The Westfield Washington Township Board of Zoning Appeals met at 7:00 p.m. on Tuesday, March 11, 2008 at Westfield Town Hall. Members present included Dan Degnan, Martin Raines, William Sanders, and Craig Wood. Also present were Greg Anderson, Director; Kevin Todd, Planner II; and City Attorney, Brian Zaiger.

Sanders reviewed the Public Hearing Rules and Procedures.

APPROVAL OF MINUTES

Wood moved to approve the February 12, 2008 minutes as presented.

Raines seconded, and the motion passed by voice vote.

OLD BUSINESS

0802-VS-02 15391 Whistling Lane, *Pools of Fun* The Appellant is requesting a Variance of Standard from the Bridgewater PUD (Ord. 06-49), to reduce the setback for an in-ground pool from 35 feet to 30 feet in Parcel B, Bridgewater PUD.

Mr. Rick Kendall, Pools of Fun, representing the Hendersons, stated this petition had been continued from last month and that the drawing has been reviewed and it has been determined the accessory structure does need to be five feet from the house. In addition, he stated he has obtained, in writing, approval from the Homeowner's Association at The Bridgewater Club.

Todd added since the continuance last month, staff has researched the issue of safety and minimum distance between the pool and the structure and have found support in the State Building Code, where it states a minimum of six feet separation between the pool and the structure, which essentially pushes the pool into the required rear yard. As the Code was reviewed, the intent is to help preserve the structural integrity of the foundation of the building and to help insure safety in accessing the pool in the event of an emergency and also accessing the structure in the event of an emergency as well.

Wood asked if staff had any thoughts about a different configuration for the pool.

Todd responded it is possible that a custom pool could be designed to fit the parameters of our setbacks; not sure if that is something the Board would want to entertain or not.

Kendall cautioned that one detail about a custom pool is that the safety cover, which is required, will still be rectangular.

Degnan questioned the legality of a diving pool.

Kendall responded, stating that State Code has a slope requirement where coming off the steps, the pool stays flat, and once you start your descent down to the deeper end, the Code states for every foot you go in depth, you must go three foot horizontally, so we have to have fourteen foot

minimum and than a six foot flat once you hit the eight foot required minimum depth and then you run a diving well of six foot flat, which allows you to put a diving board with no spring.

Raines moved to approve 0802-VS-02.

Degnan seconded, and the motion passed 4-0.

Wood moved to adopt the Staff's Finding of Fact.

Raines seconded, and the motion passed by voice vote.

NEW BUSINESS

0803-VS-03 318 North Union Street, *Weihe Engineers, Inc.*
The Appellant is requesting a Variance of Standard from the Westfield-Washington Zoning Ordinance (WC 16.06.060) to reduce the required northern buffer yard from 40 feet to 20 feet in the SF-3 District.

Wood stated because of the location and entity involved in this case, he is a member of the church and since the recommendation of staff is to deny the variance, he believes it is in his best interest to recuse himself.

Sanders asked if there was a plan to have a special meeting for this variance request.

Todd stated there has been no resolution on this since he has not heard from the fifth member regarding his availability next week for a special meeting.

Zaiger stated what was heard was that two members might be recusing themselves because of their membership at the church and that he agrees with their reasons. If they indeed want to recuse themselves, we will set a separate meeting for this.

Raines recused himself.

Zaiger advised the two members that are recusing themselves to leave the room, so that the rest of the Board could discuss this issue further. He also advised that the general public be advised of the situation.

Sanders asked whether anyone was present to participate in the public hearing on this case.

Todd stated he has one card.

Zaiger stated the Public Hearing should be postponed until the available Board can hear public comments.

Todd asked Zaiger how this affects notice.

Zaiger stated notice will be carried over. We should give notice of the next hearing and show it on the notice on the outside of the building that it was carried over.

After discussion it was determined that 0803-VS-03 will be heard at a special meeting on Monday, March 17 at 6:00 p.m. in the City Hall Assembly Room.

Wood and Raines returned to the proceedings.

0803-VS-04 1027 Watertown Drive, *Mike & Adrienne Riddle*
The Appellant is requesting a Variance of Standard from the Westfield-Washington Zoning Ordinance (WC 16.04.030, E6) to reduce the required rear yard setback for swimming pools from 30 feet to 20 feet in the SF-3 (Cluster) District.

Zaiger introduced the request for a variance of standard for a set back reduction for a swimming pool. He further stated that staff's recommendation is to approve the variance based on the findings of the report and the following two conditions:

1. That the petitioner comply with any requirements of the Westfield Public Works Department, including any soil erosion control measures during construction/installation of the pool and associated deck; and,

2. That no further encroachment of the rear yard setback occurs.

Mr. Mike Rutherford, Blue Haven Pools, representing the Riddles, presented the details of the variance request explaining the layout of the backyard and requesting approval to allow the pool to be moved ten feet into the thirty foot setback.

Wood asked if this is a diving pool.

Kendall responded this is a non-diving swimming pool.

Wood asked if it is possible to put in a smaller pool.

Kendall responded since this is a 16' x 32', it would then be six foot wide and that's very small and narrow pool.

A Public Hearing opened at 7:25 p.m.

Mr. Tom Ansech, representing the Centennial Homeowner's Board, asked for assurance that the four-foot fence will remain and not be changed. He also informed the Board that the HOA currently has restrictions about obstructing the view of the pond other homeowners.

Sanders asked if there were discussions within the homeowner's association with this particular homeowner about those items.

Ansech responded no.

Anderson stated for further clarification, as the Director of Community Development, it is my responsibility to make sure we have administrative determinations on this type of situation. We had to look at the requirements for swimming pools under the Westfield Code, which is our local ordinance, which reads swimming pools shall be enclosed with a fence not less than 5 feet in height. He further stated the Indiana Administrative Code lists four alternative means of restricting access to a residential pool, which include a five foot wall or fence, impenetrable means of not less than five feet in height, a combination of options one and two and/or an automatic pool cover. Staff reviewed and identified a gap in the two governing documents. Anderson's determination as the Director with the four options found in the Indiana Administrative Code, that this application meets or exceeds the requirements of the Westfield Zoning Ordinance since he has the four foot fence and a locking pool cover.

Degnan asked Ansech if he said he wanted to make sure the four foot fence was still in place.

Ansech replied no, the covenants do not allow a fence greater than four foot by the pond.

Sanders stated the ordinance would prevail.

Anderson stated our ordinance prevails for enforcement purposes, but there are also the HOA covenants and restrictions which we do not enforce.

Zaiger stated Anderson is making a determination that there is at least a four foot fence and a locking closing cover which meets or exceeds our ordinance requirement of a higher fence.

Ansech just wanted to make sure that a higher fence was not going to be put up. He agreed to convey this information to the HOA.

Anderson stated the building permit could be pended until the HOA is satisfied.

Degnan asked if satisfaction of the HOA covenants could be a condition of a variance request.

Anderson stated it could be a condition.

Zaiger responded yes, it would be an additional safeguard.

Anderson stated a letter of approval or satisfaction from the HOA could be a requirement.

Todd stated that staff received email communication from the Centennial HOA which noted what Ansech has already stated.

The Public Hearing closed at 7:34 p.m.

Wood asked if there are any plans for an additional structure.

Kendall responded, no, just the swimming pool and the concrete decking around it.

Raines moved to approve 0803-VS-04 with the following conditions:

1. That the petitioner comply with any requirements of the Westfield Public Works Department, including any soil erosion control measures during construction/installation of the pool and associated deck;
2. That no further encroachment of the rear yard occurs;
3. That the requirements of the Centennial Home Owners Association approve plans prior to the issuance of a building permit;
4. That a fence no more or less than four feet (4') in height remain on the subject property; and,
5. That the installation of the pool include an automatic, locking pool cover.

Wood seconded, and the motion passed 4-0.

Sanders moved to adopt Staff's Finding of Fact.

Wood seconded, and the motion passed by voice vote.

The meeting adjourned at 7:35 p.m.

Chairman

Secretary