AGENDA

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF SEPTEMBER 8, 2016 MINUTES

4. REGULAR BUSINESS

Deliberations will be held at the end of each case after public comment has been closed. No public comment is allowed during deliberations.

CASE NO. ZBA 3024
Public Hearing on the request of Andrew Leman of Leman Property Management Company, to obtain a variance from the Unified Development Code Section 5.4.7.C., Fences and Walls, to increase the allowed height of a front yard fence from 3 feet to 7 feet in a Class R-6 (Multi-family Residential) District, for the property identified as Parcel Identification Nos. 13-36-253-001 and 13-36-276-012, with addresses of 3401 W Oakcrest Drive and 3453 W Sunburst Lane and commonly known as Lexington Hills Apartments, Peoria, Illinois (Council District 4).

CASE NO. ZBA 3025
Petitioner Jim Youngman of Adams Outdoor Advertising, is appealing the Zoning Administrator's decision for the spacing requirement of an off-premise sign per the Unified Development Code, Section 8.3.c.2, in a Class C-1 (General Commercial) District for the property identified as Parcel Identification No. 14-19-402-007 with an address of 2238 W Glen Ave, Peoria, Illinois (Council District 4).

CASE NO. ZBA 3026
Public Hearing on the request of Shirley Weber, to obtain a variance from the City of Peoria Unified Development Code Section 5.4.7.C., Fence Requirements, to install a front yard fence that exceeds the allowed height of 3 feet in a Class R-3 (Single-family Residential) District, for the property identified as Parcel Identification No. 14-31-231-013 with an address of 2006 W Gilbert Avenue, Peoria, Illinois (Council District 2).

5. CITIZENS' OPPORTUNITY TO ADDRESS THE COMMISSION

6. ADJOURNMENT
WELCOME!

If you plan on speaking, please complete a Blue Speaker Form

For each case the following sequence will apply:

1. Chairperson proceeds with swearing in procedures
2. Chairperson announces the case
3. Staff enters case into the record
   a. Staff presents the case
   b. Staff answers questions from the Commission
4. Petitioner presents case and answers questions from the Commission
5. Chairperson opens the meeting to the public
6. Public comments – Chairperson may ask for response/input from staff and petitioner
7. Petitioner presents closing statements
8. Public testimony is closed (No further public comment)
9. Commission deliberates and may consult staff
10. Commission prepares findings, if applicable
11. Commission votes

All comments and questions must be directed to the Commission
A regularly scheduled Zoning Board of Appeals Meeting was held on Thursday, September 8, 2016, at 1:00 p.m., City Hall, 419 Fulton Street, Room 400, with Vice Chairperson Zachary Oyler presiding.

**ROLL CALL**

The following Zoning Board of Appeals Commissioners were present: Mark Anderson, Jerry Jackson, Nathan Wagner, Zachary Oyler – 4. Absent: Laith Al-Khafaji, Ed Barry, Richard Russo – 3.

Staff Present: Leah Allison, Madeline Wolf

**MINUTES**

Commissioner Jackson moved to approve the minutes for the meeting held on August 11, 2016; seconded, by Commissioner Wagner.

The motion was approved unanimously viva voce vote 4 to 0.

**REGULAR BUSINESS**

Commissioner Anderson announced his abstention from the following case due to personal interest.

**CASE NO. ZBA 3022**

Public Hearing on the request of David Reese and Nena Taylor-Reese to obtain a variance from the City of Peoria Zoning Ordinance Section 7.4.e. Yard Requirements, to reduce the required front yard setback from 35 feet to 11 feet for a garage addition, for the property identified as Parcel Identification No. 14-04-378-001, with an address of 264 W Detweiller Drive, Peoria, Illinois (Council District 5).

Senior Urban Planner, Leah Allison, Community Development Department, read Case No. ZBA 3022 into the record and presented the case. Ms. Allison provided the property characteristics, requested variance, and the Site Plan Review Board recommendation.

Staff's recommended DENIAL of the requested variance due to lack of hardship and failure to meet all of the following criteria:

1.) Reasonable Return: The subject property can yield a reasonable return without the requested variance.
2.) Unique Circumstances: The subject property is not unique. The property is primarily flat and a standard rectangular shape.
3.) Character: The proposed variance will alter the character of the neighborhood. Review of the surrounding properties found uniform and consistent front yard setbacks. There were no properties within the surrounding neighborhood found to have a reduced front yard setback.

Ms. Allison affirmed Vice Chairperson Oyler’s inquiry, the tree line on the south end of the property extended to the street.

Vice Chairperson Oyler opened the Public Hearing at 1:12 p.m.

David (Jeff) Reese, petitioner and owner of 264 W Detweiller Drive, questioned the regulations for front yards on corner lots. Mr. Reese said he preferred to have a two stall car garage. Mr. Reese expressed concern the dual frontage regulations would only allow for the garage addition in the rear yard, which would impact the characteristic of the neighborhood, limit the accessibility to the septic and require the removal of mature trees. Mr. Reese questioned SPRB’s determination of reasonable return.

Ms. Allison explained the Ordinance regulations for corner lots. Ms. Allison explained SPRB’s determination; the property may continue to function as the intended use of a single-family home.
David (Jeff) Reese, referred to homes in the neighborhood with two or three stall car garages. Mr. Reese said his hardship included the one stall car garage and the slope in the rear yard.

Commissioner Wagner questioned the location of the septic.

David (Jeff) Reese said access to the septic behind the house would be limited and may have to be relocated without the requested variance.

Nena Taylor-Reese, petitioner and owner of 264 W Detweiller Drive, said neighbors did not express concern regarding the approval of the requested variance. Ms. Reese said the addition would architecturally be an enhancement to the home and the community.

With no further interest from the public to provide public testimony, Vice Chairperson Oyler closed the Public Hearing at 1:24p.m.

Discussion:
Commissioner Wagner expressed concern for the construction of an additional garage in the rear yard as that would require an additional driveway which may increase surface water. Commissioner Wagner expressed concern of limited access to the septic.

Vice Chairperson Oyler said he considered two frontages a unique circumstance. Vice Chairperson Oyler said a one stall car garage would impact the reasonable return of the home.

Motion:
Commissioner Wagner made a motion to approve the requested variance as presented; seconded, by Commissioner Jackson.

The motion was approved viva voce vote.
Yeas: Jackson, Oyler, Wagner – 3.
Nays: None
Abstention: Anderson – 1.

CITIZENS’ OPPORTUNITY TO ADDRESS THE COMMISSION
There was no interest from the public to provide public testimony at 1:27p.m.

ADJOURNMENT
Commissioner Jackson moved to adjourn the Zoning Board of Appeals Meeting; seconded by Commissioner Oyler.

The motion was approved unanimously viva voce vote 4 to 0.

The Zoning Board of Appeals meeting adjourned at approximately 1:28p.m.

Leah Allison, Senior Urban Planner

Madeline Wolf, Development Technician
TO: City of Peoria Zoning Board of Appeals
FROM: Development Review Board (Prepared by Leah Allison)
DATE: November 10, 2016
CASE NO: ZBA 3024
SUBJECT: Public Hearing on the request of Andrew Leman of Leman Property Management Company, to obtain a variance from the Unified Development Code Section 5.4.7.C, Fences and Walls, to increase the allowed height of a front yard fence from 3 feet to 7 feet, in a Class R-6 (Multi-Family Residential) District, for the property identified as Parcel Identification Nos. 13-36-253-001 and 13-36-276-012, with addresses of 3401 W Oakcrest Drive and 3453 W Sunburst Lane and commonly known as Lexington Hills Apartments, Peoria, Illinois (Council District 4)

PROPERTY CHARACTERISTICS
The subject property is approximately 20.5 acres in size and zoned Class R-6 (Multi-Family Residential) District. It is surrounded by Class R-6 (Multi-Family Residential) to the north, east, and west and County-zone Agricultural2 to the south.

In the mid-1970’s, the Lexington Hills multi-family development was constructed to include 264 dwelling units located within 11 buildings.

REQUESTED VARIANCE:
The Petitioner is requesting a variance from Section 5.4.7.C, Fences and Walls, to increase the allowed height of a front yard fence from 3 feet to 7 feet. The proposed fence is constructed of iron materials with a black finish color.

The Petitioner states that a hardship of uncontrolled access into the apartment complex has led to trespassing and increased crime.

DEVELOPMENT REVIEW BOARD RECOMMENDATION
Staff’s recommendation is to APPROVE the variance based on the following criteria:

1) Reasonable Return: The subject property’s return is diminished as a result of the inability to control trespassing and criminal activity.
2) Unique Circumstances: The surrounding wooded land creates a unique, secluded location on the east side of the development, with unlimited access along the west side.
3) Character: The proposed variance will not alter the character of the neighborhood. Review of the surrounding neighborhood found similar fences in the adjacent Aspen Bluffs development located on Marengo St, LaValle St, and Verona St.

And subject to the following condition of approval:
1) To repair the parking lot surfaces to remove potholes and cracks per section 8.1.5.H of the Unified Development Code.

ATTACHMENTS
1. Surrounding Zoning Map
2. Application
3. Aerial Photo
4. Site Plan
5. Rendering of fence
Disclaimer: Data is provided "as is" without warranty or any representation of accuracy, timeliness or completeness. The burden for determining fitness for, or the appropriateness for use, rests solely on the requester. The requester acknowledges and accepts the limitations of the Data, including the fact that the Data is in a constant state of maintenance. This website is NOT intended to be used for legal litigation or boundary disputes and is informational only. -Peoria County GIS Division
CITY OF PEORIA
APPLICATION FOR VARIANCE/ZONING BOARD OF APPEALS

I. PROPERTY INFORMATION:
   A. Street address: 3401 Oakcrest Dr - 3453 W. Sunburst In
   B. Tax ID number: 133 627 6012, 133 625 3001
   C. Legal description (attached) and on CD-ROM (MS Word format)
   D. Area (square feet or acres): 14 acres
   E. Current property use: Multi-family Residential
   F. Current zoning district: R6

II. APPLICANT(S):
   A. Name: Andrew Leman (Agent for Owner)
   B. Company name: Leman Property Management Co
   C. Address (Street, City, Zip + 4): 2807 Broadway Rd., Ste B, Pekin, IL 61554
      *E-mail Address: drew@midwestshelters.com
   D. Daytime phone number: 309-347-5984 x3
   E. Interest in subject property: ___ Owner  X Representative
   F. Applicant(s) signature(s): ___________________________ Date: 10-3-16

III. OWNER(S) OF SUBJECT PROPERTY:
   A. Name: Lexington Hills I Apartments & Lexington Hills II, Ltd
   B. Company: Lexington Hills Apartments c/o Leman Property Management Co
   C. Address (Street, City, Zip): 2807 Broadway Ste B, Pekin, IL 61554
      * Email Address: drew@midwestshelters.com
   D. Daytime phone number: 309-347-5984 x3
   E. Owner(s) signature(s): ___________________________ Date: 10-3-16

[Signature: Agent for Owner]
Please note: Email will be used for all correspondence unless otherwise requested.

Correspondence/communication to be sent to:

X Applicant ___ Owner  (Select only one)

IV. Variance Information:

A. 1. Variance being requested 7' ornamental iron fence installed across
   entryway (approximately 700' length)

2. From what section of the zoning ordinance is a variance being requested? 5.4

B. What unique or exceptional characteristics of your property prevent it from meeting
   the requirements in your zoning district? (Check applicable)
   - Too narrow ___  Too small ___  Soil ___
   - Subsurface ___  Elevation ___  Slope ___
   - Too shallow ___  Shape ___  Other X

C. What is your hardship? Please be specific. Lack of controlled access at this
   264 unit apartment complex has prevented us from properly monitoring
   guests. Trespassing has led to crime.

D. If granted a variance in the form requested, will it be in harmony with the neighborhood
   and not contrary to the intent and purpose of the Zoning Ordinance?
   X Yes ___ No

Please elaborate: The fence will be ornamental and similar to other fences
at apartments on Molleck Drive. Furthermore, trees and elevation
result in this location not being visible to neighbors.
V. FINDINGS OF FACT WORKSHEET:

Please select true or false for the following three questions:

Sections 2.12.e / 2.6.4.F. Standards for Variations
No variations from the regulations of this ordinance/development code shall be granted unless the entity or person granting such variation shall find based upon the evidence presented to them in each specific case that all three of the following criteria are true:

1) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zoning district.

   False

Explanation: Wide open access to the property has resulted in our inability to monitor and deter trespassing, leading to criminal activity

Fact to consider:
   a. The purpose of the variation is not based primarily upon a desire to increase financial gain.

2) The plight of the owner is due to unique circumstances.

   False

Explanation: The property is surrounded by dense timber; however, the 700' frontage is unobstructed; is along a cul-de-sac with bus stop; and is nearly impossible to monitor without a physical barrier

Facts to consider:
   a. The particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out.
   b. The conditions upon which an application for a variation is based are unique to the property for which the variance is sought, and are not applicable, generally, to other property within the same zoning classification.
   c. The practical difficulty or hardship is caused by this ordinance and has not been created by any persons presently having an interest in the property.

3) The variation, if granted, will not alter the essential character of the locality or be injurious to the public or other property or properties.

   True

Explanation: This location is remote. It is at the end of a dead-end with no visible nearby neighbors. The fence will be aesthetically pleasing

Facts to consider:
   a. The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
   b. The proposed variation will not impair an adequate supply of light and air to adjacent property or substantially increase the danger of fire, or impair natural drainage or create drainage problems on adjacent properties, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.
VI. **FILING FEE (MUST ACCOMPANY APPLICATION):**

Variance Application Fees for any property in the City shall be as set forth in the table below:

Zoning Ordinance Section 2.17.a (1) Variance Application Fees Table
Land Development Code Section 2.14.a Variance Application Fees Table:

<table>
<thead>
<tr>
<th>Variation Application Fees (Non-refundable)</th>
<th>Before Construction</th>
<th>After Construction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Variations all, (&lt;20%)</td>
<td>$500</td>
<td>$1,000</td>
</tr>
<tr>
<td>Principal Structure, Major</td>
<td>$500</td>
<td>$1,000</td>
</tr>
<tr>
<td>Accessory Structure, Major</td>
<td>$500</td>
<td>$1,000</td>
</tr>
<tr>
<td>Signs &amp; Multi-Family/Sub. Signs, Major</td>
<td>$500</td>
<td>$1,000</td>
</tr>
<tr>
<td>Fence, Major</td>
<td>$500</td>
<td>$1,000</td>
</tr>
</tbody>
</table>

_X_ A. **MINOR VARIANCE** – Requires Administrative Approval

Ordinance Section: 2.12.b. (1) *Minor Variations*. Minor variations from height, yard (with the exception of transitional buffer yard requirements), bulk, lot area, and fence height provisions of this Ordinance that are less than twenty percent (20%) of the required standard. (For example, a variation from a required 20-foot yard setback in an amount of less than 4 feet is a minor variation.) No minor variation shall be allowed in a Form District.

_B_ B. **MAJOR VARIANCE** – Requires Public Hearing and ZBA Approval

Ordinance Section: 2.12.b.(2) *Major Variations*. All variations authorized by this Ordinance, which are not minor variations, shall be considered major variations. Any variation request of transitional buffer yard requirements shall be considered a major variation. Any variation in a Form District shall be considered a major variation.

VII. **REQUIRED SITE PLANS:**

One copy of the site plan and one on a compact disc or appropriate digital media.
Disclaimer: Data is provided 'as is' without warranty or any representation of accuracy, timeliness or completeness. The burden for determining fitness for, or the appropriateness for use, rests solely on the requester. The requester acknowledges and accepts the limitations of the Data, including the fact that the Data is in a constant state of maintenance. This website is NOT intended to be used for legal litigation or boundary disputes and is informational only. -Peoria County GIS Division
LEXINGTON HILLS
SECTION 4 APARTMENTS
PEORIA, ILLINOIS
HUD PROJECT NO. 072-33075

MONGE REALTY & INVESTMENTS, INC. OWNER

PEACOCK & STEEN ARCHITECTS
TO: City of Peoria Zoning Board of Appeals
FROM: Development Review Board (Prepared by Leah Allison)
DATE: November 10, 2016
CASE NO: ZBA 3025

SUBJECT: Petitioner Jim Youngman of Adams Outdoor Advertising, is appealing the Zoning Administrator's decision for the spacing requirement of an off-premise sign per the Unified Development Code, Section 8.3.10.C.2, in a Class C-1 (General Commercial) District for the property identified as Parcel Identification No. 14-19-402-007 with an address of 2238 W Glen Ave, Peoria, Illinois (Council District 4)

PROPERTY CHARACTERISTICS
The subject property is 0.87 acre in size and zoned Class C-1 (General Commercial) District. It is surrounded by Class C-1 (General Commercial) to the north, south, east, and west. The property is developed with a 2670 sq. ft. commercial building and parking lot.

SUMMARY OF APPEAL:
The petitioner submitted an application to place a 30-foot tall, 300 sq. ft. off-premise sign at the subject property. The following Section 8.3.10.C.2 of the Unified Development Code addresses zoning requirements.

2. Off-Premises Freestanding Signs
   a. Applicable Districts and Limitations for Area and Sign Height.
      1) Off-premises freestanding signs that have a maximum area limitation of 300 square feet and maximum height limitation of 30 feet, excluding off-premises sign extensions in either instance, are permitted uses in the commercial and industrial districts.
      2) Off-premises freestanding signs that are greater than 300 square feet in sign area, and have a maximum area limitation of 700 square feet and maximum sign height of 40 feet, excluding off-premises sign extensions in either instance, may be approved as a special use, (pursuant to 2.9), by the City Council in the C2 and industrial districts.
   b. Spacing for off-premises freestanding sign as a permitted use shall be a minimum of:
      1) 50 lineal feet from the base of the sign to any on-premises freestanding sign located on the same street frontage;
      2) 1,000 lineal feet from the base of the sign to any off-premises freestanding sign on either side of the street, permitted or special use; and
      3) 300 lineal feet, measured in a radius from the base of the sign from any property line of residential zoned property.

Upon review, staff denied the application as it did not meet the required 1,000 lineal foot separation from another off-premise sign. The proposed off-premise sign is located approximately 376 feet from an existing off-premise sign on Brandywine Dr.

The Petitioner is appealing the Zoning Administrator’s decision regarding the required 1,000 lineal foot separation between off-premise signs. The Petitioner states that the 1,000 lineal foot separation requirement applies only to off-premise signs located on the same street as the proposed location of Glen Avenue.

DEVELOPMENT REVIEW BOARD RECOMMENDATION
Staff is recommending affirmation of the Zoning Administrator’s decision based on the intent of the sign ordinance and specific requirements of section 8.3.10.C.2.

Section 8.3.1 Purpose states:

This chapter is intended to regulate the design and placement of signs from the date of adoption of this ordinance, in the following circumstances:
A. Where a newly constructed facility includes signs;
B. Where a sign is replaced because of a change of occupancy or ownership;
C. Where a new sign is added to an existing building; and
D. In the case of a granting of a special use or expansion of a facility which includes signs.

The sign regulations, controls, and provisions set forth in this section are made in accordance with an overall plan and program for the public safety, area development, preservation of property values, and the general welfare of the City of Peoria and are intended to:

1) aid in traffic control and traffic safety;
2) preserve and protect property values;
3) lessen congestion of land and air space;
4) provide against undue concentrations of signs which distract and endanger traffic safety and traffic flow;
5) establish reasonable standards for commercial and other advertising through the use of signs, in order to maintain and encourage business and area development;
6) avoid uncontrolled proliferation of signs;
7) recognize the rights of the public on roads, streets, and highways;
8) preserve the wholesome and attractive character of the City;

And to recognize that the general welfare includes a community plan that provides for a community that shall be beautiful as well as healthful, spacious as well as clean, and well balanced in its growth and development.

Also, the purpose of the sign ordinance is to provide for the gradual elimination of nonconforming signs and to provide for new signs which conform to the provisions of this ordinance in order to accomplish its objectives.

The regulations as interpreted by staff meet the intent of the sign ordinance, specifically to protect and preserve property values, lessen congestion of land and air space, avoid uncontrolled proliferation of signs, and preserve the wholesome and attractive character of the City. The 1,000 lineal foot separation requirement applies to any street in the City of Peoria, not just the street of the subject property. This is evident when considering the language of 8.3.10.C.2.b.1 which states:

1) 50 lineal feet from the base of the sign to any on-premises freestanding sign located on the same street frontage.

as compared to 8.3.10.C.2.b.2 which states:

2) 1,000 lineal feet from the base of the sign to any off-premises freestanding sign on either side of the street, permitted or special use.

If the intent of the 1,000-foot separation was to be applied to the same street frontage, the regulation would have been written as it is in the sentence 1) above. The 1,000-foot separation regulation was intentionally written without the requirement of the same street frontage. The words “the street” means any street in the City of Peoria. The regulation as written and interpreted allows the placement of off-premise signs to meet the intent of the overall sign ordinance.

The interpretation offered by the petitioner fails to meet the intent of the sign ordinance. If interpreted as suggested by the Petitioner, an off-premise sign may be located on each frontage of a corner property. The result is a proliferation of 30-foot tall, 300 sq. ft. in size off-premise signs on both frontages of commercial and industrial zoned corner properties.

ATTACHMENTS
1. Surrounding Zoning Map
2. Appeal
3. Aerial Photo
Disclaimer: Data is provided 'as is' without warranty or any representation of accuracy, timeliness or completeness. The burden for determining fitness for, or the appropriateness for use, rests solely on the requester. The requester acknowledges and accepts the limitations of the Data, including the fact that the Data is in a constant state of maintenance. This website is NOT intended to be used for legal litigation or boundary disputes and is informational only. -Peoria County GIS Division
CITY OF PEORIA
APPLICATION FOR REQUEST FOR APPEAL
TO THE
ZONING BOARD OF APPEALS

Fee: $250

I, Jim Youngman, do hereby appeal the decision made for the property located at 2238 W. Glen Avenue, Peoria, IL
by Leah Allison, ATCP, LEED Green Associate for the City of Peoria, on behalf of the Zoning Administrator of the City of Peoria, on October 7, 2016
regarding the following: APPLICATION FOR ZONING CERTIFICATE FOR OFF-PREMISE SIGNS

(Summary of Decision):
PLEASE SEE THE ATTACHED DOCUMENT FOR MY RESPONSE.

To the Zoning Board of Appeals (ZBA) pursuant to Section 2.13, Appendix B, of the Zoning Ordinance of the City of Peoria, OR Section 2.7, Appendix C, of the Land Development Code of the City of Peoria.

10/7/2016

Date

Note: The following page must be completed before processing. Applications will be processed upon completion of this application and the receipt of the fee.

Application for Appeal
Revised 11-13-12
I. PROPERTY INFORMATION:
   A. Street address: 2238 W. GLEN AVENUE Zip Code + 4 __________
   B. Tax ID number: 14-19-402-007
   C. Area (square feet or acres):
   D. Current property use: COMMERCIAL (KEY+LOCK SHOP)
   E. Current zoning district: C-1

II. APPLICANT(S):
   A. Name: JIM YOUNGMAN
   B. Company name: ADAMS OUTDOOR ADVERTISING
   C. Address (Street, City, Zip + 4): 911 SW ADAMS STREET
      *E-mail Address: jyoungman@adamsoutdoor.com
   D. Daytime phone number: (309) 692-2482
   E. Interest in subject property: Owner X Representative
   F. Applicant(s) signature(s): __________________________ Date: 10/7/2016

III. OWNER(S) OF SUBJECT PROPERTY:
   A. Name: DAN KAURI
   B. Company: KOURI BROTHERS
   C. Address (Street, City, Zip): 2232 W. GLEN AVENUE PEEORIA, IL 61614
      * Email Address: info@peoriasteakhouse.com
   D. Daytime phone number: (309) 691-4731
   E. Owner(s) signature(s): __________________________ Date: 10/7/2016

*PLEASE NOTE: EMAIL WILL BE USED FOR ALL CORRESPONDENCE UNLESS OTHERWISE REQUESTED.

CORRESPONDENCE/COMMUNICATION TO BE SENT TO: (Select only one)

X Applicant ___ Owner

Application for Appeal
Revised 11-13-12
Summary of Decision: In bold & red ink is word for word straight from the City of Peoria Code of Ordinances: Highlighted is the particular spacing requirement in question.

(2) Spacing.
   (a) An off-premise's freestanding sign as a permitted use shall be spaced a minimum of:
      (1) 50 lineal feet from the base of the sign to any on-premises sign located on the same street frontage;
      (2) 1,000 lineal feet from the base of the sign to any off-premises freestanding sign on either side of the street, permitted or special use; and
      (3) 300 lineal feet, measured in a radius from the base of the sign from any property line of residential zoned property.

Our application was denied because Leah Allison alleges that this conforming (not greater than 300 square feet) off-premises sign does not meet #2 in the spacing requirement in the city of Peoria code of ordinances for off-premises signs (1,000 lineal feet from the base of the sign to any off-premises freestanding sign on (either side of “the” street), permitted or special use). The following is the email response from Leah Allison’s that I received on Friday, 10/8/2015 at 2:34pm.

Jim,

I’ve reviewed your application for the off-premise sign at 2238 W Glen Ave. I am unable to approve as the sign does not meet the required 1,000 feet of separation from another off-premise sign located to the southwest, on Brandywine Dr. You may appeal this decision of the Zoning Administrator to the Zoning Board of Appeals. I’ve attached the form. Note that this appeal form must be submitted to the Community Development Dept. within 30 days of this email.

Let me know if you have any questions.

Thanks,

Leah Allison, AICP, LEED Green Associate Senior Urban Planner City of Peoria Ph: (309) 494-8667 Email: lallison@peoriagov.org

The language at issue in the Ordinance is clear. The word "the" modifies the word “street”, meaning that, in this case, “the street” refers to the specific street (Glen Avenue) on which the off-premise sign will be located. There is not another off-premise sign on either side of the street—i.e., Glen Avenue—that is within 1,000 lineal feet of the proposed off-premises sign that will be located at 2238 W. Glen Avenue. The off-premises sign that Leah Allison is using for her measurement is located on N. Brandywine Drive (parcel #14-194-020-05), which is certainly “a” street within the City of Peoria, but is not “the” street at issue under the Ordinance. Because the Ordinance requires that the measurement be computed with reference to either side of “the street,” which in this case can only be Glen Avenue, it was an error for Ms. Allison to use an off-premise sign located on Brandywine Drive to perform her calculations and deny the permit in question.
Proposed Off-Premise Sign

Existing Off-Premise Sign

Disclaimer: Data is provided 'as is' without warranty or any representation of accuracy, timeliness or completeness. The burden for determining fitness for, or the appropriateness for use, rests solely on the requester. The requester acknowledges and accepts the limitations of the Data, including the fact that the Data is in a constant state of maintenance. This website is NOT intended to be used for legal litigation or boundary disputes and is informational only. -Peoria County GIS Division
TO: City of Peoria Zoning Board of Appeals
THRU: Development Review Board
FROM: Shannon Techie, Senior Urban Planner
DATE: November 10, 2016
CASE NO: ZBA 3026

SUBJECT: Public Hearing on the request of Shirley Weber, to obtain a variance from the City of Peoria Unified Development Code Section 5.4.7.C., Fence Requirements, to install a front yard fence that exceeds the allowed height of 3 feet in a Class R-3 (Single-family Residential) District, for the property identified as Parcel Identification No. 14-31-231-013 with an address of 2006 W Gilbert Avenue, Peoria, Illinois (Council District 2).

PROPERTY CHARACTERISTICS
The subject property is 0.29 acres in size and zoned Class R-3 (Single Family Residential) District. It is surrounded by Class R-3 (Single Family Residential) to the north, south, east, and west. In 2003, a zoning certificate and building permit were issued for an in-ground pool.

REQUESTED VARIANCE:
The Petitioner is requesting a variance from City of Peoria Unified Development Code Section 5.4.7.C., Fence Requirements, to increase the height of a front yard fence from 3 feet to 6 feet.

The following summary addresses the three standards for variances per Section 2.6.3.E. of the Unified Development Code:
1. The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in the zoning district.
   a. The petitioner states that this request is not based on a desire to increase financial gain. The existing chain link fence was damaged and the petitioner states that she would not be able to replace the existing chain link, to enhance the neighborhood visually, without a variance. If the fence were placed according to code, it would cut across the existing pool. Further, the petitioner indicated that a ‘safe’ play space buffer away from the street, would be lost if the existing chain link fence were removed and not replaced.
   b. Staff further adds that due to the placement of the pool and surrounding patio/walkway, any fencing placed around the pool would encroach into the front yard, and as a result become a front yard fence. It appears that when the permit was pulled for the pool, that the concrete area and fencing were not included in the area shown on the site plan for the pool, as the pool was contained in the rear yard, based on the approved site plan. This would cause the property owner to have to relocate the pool and concrete area to install fencing to meet building code requirements for pool safety or place the fence within the front yard.

2. The plight of the owner is due to unique circumstances:
   a. The petitioner states that the property has a unique layout (shape and two front yards), existing structure (pool and permanent concrete around patio around the pool). Some existing landscaping all encroach into the front yard setback.
   b. Staff further adds that the property is a corner property with two front yards, as other homes front on this side of the street, on both Gilbert and Harper Terrace. In addition, the property is a bit irregularly shaped, as it follows the curve in the road along Harper Terrace. The placement and orientation of the house further adds to the uniqueness of the site, and impacts what is considered a front yard, which limits the placement of a fence on the property.
3. The variation, if granted, will not alter the essential character of the locality or be injurious to the public or other property or properties:
   a. The petitioner states that the variation will not affect supply of light and air to adjacent properties and will not affect traffic volume or line of sight along the sidewalk or at intersection. No potential for fire and endangerment of public safety. The proposed fence will not diminish property values in the neighborhood and will add to the aesthetics by upgrading the fencing. In addition, a variance to allow a new fence will allow pool safety barrier requirements to meet current standards.
   b. Staff further adds that a chain link fence in disrepair currently exists on the property. A new fence would be an improvement and not alter the locality if it would set back 10 feet from the property line, constructed of material other than chain link, and no taller than 4 feet in height.

Please note that the existing fence appears to be located on the public right-of-way and not on private property. The right-of-way (property line) appears to be about 10-feet behind the face of curb. Fence should be placed on private property, outside of public right-of-way. In addition, any work to be done on or within public right of way will require ROW permit.

Please also note that a 4 foot tall fence would be tall enough to meet building code barrier requirements for fencing around pools.

DEVELOPMENT REVIEW BOARD RECOMMENDATION
In summary, Development Review Board feels that the standards for variances are met due to the existing placement of structures on the site, the shape of the site, and the fact that the property is a corner lot. Development Review Board’s recommendation is to APPROVE the variance with the following conditions:
1. That the fence be constructed of vinyl or other similar material.
2. The fence not exceed 4 feet in height.
3. The fence be set back 10 feet from the front property line.
4. The existing fence around the pool (that doesn’t meet barrier requirements) be removed and the new fence serve the purpose of fencing both the yard and the pool, which would result in only one fence on the property.

ATTACHMENTS
1. Surrounding Zoning (County GIS Print in Color)
2. Aerial Photo (County GIS Print in Color - 2008 Photo for until updated)
3. Site Plan
4. Photos
5. Other
Disclaimer: Data is provided ‘as is’ without warranty or any representation of accuracy, timeliness or completeness. The burden for determining fitness for, or the appropriateness for use, rests solely on the requester. The requester acknowledges and accepts the limitations of the Data, including the fact that the Data is in a constant state of maintenance. This website is NOT intended to be used for legal litigation or boundary disputes and is informational only. -Peoria County GIS Division
Disclaimer: Data is provided 'as is' without warranty or any representation of accuracy, timeliness or completeness. The burden for determining fitness for, or the appropriateness for use, rests solely on the requester. The requester acknowledges and accepts the limitations of the Data, including the fact that the Data is in a constant state of maintenance. This website is NOT intended to be used for legal litigation or boundary disputes and is informational only. -Peoria County GIS Division
Disclaimer: Data is provided 'as is' without warranty or any representation of accuracy, timeliness or completeness. The burden for determining fitness for, or the appropriateness for use, rests solely on the requester. The requester acknowledges and accepts the limitations of the Data, including the fact that the Data is in a constant state of maintenance. This website is NOT intended to be used for legal litigation or boundary disputes and is informational only. -Peoria County GIS Division

Map Scale
1 inch = 42 feet
8/25/2016
Disclaimer: Data is provided 'as is' without warranty or any representation of accuracy, timeliness or completeness. The burden for determining fitness for, or the appropriateness for use, rests solely on the requester. The requester acknowledges and accepts the limitations of the Data, including the fact that the Data is in a constant state of maintenance. This website is NOT intended to be used for legal litigation or boundary disputes and is informational only. -Peoria County GIS Division

Map Scale
1 inch = 167 feet
8/25/2016
SECTION 31
PAL MERIDIAN

LEGEND
PLANNING DEPT. (309) 494-8600

INSPECTOR: 'JIDE GIWA

<table>
<thead>
<tr>
<th>PERMIT NUMBER:</th>
<th>03- 5172</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROPERTY ADDRESS:</td>
<td>2006 W GILBERT AVE</td>
</tr>
<tr>
<td>TAX ID NUMBER:</td>
<td>14-31-231-013</td>
</tr>
<tr>
<td>ZONING DISTRICT:</td>
<td>R3</td>
</tr>
<tr>
<td>PROPERTY USE:</td>
<td></td>
</tr>
</tbody>
</table>

| PERMIT TYPE: | ZONING CERTIFICATE/BUILDING PERMIT |
| WORK DESCRIPTION: | LAWFUL/OTHER - SEE NOTES 1 |
| | AS PER SITE PLAN ON FILE 1 |
| | ISSUED PURSUANT TO ZA 1 |

OWNER:
GREGORY E/SHARON DAVIS
2006 W GILBERT AVE
PEORIA IL 61604

| PERMIT: | ZONING CERTIFICATE / PZ |
| APPROVAL DATE: | 8/26/03 |
| EXPIRATION DATE: | |
| PERMIT FEE: | 50.00 |
| PERMIT VALUATION: | |

STRUCTURE INFORMATION:
NO. OF EMP./PZ
HEIGHT
PRKG SPACE: REG BY ORD/PZ
PRKG SPACE: PROVIDED/PZ
PRKG SPACE: HANDICAP/PZ
SQUARE FEET
USE/PZ
2'
NA
NA
350
SWIMMING POOL

MISCELLANEOUS INFORMATION:
APPROVED FOR A DECK AS PER SUBMITTED SITE PLAN AND APPLICATION. ANY CHANGE REQUIRES ADDITIONAL APPROVAL FROM THIS OFFICE.

| FEE SUMMARY: | |
| PERMIT FEE TOTAL: | 50.00 |
| OTHER FEE TOTAL: | |
| GRAND TOTAL: | 50.00 |

THE APPLICANT SHALL PERFORM SAID WORK AS TO COMPLY WITH APPROPRIATE LOCAL, STATE AND NATIONAL CODE REQUIREMENTS.

UNDER PENALTIES PROVIDED BY LAW, THE APPLICANT CERTIFIES THAT THE STATEMENTS SET FORTH IN THIS INSTRUMENT ARE TRUE AND CORRECT AND THAT IF THEY ARE NOT, ANY PERMIT, LICENSE OR AUTHORIZATION GIVEN HEREUNDER SHALL BE VOID FROM ITS INCEPTION.
POOLS

__ Permanent (requires a zoning certificate) remains up year round.

__ Temporary (does not require a zoning certificate) is taken down and removed at the end of the season.

__ Above ground (construction fence required if pool does not provide its own barrier and must remain in place until a permanent barrier is installed)
  ____ height of pool frame
  ____ height is adjustable (requires a barrier)
  ____ removable ladder
  ____ lock up ladder

__ In ground (construction fence required must remain in place until a permanent barrier is installed)

__ Are there any overhead wires electrical or communication (clearance in any direction to the water level, edge of water surface or base of diving board for overhead conductors is 22-1/2 feet)
All wiring above pools must be compliant with the 2005 NEC and the Utility Company.
  ____ height of wires

__ Are there any underground wires located within 5' of the edge of the pool

__ location of a GFCI receptacle for the pump motor

__ length of the factory installed cord for the pump motor (an extension cord cannot be used)

__ any metal parts (requires bonding)

__ electrical permit application required pool with pool permit application
SWIMMING POOLS

Property Owners and Contractors: It is important that you understand your responsibilities as defined in this attachment to your permit.

These items are your responsibility:

1. **Electrical Work:** Electrical permits are required for items such as power to pumps and filters, and pool lighting. An extension cord **cannot** be used. An electrical permit must be obtained by a licensed electrical contractor or the owner/occupant of the single family dwelling. Electrical permits for swimming pools must be obtained **before** or **concurrent** with the building permit.

2. **Fencing:** The pool area must be fenced in, or have a proper barrier before the pool has any water put into it.
   1. Every person owning land on which there is situated a swimming pool shall erect and maintain thereon an adequate enclosure surrounding either the property or pool area. Such enclosure, including the gates, must not be less than forty eight inches high and shall meet all the requirements of the 2006 IRC. The enclosure or fence shall be constructed of durable material, which may be of galvanized steel fabric, metal, wood, masonry or other material that will provide for permanent separation. All posts and fittings used shall be substantially sound. All gates must be self-closing and self-latching.

3. There are inspections that must be made during the construction and a final inspection that must be made before the pool can have water placed into it and used *

4. A Certificate of Use shall be issued upon completion of a final inspection. Failing to have proper inspection and a Certificate of Use prior to the use of the pool may result in daily tickets with a fine of $100 to $500.

5. All pools shall have a construction fence (48 inch minimum in height) in place during construction until the permanent barrier is installed.

**THE POOL CANNOT BE USED SAFELY UNTIL ALL OF THIS IS DONE.**

* A Minimum amount of water may be placed in the pool to hold the liner in place during construction.
SWIMMING POOLS – REQUIRED PERMITS

Definition:
Swimming Pool means and includes any private or public swimming pool, tank, hot tub, or other device that is artificially constructed, to provide recreational facilities for swimming, bathing, or wading, whether of permanent construction or portable in nature, upon any premises, which has a depth at any point in excess of 24 inches, and whether said pool is below ground level, above ground level, or partly above and partly below ground level.

Swimming Pools, Hot Tubs & Spas must conform to the 2006 International Residential Code. The purpose of these requirements is to provide an integrated level of protection against potential swimming pool drownings through the use of physical barriers and warning devices. It is not intended as a substitute for adult supervision of children.

A Swimming Pool permit is required to construct, replace, or install all in-ground and above ground swimming pools, spas or hot tubs. Wading pools less than 24 inches deep do not require a permit.

A site plan must be provided to the Planning and Growth Development department for the required zoning certificate. A zoning certificate is not required for temporary pools (ones that are taken down and stored at the end of the season). The site plan must indicate the following:

- Property lines, easements, right of ways and overhead utilities adjacent to the pool
- Existing structures, fences, retaining walls
- Proposed pool shape, dimension, relation to setbacks, side yards, clearance of existing structures, and proper barriers
- Proposed mechanical equipment
- Proposed deck

A building permit application must be submitted with a structural plan that indicates the pool dimensions, type of construction, details of any deck, and the exact type and dimensions of the barrier to be installed. Include specific details on the gates to be used or the door alarms to be installed.

An Electrical permit is required for items such as power to pumps and filters, and pool lighting. An extension cord cannot be used. An electrical permit must be obtained either by a licensed electrical contractor or the owner/occupant of the single family dwelling. Electrical permits for swimming pools must be obtained before or concurrent with the building permit.

The electrical plan must indicate the following:

- Location of all outlets, conductors, and pool equipment
- Sizing of all conductors- Underground installation must be in galvanized rigid steel or non-metallic conduit with a minimum #12 THHN
- Grounding of all equipment and ground fault interrupters
- Bonding detail of all components including lighting (indicate type of lights)
- Details for the pool cover motor
- Show location of all overhead and underground wires.

A permit for HVAC work shall be required for heated pools.
SWIMMING POOL SAFETY ENCLOSURES

Swimming Pools, Hot Tubs & Spas must conform to the 2006 International Residential Code. The purpose of these requirements is to provide an integrated level of protection against potential swimming pool drowning through the use of physical barriers and warning devices. It is not intended as a substitute for adult supervision of children.

The top of the barrier shall be at least 48 inches above grade measured on the side of the barrier that faces away from the pool. The maximum distance between the bottom of the barrier and the grade is 2 inches.

All above ground pools with sidewalls that are at least four feet high (measured from the top of grade to the top of the pool wall) do not require enclosure by a separate fence as long as the pool has a removable or lock-up ladder except for pools that are adjustable in height. Ladder shall be removed or locked up when not in use.

A deck with stairs down to the ground (around or next to a pool) shall be built with a normal 36 inch high guardrail with pickets not more than 4 inches apart except at the end where the stairs will be located. The guardrail on this end is built 48 inches high. Latch hardware must be located on the pool side of the gate as specified in the 2006 IRC.

Barriers shall be located so as to prohibit permanent structures, equipment or similar objects from being used to climb the barriers. The purpose of a swimming pool barrier would be defeated if children could climb on benches, planters, pumps, and similar permanent features adjacent to the barrier and gain access to the pool area.

When the house is used as part of the barrier for a pool the protection of all door openings which give access to a swimming pool shall be as follows:

1. Use of an approved power safety cover, OR
2. Doors shall be equipped with an alarm.

Door alarms must produce an audible warning when the door and or its screen are opened.

The alarm shall be listed in accordance with UL 2017.
The audible alarm shall activate within 7 seconds and sound continuously for a minimum of 30 seconds after the door and/or its screen is opened.
The alarm must be capable of being heard throughout the house during normal household activities.
The alarm shall automatically reset under all conditions.
The alarm system shall be equipped with a manual means (touch pad or switch) to temporarily deactivate the alarm for a single opening. Deactivation shall last not more than 15 seconds. Deactivation switches shall be located at least 54 inches above the threshold of the door.

Indoor pools: When a pool is located completely within a house, the walls that surround the pool should be equipped to serve as pool safety barriers.

It is the responsibility of the permit holder of the swimming pool to install all permanent barriers.

It is the responsibility of the pool contractor to inform the new pool owner that the barrier requirements must be maintained.
#8 Solid Bare Copper wire bonds perimeter to pool wall steel at 4 equal distant points. This wire is embedded in pavement or is unpaved-buried 4" to 6" deep. It is run following the perimeter of the pool 18" to 24" from pool wall. May bond other items to it.

Bond: Equipment (pump and heater), metal items within 5' of water, underwater luminaire shell, listed JB connected to shell, ladder, water (9 sq in), handrails, pool cover motor and frame, all structural steel (if no structural steel, make them install some).
Equipotential Bonding Grid to reduce voltage gradients in area. (lower chance of shock)

Conductive pool shells (concrete, metal) require connection to the grounding/bonding grid. The choices are to connect to the non-encapsulated structural steel of the pool (rebar or mesh) or install a very expensive copper mesh 12" on center with connectors at every cross point. If encapsulated rebar is used, may permit mesh to be overlaid on insulated mesh instead of requiring the copper grid.

The perimeter surfaces of all permanent pools is required to be bonded from the sidewall out 3 feet. If the surface is paved, connect mesh to grid via #8 solid cu wire installed in pour. If not paved or no structural steel, then a #8 wire is required to be installed 18" to 24" from pool wall. This wire is embedded in any pavement or buried 4" to 6" deep below grade if not paved. The wire shall follow the perimeter all the way around the pool.

All metallic components of pool structure, including reinforcing metal (unless encapsulated).

All metal shells of underwater lighting, including brackets of no-niche luminaires.

All metal fittings with or attached to pool structure. Isolated parts not over 4" in any dimension and do not penetrate into the pool structure more than 1" shall not require bonding.

Electrical equipment, including circulating pumps, covers, heaters, etc. If double insulated pump, then leave a #8 (solid, CU and connected to the grid) coiled at the pump location for future pump change out.

Pool water—An intentional bond with a conductive surface area of 9 square inches or more in contact with the pool water shall be bonded to the grid. A brass or stainless nipple with a water pipe ground clamp is sufficient provided the nipple is $\geq \frac{3}{4}'' \times 4''$ or $\geq \frac{1}{2}'' \times 6''$. Handrails and other items in contact with water that are bonded count as this bond.

Storable Pool

Power to pump listed for storable pool (cord may be 25' long, no grounding terminal wanted as pump should be double insulated) is supplied from a GFCI protected outlet that is $\geq 6'$ from water.

Luminaires in storable pools must be listed for the purpose. Some requirements are no exposed metal parts, polymeric lens and body, an integral GFCI that opens the neutral as well built into the assembly. They may be 15 volts or less or between 15 and 150 volts to ground. Follow manufacturer's installation instructions.

Definitions from Article 680 National Electrical Code

Permanently Installed Swimming, Wading, Immersion, and Therapeutic Pools. Those that are constructed in the ground or partially in the ground, and all others capable of holding water in a depth greater than 1.0 m (42 in.), and all pools installed inside of a building, regardless of water depth, whether or not served by electrical circuits of any nature.

Storable Swimming, Wading, or Immersion Pool. Those that are constructed on or above the ground and are capable of holding water to a maximum depth of 1.0 m (42 in.), or a pool with nonmetallic, molded polymeric walls or inflatable fabric walls regardless of dimension.

IAEI Dec 2008
Checklist:

_____ Permanently Installed Pool or _____ Storable pool (see reverse for definitions)

_____ Pool Placement on lot. Has location been JULIED?  
Minimum of 5 foot clearance from underground wires to pool sidewalls.  
Clearance to overhead wires? (22.5’ min to wire from water, 14.5’ from dive tower)  
Zoning placement – proximity to lot line, front yard, back yard, etc.

**Permanently Installed Pool (All Indoor pools and Outdoor over 42” not vinyl or nonconductive)**

_____ Wiring method OK? Rigid metal conduit, IMC, PVC, or (MC approved for location). EMT OK on or within buildings. Sealight OK for flexible connections only. Must have #12 or larger equipment grounding conductor (cannot rely on raceway as a ground). For single family, any permitted wiring inside is OK (romex up to point exits bldg is ok). Feeders are required to be in a conduit system (see the code if have subpanel for list)  
Cord and plug connections OK (cord length 3”) on utilization equipment other than lights (hardwired).

_____ No GFCI protected wiring or wiring under 15 volts shall occupy same raceway as non-GFCI protected wiring. Do not want to intermingle

_____ Equipment receptacles should be 10’ from water. They may be 6’ from water if (1) a single receptacle. (2) A locking configuration (3) Grounding type (4) Have GFCI protection  
Other receptacles must be 6’ from inside walls. Dwelling unit pools require a receptacle within 20’ of the water and not more than 6’6” above grade. All receptacles within 20’ shall be GFCI protected (indoor and outdoor pools).

_____ 120 and 240 volt pump motors supplied by 15 and 20 amp breakers require GFCI protection.

_____ Luminaires. Outdoor Lights above pool or within 5’ of sidewall shall be ≥ 12’ above water.  
Indoor-Totally enclosed luminaires permitted ≥ 7’ 6” above water. Fans permitted if listed for porch or patio. Light outlets between 5’ and 10’ of sidewalls must be GFCI protected. Existing lights permitted if GFCI and ≥ 5’ above water. No switches permitted closer than 5’ to water. Permanent barrier ok to separate (wall or door).

_____ Underwater Luminaires. If over 15 volts, require GFCI protection. Cannot be over 150 volts. Top of wall luminaire must be 18” below water. Bottom facing up must be listed and guarded. Check manufacturers installation instructions for specific requirements.

**Wet Niche Fixture:** The forming shell must have terminals inside and out for #8 copper. Conduit between the shell and listed junction box shall be approved non-corrosive (brass or PVC or other approved). If PVC, then a #8 insulated solid or stranded conductor required to be run inside the conduit between listed box and shell. The termination inside the shell must be potted with listed potting compound. Listed junction box and exterior of shell should be connected to the #8 solid copper bonding grid wire (see below for Grid).  
Bottom of listed Junction Box shall be greater of 8” above water or 4” above pool deck/grade. Box shall be located at least 4’ from pool wall. If low voltage (<15 volts) the box may be flush with deck if filled with potting compound. The wet niche fixture must be removable for inspection/relamping with sufficient cord to place on deck out of water.

**Dry Niche Fixture:** not common, see NEC for specifics.
Pedestrian access gates shall open outward away from the pool and shall be self-closing and have a self-latching device.

A self-closing pedestrian gate must open away from the pool because if the latch fails to operate, a child pushing on the gate will not gain immediate access to the pool.

Large non-pedestrian gates are not required to be self-closing (these gates are typically operated by persons other than small children).

When the release mechanism of the self-latching device is located less than 54 inches from the bottom of the gate, the release mechanism and openings shall comply with the following:
   The release mechanism shall be located on the pool side of the gate at least 3 inches below the top of the gate AND
   The gate and barrier shall have no openings greater than ½ inch within 18 inches of the release mechanism.

Use this as a guide when the release mechanism is located less than 54 inches from the bottom of the gate.
Where the barrier has horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, the horizontal members shall be located on the swimming pool side and the spacing between the vertical members shall not exceed 1-3/4 inches. When the distance between the tops of the horizontal members is more than 45 inches spacing between vertical members shall not exceed 4 inches.

Solid barriers with out openings (masonry or stone) shall not contain indentions or protrusions except for normal construction tolerances and tooled joints. This provision reduces the potential for gaining a foothold and climbing the barrier.

Barriers shall be located so as to prohibit permanent structures, equipment or similar objects from being used to climb the barriers. The purpose of a swimming pool barrier would be defeated if children could climb on benches, planters, pumps, and similar permanent features adjacent to the barrier and gain access to the pool area.
The more stringent 1-3/4 inch provision for spacing between vertical members applies when the spacing between horizontal members is less than 45 inches. It acknowledges the potential for a child to gain both a handhold and a foothold by limiting the space between the vertical members on the same barrier.

Lattice fences, the maximum opening formed by the diagonal members shall not be more than 1-3/4 inches.

Maximum mesh size for chain link fences shall be 2-1/4 inches. The mesh size is permitted to be larger if slats are used to reduce the mesh openings to 1-3/4 inches in order to reduce the potential for a child to obtain a foothold or handhold.

For SI: 1 inch = 25.4 mm