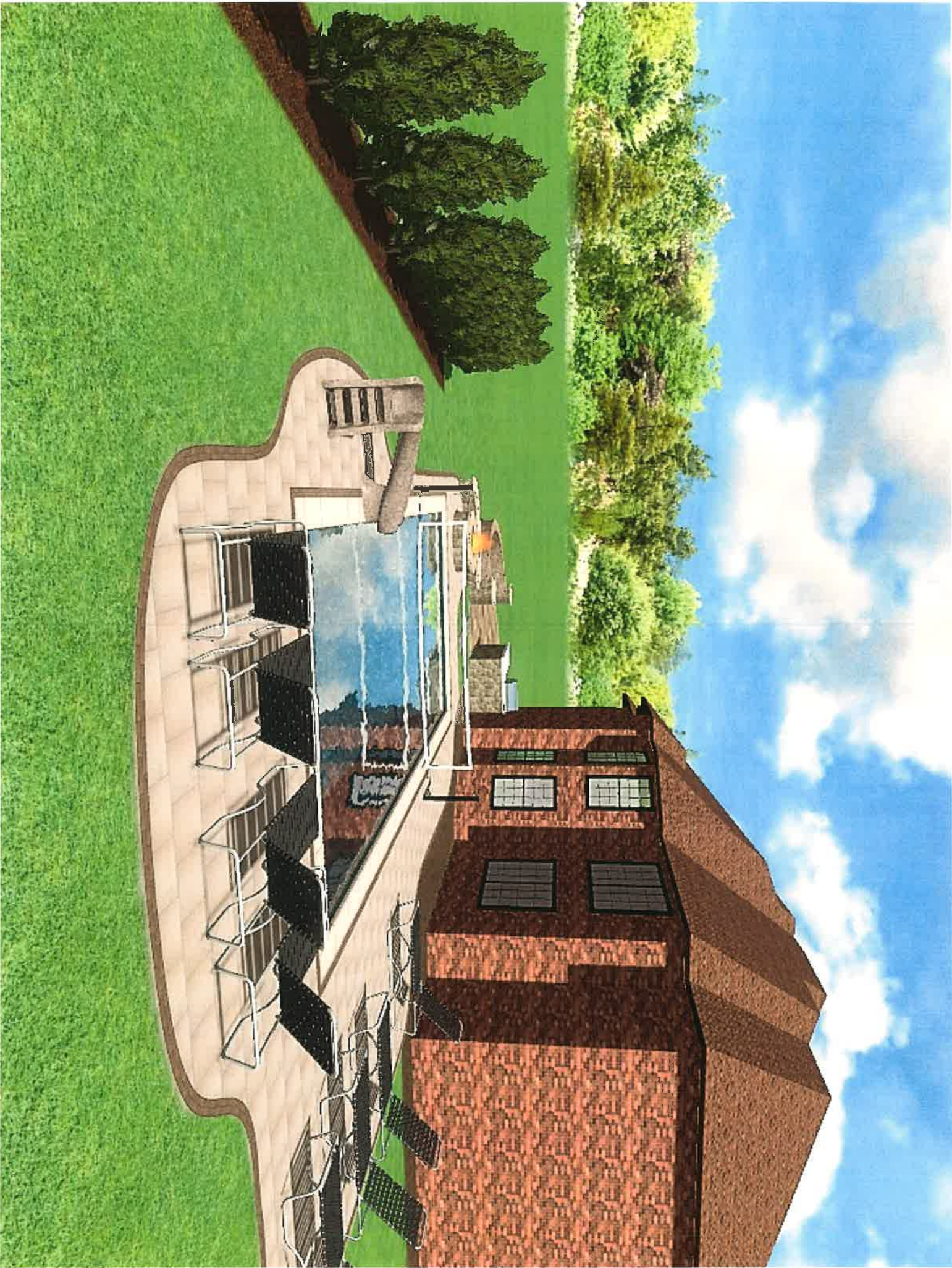
IN Registered Surveyor No. 9400001

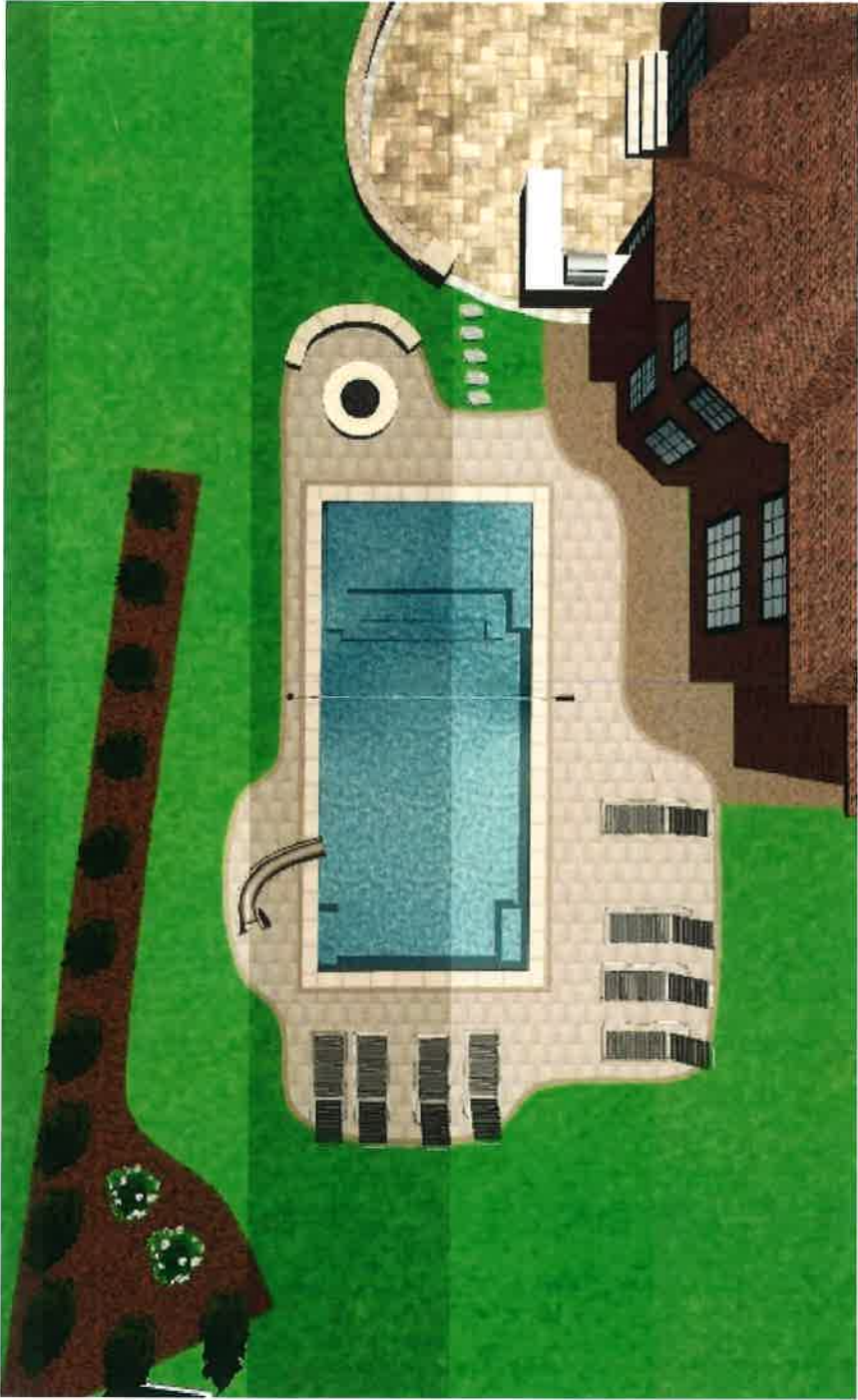
LEGEND:

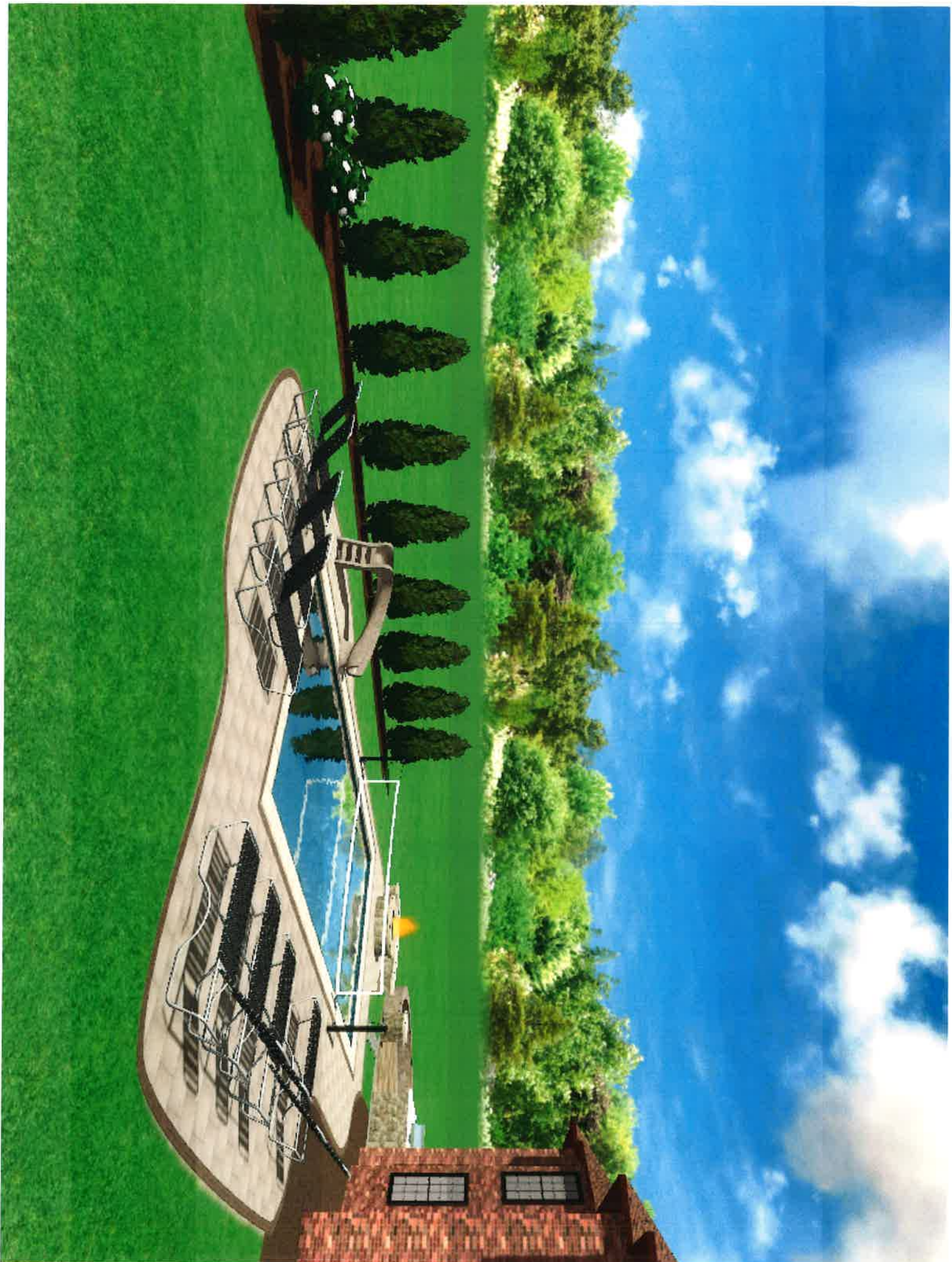
EXISTING GRADE + 617.2

DRAINAGE FLOW









DEVELOPMENTAL VARIANCE CONDITIONS OF APPROVAL

The Munster Board of Zoning Appeals is authorized to hear petitions for developmental standards variances and to approve or deny. The Board of Zoning Appeals may also impose reasonable conditions and restrictions. Indiana Code 36-7-4-918.5 lists the legal criteria for a developmental standards variance:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community. Explain why this statement is true in this case:

Pools have evolved and now offer a safe alternative to fences. Also, Petitioner's yard is fully enclosed with fences from the neighboring properties. The only opening is through Petitioner's driveway to the back yard.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. Explain why this statement is true in this case:

The adjacent property owners all currently have fences. This variance has no effect on their value or use.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property. Explain why this statement is true in this case:

Petitioner would have to go through an unnecessary expense to put a fence around their yard that is 90% enclosed by neighboring properties.

Attach additional pages if necessary

Town of Munster
Legal Notice
BOARD OF ZONING APPEALS PETITION NO. _____

Notice is hereby given that the Town of Munster, Lake County, Indiana, will hold a public hearing in the Munster Town Hall, 1005 Ridge Road, at 6:45 p.m. on September 14, 2021, to consider the following petition, in accordance with the Munster Zoning Ordinance:

Variance for Developmental Standards (26-157)

Common Address and/or Description: 9745 Laurel Ct, Munster, IN 46321

Legal Description:

Lot 22, in First Metropolitan Estates of White Oak, An Addition to the Town of Munster, as per plat thereof, Recorded in Plat Book 92, Page 99, and as amended by certificate of Amendment Recorded January 29, 2003 as Document No. 2003-010212 in the office of the Recorder of Lake County, Indiana

Anyone interested in the Petition may appear in person or by agent at the public hearing. Written objections filed with the Board of Zoning Appeals Executive Secretary, Thomas Vander Woude, before the hearing will be considered. The hearing may be continued from time to time as may be found necessary. All information concerning such petition is on file in the Community Development Office, 1005 Ridge Road, Munster, Indiana, 46321, for public examination.

Thomas Vander Woude, Executive Secretary

DEMPSEY RESIDENCE

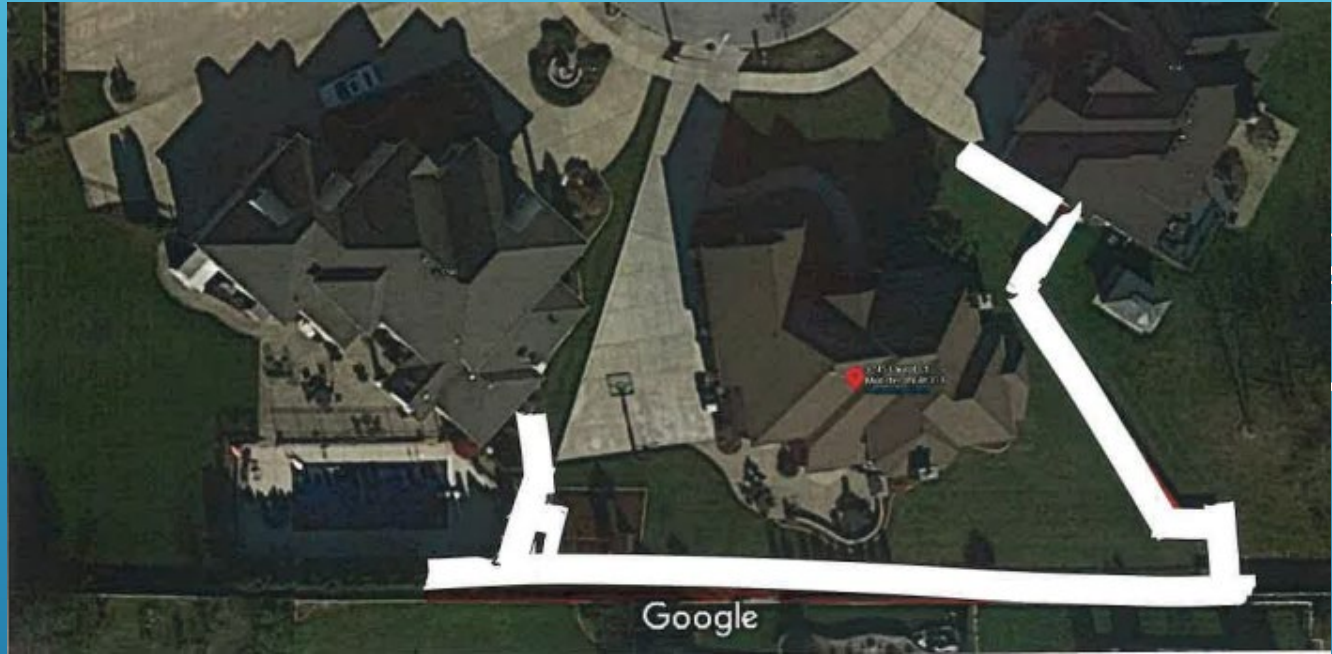
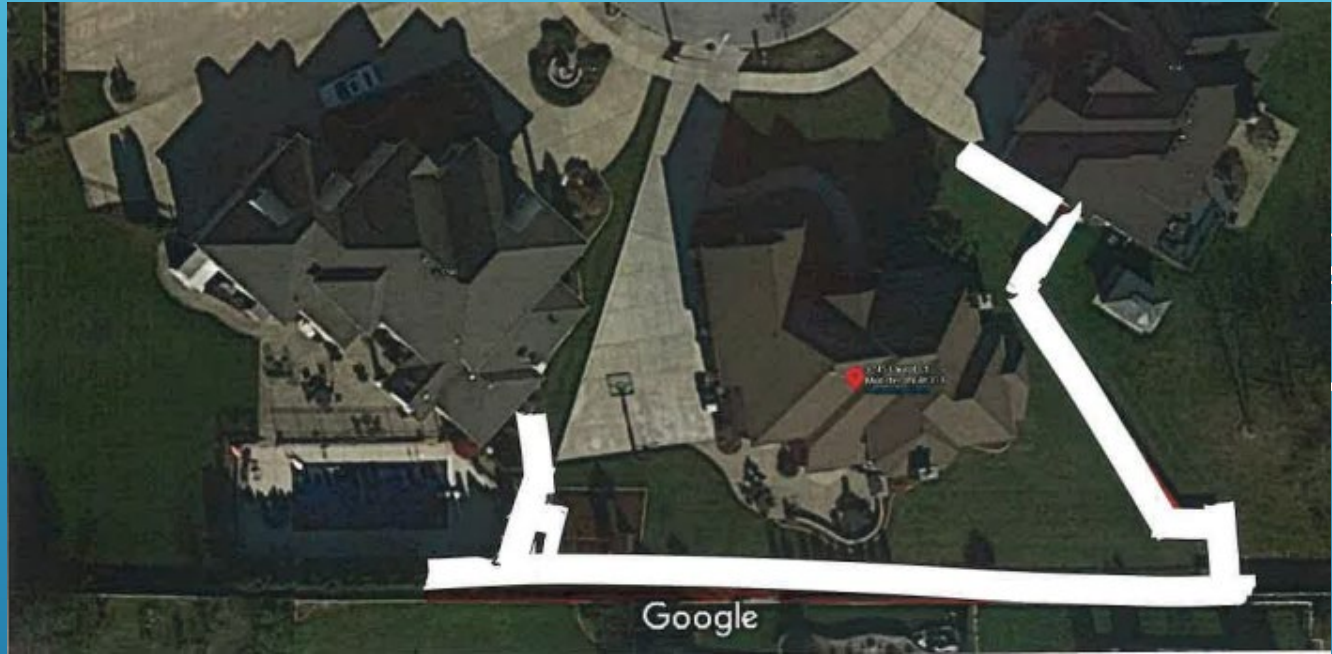
Developmental Variance Request

September 14, 2021 Public Hearing



9745 LAUREL CT

- ▶ Single Family Residence
- ▶ Petitioner is planning to construct an inground pool with automatic cover
- ▶ Section 26-159 of the Munster Municipal Code prohibits outdoor swimming pools without a fence









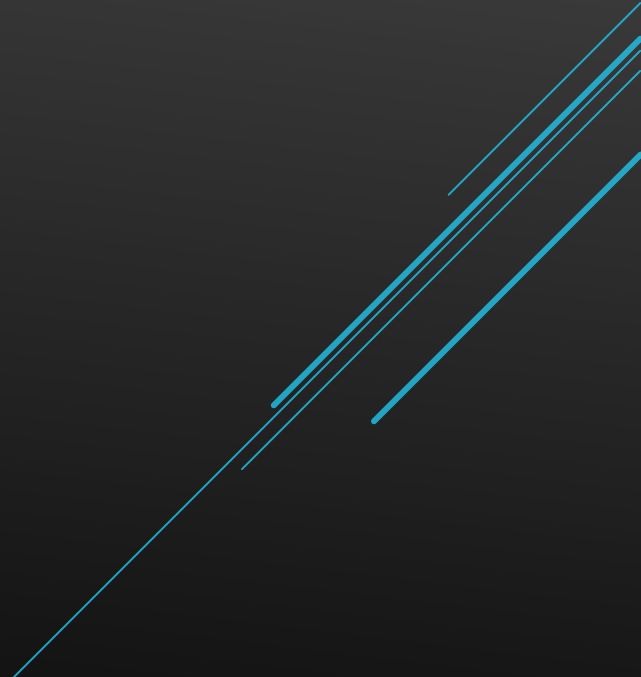
DEVELOPMENTAL VARIANCE

- ▶ Approval will not be injurious to the public health, safety, morals and general welfare of the community
- ▶ Use and value of the area adjacent to the property will not be affected in a substantially adverse manner
- ▶ Strick application of the terms of the zoning ordinance will result in practical difficulties in the use of the property

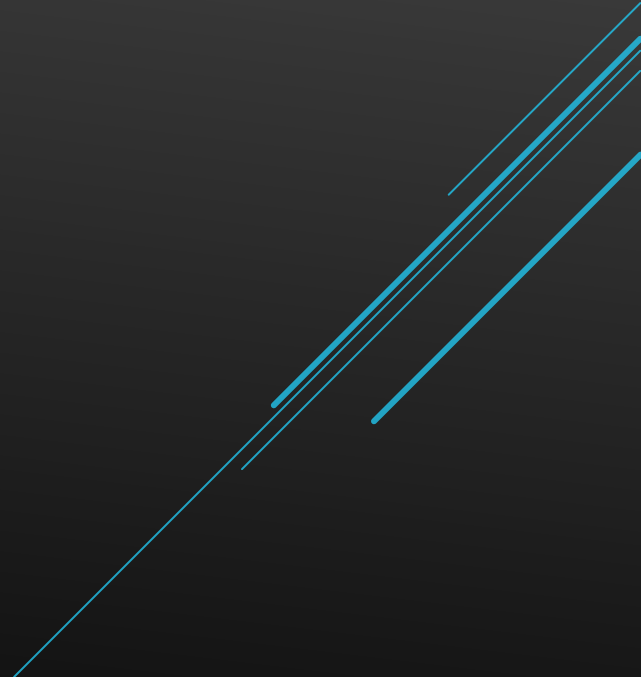
APPROVAL WILL NOT BE INJURIOUS TO THE
PUBLIC HEALTH, SAFETY, MORALS AND
GENERAL WELFARE OF THE COMMUNITY



APPROVAL WILL NOT BE INJURIOUS TO THE PUBLIC HEALTH, SAFETY, MORALS AND GENERAL WELFARE OF THE COMMUNITY

- ▶ Coverstar automatic covers use an exclusive, patented process to heat seal webbing around a polymer bead and weld it to the cover in one step. Independent lab tests show Coverstar's webbing is over twice as strong as our competitors.
 - ▶ Coverstar fabric is made from specially formulated heavy-duty vinyl fabric for superior product performance. Our strong, durable top-of-the-line fabric offers these exclusive features:
 - Ultraviolet protection
 - Chemical resistance
 - Mildew resistance
 - Fabric strength (17 oz)
 - Tear resistance
 - Abrasion resistance
 - Minimal fabric shrinkage (less than 1%)
- 

APPROVAL WILL NOT BE INJURIOUS TO THE PUBLIC HEALTH, SAFETY, MORALS AND GENERAL WELFARE OF THE COMMUNITY

- ▶ Pool covers are often more reliable than other safety equipment, like fences, because they create a barrier that directly seals your pool off. Even with a fence, if someone is able to get in the pool area, a pool cover will prevent them from entering the pool without your permission.
 - ▶ Coverstar fabric is made from specially formulated heavy-duty vinyl fabric for superior product performance. Our strong, durable top-of-the-line fabric offers these exclusive features:
 - Ultraviolet protection
 - Chemical resistance
 - Mildew resistance
 - Fabric strength (17 oz)
 - Tear resistance
 - Abrasion resistance
 - Minimal fabric shrinkage (less than 1%)
- 

APPROVAL WILL NOT BE INJURIOUS TO THE PUBLIC HEALTH, SAFETY, MORALS AND GENERAL WELFARE OF THE COMMUNITY

- ▶ 675 IAC 20-4-27 Safety features Authority: IC 22-13-2-2; IC 22-13-2-13 Affected: IC 22-12; IC 22-13; IC 22-15; IC 36-7 Sec. 27.
- ▶ Access to residential pools shall be restricted by one (1) of the following means:
 - ▶ (1) Walls or fencing not less than five (5) feet high and completely surrounding the pool and deck area with the exception of self-closing and latching gates and doors, both capable of being locked.
 - ▶ (2) Other means not less than five (5) feet high and deemed impenetrable by the enforcing authority at the time of construction and completely surrounding the pool and deck area when the pool is not in use.
 - ▶ (3) A combination of subdivisions (1) and (2) that completely surrounds the pool and deck with the exception of self-closing and latching gates and doors which are capable of being locked. This applies to subdivisions (1) and (2) and this subdivision only.
 - ▶ **(4) A power safety pool cover which shall: (A) provide a continuous connection between the cover and the deck, so as to prohibit access to the pool when the cover SWIMMING POOL CODE Indiana Administrative Code Page 45 is completely drawn over the pool; (B) be mechanically operated by a key or key and switch such that the cover cannot be drawn open or retracted without the use of a key; (C) is installed with track, rollers, rails, guides, or other accessories necessary to accomplish clauses (A) and (B), in accordance with the manufacturer's instructions; and (D) bear an identification tag indicating that the cover satisfies the requirements of ASTM F1346 for power safety pool covers**

USE AND VALUE OF THE AREA ADJACENT TO THE PROPERTY WILL NOT BE AFFECTED IN A SUBSTANTIALLY ADVERSE MANNER

PETITION FOR DEVELOPMENT VARIANCE

Petitioner is seeking variance to allow for an ^{ground} indoor pool in their backyard without having to enclose it with a fence due to an electric cover being on the pool.

We approve Petitioner's developmental variance:

NAME

KEITH ERICKSON

Nalan Turan

Brooke Doesburg

Natalie Starobck

Milanka Irlinovic

Carol Mitvakis

Tala Haddadin

Gina Compagna

Anita Reyna

Kristen Mamick

ADDRESS

9733 Laurel ct, munster 46321

9734 Laurel ct Munster 46321

9710 Laurel Ct Munster, IN 46321

1027 Laurel Lane Munster, IN 46321

9728 Laurel Ct. Munster, IN 46321

9740 Laurel Ct Munster, IN 46321

9741 Laurel ct.

9922 Wildflower Ln.

9734 Warwick ct.

1737 Laurel Ln.

ROSEWOOD



MEGAN WAY



STRICT APPLICATION OF THE TERMS OF THE ZONING ORDINANCE WILL RESULT IN PRACTICAL DIFFICULTIES IN THE USE OF THE PROPERTY

- ▶ The “practical difficulties” standard is most commonly used in the context of area **variances** and is generally considered to be more relaxed than the unnecessary **hardship** standard applied to use **variances**.
 - ▶ Most communities allow covers instead of fences
 - ▶ Petitioner currently has difference fences enclosing 80% of his yard
 - ▶ Economic Impact
 - ▶ Not practical to install fence along with driveway, cannot cut off driveway
 - ▶ Having 4 different fences enclosing a backyard is not practical
 - ▶ There is a reasonable alternative to adding the fence
- 