

SANGAMON COUNTY, ILLINOIS

ORDINANCE
NUMBER 22-48

**AN ORDINANCE AUTHORIZING A VARIANCE TO ALLOW FOR A POOL
WITHOUT FENCE ENCLOSURE FOR PIN: 29-08.0-200-038**

DAVE KIMSEY, Village President
DAN HOLDEN, Village Clerk

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JOHN FLETCHER
BRETT GERGER
TIM NICE
CARL TRY
Village Trustees

Published in pamphlet form by authority of the President and Board of Trustees of the Village of
Chatham
on November 22, 2022

Sorling Northrup – 1 N. Old State Capitol Plaza, Suite 200, P.O. Box 5131, Springfield, IL
62705

ORDINANCE NO. 22- 48

**AN ORDINANCE AUTHORIZING A VARIANCE TO ALLOW FOR A POOL
WITHOUT FENCE ENCLOSURE FOR PIN: 29-08.0-200-038**

WHEREAS, the Village of Chatham, Sangamon County, State of Illinois, is a duly organized and existing Village created under the provisions of the laws of the State of Illinois; and,

WHEREAS, Richard “Rick” M. and Kimberly Willey (collectively “Owner”) are the owners of record of certain real property commonly referred to as 2631 E. Walnut Street, Chatham, IL 62629, PIN: 29-08.0-200-038 (hereinafter referred to as “Property”); and,

WHEREAS, the Owner filed for a variance at the Property to allow for an in-ground swimming pool with specialized pool cover and without a fence enclosure as required in the Chatham Code of Ordinances § 156.14; and,

WHEREAS, a public hearing was duly noticed by publication and held by the Chatham Zoning Board of Appeals on November 7, 2022; and,

WHEREAS, the Zoning Board of Appeals met on November 7, 2022, and voted to recommend granting the requested variance; and,

WHEREAS, the Chatham Code of Ordinances § 158.121 permits the Village Board to approve variations from the Zoning Code to vary requirements for fences and swimming pools; and,

WHEREAS, the Village Board of Trustees and the President of the Village of Chatham believe it is in the best interests of the Village to grant the requested variance.

NOW THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Chatham, Sangamon County, Illinois, as follows:

Section 1. Recitals. The foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1.

Section 2. Findings of Fact. Regarding the need for all of the variations requested by Petitioner, the Board of Trustees find as follows:

- A. **Reasonable Return.** Due to the size and location of the lot and the cost of installation of a specialized pool cover capable of holding up to 3500 pounds, the strict application of the regulations set forth in the Zoning Code would result in an unnecessary and undue hardship, and the property could not yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located.
- B. **Unique Circumstances.** The owner has no immediate adjacent neighbors, and the property sits alone on approximately six acres. The variance is necessary solely as a result of the installation of the specialized pool cover and the location of the lot, and those circumstances are unique to the property.
- C. **Not Alter Local Character.** The property has no immediately adjacent neighbors and the swimming pool is not visible from the road. Accordingly, the variance, if granted, will not alter the essential character of the locality.

Section 3. Description of the Property. The property is commonly referred to as 2631 E. Walnut Street, Chatham, IL 62629, PIN: 29-08.0-200-038.

Section 4. Public Hearing. A public hearing was duly advertised in the Chatham Clarion and held by the Zoning Board of Appeals November 7, 2022, at which time the Zoning Board of Appeals recommended granting the requested variance.

Section 5. Variance. The variations requested in the Petition for Zoning Variance to the Zoning Code, outlined herein, is hereby granted as follows:

- A. A variance allowing for an in-ground swimming pool with specialized pool cover capable of holding up to 3500 pounds and without a fence enclosure.

Section 6. Severability. In the event that any section, clause, provision, or part of this Ordinance shall be found and determined to be invalid by a court of competent jurisdiction, all valid parts that are severable from the invalid parts shall remain in full force and effect.


Section 7. Repeal and Savings Clause. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall

affect any rights, action, or causes of action which shall have accrued to the Village of Chatham prior to the effective date of this Ordinance.

Section 8. Effectiveness. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law.

	AYE	NAY	ABSTAIN	ABSENT
KRISTEN CHIARO	✓			
MEREDITH FERGUSON	✓			
JOHN FLETCHER	✓			
BRETT GERGER		✓		
TIM NICE				✓
CARL TRY		✓		
DAVE KIMSEY				
TOTAL	3	2	0	4

APPROVED by the President of the Village of Chatham, Illinois this 22 day of November, 2022.



 Dave Kimsey, Village President

Attest:


 Dan Holden, Village Clerk

ZONING VARIANCE RECOMMENDATION AND FINDING OF FACT

To: Village of Chatham Board of Trustees

From: Zoning Board of Appeals

Re: Recommendation for Zoning Variance for 2631 East Walnut Street

Date: November 8, 2022

On November 7, 2022, the Zoning Board of Appeals held a public hearing for a zoning variance at 2631 East Walnut Street.. The notice of public hearing was published in the Chatham Clarion on October 14, 2022.

Mr. Rick Willey, owner of 2631 East Walnut Street, petitioned the Village of Chatham Zoning Board of Appeals to allow the use of a specialized pool cover over his in-ground swimming pool in lieu of a fence at 2631 East Walnut Street.

Based on the public hearing, the ZBA voted **5 – yes to 2 – no**, with none absent, to allow the zoning variance at 9113 Gordon Drive. The ZBA further made the following findings of fact:

Below is a list of suggested guidelines which are to be used by the ZBA in making an informed vote concerning zoning variations:

(C) Standards

1. The Zoning Board of Appeals shall not recommend variance of the provisions of this chapter as authorized in this section unless it shall have made findings based upon the evidence presented to it that all of the following conditions apply:

(a) That the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located;

Ryan Vaughn: Petitioner's request was to use a specialized retractable pool cover capable of holding up to 3500 pounds in lieu of a fence. Petitioner testified that he

had spoken to the Village code enforcement officer before building the pool, and was told that he could use the specialized pool cover without having to have a fence and without having to request a variance. Petitioner began construction of the pool shortly thereafter. However, after having started construction, he was told by the code enforcement officer that he would, in fact, now have to request a variance. While the petitioner certainly could build a fence in line with regulations, the particulars of his situation cast doubt on whether that would result in a “reasonable return.”

(b) That the plight of the owner is due to unique circumstances; and

Ryan Vaughn: The owner has no immediate adjacent neighbors and the property sits alone on approximately six acres.

(c) That the variance, if granted, will not alter the essential character of the locality.

Ryan Vaughn: There was no testimony that the variance would alter the essential character of the locality. The property is not in a neighborhood per se, and the swimming pool is not visible from the road.

2. The Zoning Board of Appeals, in making the foregoing determination may take into consideration the extent to which the following facts, favorable to the applicant, have been established by the evidence:

(a) That the physical surroundings, shape or topographical conditions of the specific property involved would bring a particular hardship upon the owner as distinguished from a mere inconvenience if the strict letter of the regulation were to be carried out;

Ryan Vaughn: There was no testimony in this regard.

(b) That the condition upon which the petition for variance is based would not be applicable generally to other property within the same zoning classification;

Ryan Vaughn: There was testimony that the unique positioning of the property within the village - largely on its own and sitting on several acres with no immediate adjacent neighbors - mitigates the need for a fence.

(c) That the purpose of the variance is not based exclusively upon a desire to make more money out of the property;

Ryan Vaughn: There was no testimony in this regard.

(d) That the alleged difficulty or hardship has not been created by any person presently having an interest in the property;

Ryan Vaughn: There was no testimony in this regard.

(e) That the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located; or

Ryan Vaughn: There was no testimony in this regard.

(f) That the proposed variance will not impair an inadequate supply of light and air to adjacent property, or substantially increase the danger of fire, or otherwise endanger the public safety or substantially diminish or impair property values within the neighborhood.

Ryan Vaughn: There was no testimony in this regard.

3. The Zoning Board of Appeals may require such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the standards set forth in this section to reduce or minimize the injurious effect of such variance upon other property in the neighborhood, and to implement the general purpose and intent of this chapter.

(E) Authorized variations. Variations from the regulations of this chapter may be recommended by the Zoning Board of Appeals only in accordance with the standards set forth in this section and only in the following instances:

(1) To permit a height greater than allowed.

(2) To permit a yard less than the yard required by the applicable regulation.

(3) To permit the use of a lot located in a Residential District having insufficient area and width for a single-family dwelling, provided such lot is of record on the effective date of this chapter.

(4) To permit the use of any lot not covered above, for the use otherwise prohibited solely because of insufficient area of the lot.

(5) To permit the same off-street parking spaces to qualify as required spaces for two or more uses, provided that the maximum use of such facility by each user does not take place during the same hours of the same days of the week.

(6) To reduce the applicable off-street parking or loading requirements.

(7) To authorize the use of land where an amendment to the village zoning district classification causes difficulties or hardships.

(8) To vary requirements for fences and swimming pools.

(F) Decisions

(1) The Zoning Board of Appeals at the conclusion of the public hearing promptly thereafter shall submit a report of its findings and recommendations on each petition to the Village Board.

(2) The Village Board, after receiving the report of the Zoning Board of Appeals and without further public hearing, except for any new matter not presented to the Zoning Board of Appeals and which the Village Board deems relevant, may grant or deny by majority vote and proposed variation or may refer it back to the recommending body for further consideration.

The ZBA did have a public hearing on **November 7, 2022**, in which (0) people addressed the Zoning Board.

This zoning variance Recommendation and Finding of Fact was compiled by the Village of Chatham's Zoning Board of Appeals Chairperson.

Zoning Board of Appeals Chairperson:



Date: 11/10/2022