



**COMMUNITY DEVELOPMENT  
SERVICES DEPARTMENT**

616 W. Lancashire Blvd.  
Bella Vista, Arkansas 72715  
Phone: (479) 268-4980

## Board of Construction Appeals Regular Meeting

DATE: SEPTEMBER 10, 2019 at 3:00pm  
LOCATION: COMMUNITY DEVELOPMENT SERVICES CONFERENCE ROOM  
616 W. LANCASHIRE BLVD.  
BELLA VISTA, ARKANSAS 72715

# AGENDA

### I. CALL TO ORDER

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### II. ROLL CALL

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*Members: Gary Young, Chairman; Tim Hull, Vice-Chairman; John Nuttall, Secretary; Stanley Moore; and Wade Hagan.*

### III. CONSIDERATION OF MINUTES

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*A. Meeting Minutes – June 11, 2019.*

### IV. UNFINISHED BUSINESS

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*None.*

### V. NEW BUSINESS

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A. **CVR-2019-31894**; Construction variance request for a swimming pool without a fence barrier at 57 Kensington Drive; Parcel #16-16533-000; Applicant Jon & Courtney Fitzgerald; Presented by Mr. Enochs.

### VI. OPEN DISCUSSION

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### VII. ANNOUNCEMENTS

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A. Next Board of Construction Appeals meeting will be on Tuesday, October 8, 2019 at 3:00pm in the Community Development Services Conference Room.

### VIII. ADJOURNMENT

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## BOARD OF CONSTRUCTION APPEALS REGULAR MEETING

DATE: JUNE 11, 2019  
LOCATION: COMMUNITY DEVELOPMENT SERVICES  
CONFERENCE ROOM  
616 W. LANCASHIRE BLVD.  
BELLA VISTA, ARKANSAS 72715

# MINUTES

## I. CALL TO ORDER

Chairman Young called the meeting to order at 3:00 PM.

## II. ROLL CALL

*Members present:* Gary Young, Chairman; John Nuttall, Secretary; Tim Hull; Stan Moore; Wade Hagan.

*Members absent:* None.

## III. CONSIDERATION OF MINUTES

A. *Regular Meeting Minutes – March 12, 2019.*

On a motion by Mr. Hull and a second by Mr. Nuttall, the March 12, 2019 minutes were approved by voice vote.

## IV. UNFINISHED BUSINESS

A. *Letter Regarding Construction Appeals Process.*

1. Mr. Nuttall said I drafted the letter we discussed at our last meeting, and after talking to Mayor Christie a couple of times, I don't think it's wise to go ahead with this idea. When we met a few months ago, there was almost no one here that knew who we were. I suspect the issues being brought to the Mayor's office were the fact that the Community Development Services Department (CDS) was in a little bit of turmoil. I suggest we let this topic die until such time it resurfaces.
2. Mr. Enochs said I make sure people that I talk to are aware of their option to bring things to the Board of Construction Appeals Board (BCA) if needed.
3. Mr. Nuttall said it would be good to have a flyer to give to people who have issues with building codes, ordinances, or field inspections.
4. Mr. Hull said from what I recall, you (Mr. Enochs) felt like contractors were going around you to the Mayor.
5. Mr. Enochs said yes, of course they do. If they don't like the decision of the CDS office, they tend to run down to the Mayor's office.
6. Mr. Hull asked what the Mayor does when they do that.
7. Mr. Enochs said most of the time the Mayor handles it.
8. Mr. Hull said shouldn't the Mayor direct them to this Board instead, and is this still happening today.
9. Mr. Enochs said the protocol should be that complaints are directed back to the BCA to deal with.
10. Mr. Nuttall said they should come back to us or the CDS office.

## BOARD OF CONSTRUCTION APPEALS

### REGULAR MEETING

11. Mr. Moore said if issues are being brought to the Mayor and he says he's bouncing them back, what is happening. Does the issue die or is someone else instead of us handling the appeal.
12. Mr. Enochs said they would be resolved. We have a new director, Doug Tapp, who is a really nice guy. Most things are being brought back to him.
13. Mr. Nuttall said that is a perfectly good procedure. If Staff isn't able to address the issue, then it should be brought to us.
14. Mr. Hull said my concern was if things are bouncing back, but aren't being addressed by the wrong people. The inefficiency may be that people are going to the Mayor first.
15. Mr. Nuttall said you aren't going to convince 26,000 people they don't have the right to go talk to the Mayor. When I spoke to him in March, he thinks he was directing people back to the CDS office.
16. Chairman Young said that is exactly the way it should be.
17. The Board agreed to let this issue die unless the need arises in the future.

#### V. NEW BUSINESS

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##### A. *Grading and Erosion Control Best Management Practices Training; Presented by Ms. Bingham.*

1. Ms. Bingham presented the Best Management Practices training. Mr. Hull had to leave during this portion of the meeting. All other board members took the training, passed the test, and were issued a Stormwater license.

#### VI. ANNOUNCEMENTS

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None.

#### VII. ADJOURNMENT

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The meeting adjourned at 4:00 PM.

SUBMITTED BY:

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Brenda Jorgensen  
Administrative Assistant III  
Community Development Services Department

APPROVED AND ACCEPTED THIS 10<sup>TH</sup> DAY OF SEPTEMBER, 2019.

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Gary Young, Chairman  
Bella Vista Board of Construction Appeals

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John Nuttall, Secretary  
Bella Vista Board of Construction Appeals

# Construction Exception

## Application

Please fill out this form completely, supplying the necessary information and documentation to support your request. Your application will not be processed until the application is completed and the required documentation is provided. All application fees are non-refundable.



**Fee: \$100.00 per request**

**PRIMARY CONTACT** (select one):

☐ Applicant / Agent

☒ Owner

### PROPERTY INFORMATION

Property Address: <b>57 KENSINGTON DRIVE</b>	Parcel #:		
Lot:	Block:	Subdivision:	Current Zoning:

### OWNER INFORMATION

**OWNER CERTIFICATION:** By my/our signature below, I/we certify under penalty of perjury that I am/we are the owner(s) of the property that is the subject of this application. I/we have read this application and consent to its filing. Further, I/we authorize the agent listed below to represent me/us in proceedings with the City of Bella Vista regarding this application. (See reverse for additional acknowledgements)

Name: <b>JON FITZGERALD</b>	Owner Signature:
Mailing Address: <b>57 KENSINGTON DR.</b>	City: <b>BELLA VISTA</b> State: <b>AR</b> Zip: <b>72715</b>
Phone: <b>479-422-4989</b>	Phone: Email: <b>jonfitzgerald@yahoo.com</b>
Name: <b>COURTNEY FITZGERALD</b>	Owner Signature:
Mailing Address: <b>57 KENSINGTON DR.</b>	City: <b>BELLA VISTA</b> State: <b>AR</b> Zip: <b>72715</b>
Phone: <b>479-271-5988</b>	Phone: <b>314-368-8838</b> Email: <b>cb-fitzgerald@hotmail.com</b>

### APPLICANT / AGENT INFORMATION

**APPLICANT / AGENT ACKNOWLEDGEMENT:** By my signature below, I certify under penalty of perjury that the foregoing statements and answers herein made all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval. I understand that the City might not approve what I am applying for, or might set conditions on approval. (See reverse for additional acknowledgements)

Name:	Applicant/ Agent Signature:
Mailing Address:	City: State: Zip:
Phone:	Phone: Email:

***This application is not valid unless signatures on both the front and back of this form have been provided.***

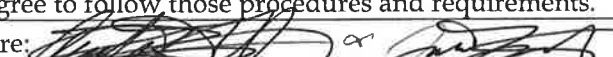
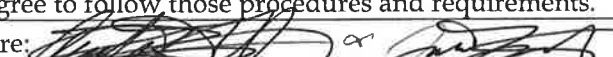
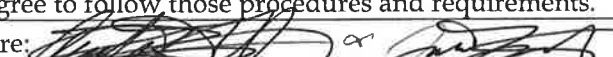
### FOR OFFICE / REVIEW USE ONLY

Application Date:	How Paid: <input type="checkbox"/> Cash <input type="checkbox"/> Check <input type="checkbox"/> Plastic	Notification Deadline:
Reviewer:	File #:	Zoning: Board Date:
Permit #:	Permit Fees:	Receipt # Board Action:

### APPLICATION CHECKLIST

- |                                     |   |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | 1. A completed application with appropriate fee. Applications will not be processed unless all of the required information is provided, including the items below.  |
| <input checked="" type="checkbox"/> | 2. Applications must include that interpretation claimed, the use for which the permit is sought, and the details of the exception and the grounds on which it is claimed that the exception should be granted.   |
| <input checked="" type="checkbox"/> | 3. Scaled drawing showing the requested exception along with all relevant information, including the exceptional condition or the situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought. |
| <input checked="" type="checkbox"/> | 4. Any additional information that conveys the exceptional hardship on the property including photos, maps, etc.  |

### ACKNOWLEDGEMENTS

- |  |   |   |               |
|--|---|---|---------------|
| 1.   | <i>Fees:</i> The fee for any appeal or application to the Board of Construction Appeals is non-refundable.  |   |               |
| 2.   | <i>Effect of Appeals:</i> An appeal shall stay all proceedings of the action appealed from, unless the person affected by such appeal certifies to the Board of Construction Appeals that, by reasons of facts stated in the certification, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board or a court of record on application, and notice to the person from whom the appeal was taken. |   |               |
| 3.   | <i>Time Limits on Permits:</i> No order permitting the use of a building or premises, or the alteration or erection of a building, shall be valid for a period longer than 180 days. Such use must be started or established or the erection or alteration is started within such period and proceeds to completion in accordance with the terms of a building permit.  |   |               |
| 4.   | <i>Reconsideration:</i> If an exception request is disapproved, it shall not be reconsidered by the Board of Construction Appeals within one year from the date of denial of the exception request. The resubmission must meet all requirements for an exception request and shall be a different exception request.  |   |               |
| 5.   | <i>Appeals from Board of Construction Appeals:</i> Any person or persons, or any board, taxpayer, department, board or bureau of the City aggrieved by any decision of the Board of Construction Appeals may seek review by a court of record of such decision, in the manner provided by the laws of the State of Arkansas.  |   |               |
| 6.   | I hereby acknowledge the legal notification requirements and Board of Construction Appeals hearing procedures. I also agree to follow those procedures and requirements.  |   |               |
| <table style="width: 100%;"> <tr> <td style="width: 70%;">Owner / Agent Signature: </td> <td style="width: 30%;">Date: 7/31/19</td> </tr> </table> |   | Owner / Agent Signature:  | Date: 7/31/19 |
| Owner / Agent Signature:   | Date: 7/31/19   |   |               |

***This application is not valid unless signatures on both the front and back of this form have been provided.***

**The application continues on the next page.**

## EXCEPTION REQUEST INFORMATION

Exception requested and why you are requesting the exception (include the code section you wish to vary):

CODE 109-251 → FENCING REFERENCE GUIDE: POOLS, SPAS, DETENTION, RETENTION TONDS. PLEASE SEE ATTACHED FOR EXCEPTION EXPLANATION.

Section 103-45(f) of the Municipal Code requires that each exception request meet at least one of the following criteria in order to be granted. Please attach additional sheets of paper to this application for continuations of exception request justifications.

Exception Review Criteria	Yes	No	Applicant's Justification for Request
1. Does the literal interpretation of the provisions of the Municipal Code deprive the applicant of rights commonly enjoyed by other properties?			PLEASE SEE ATTACHED
2. Do special conditions and/or circumstances exist which are peculiar to only this land, structure or building and not to any other?			PLEASE SEE ATTACHED
3. Are special conditions and circumstances the result of any action by the applicant? If yes, do new special conditions or circumstances exist? If yes, what are they?			PLEASE SEE ATTACHED
4. Does granting the exception keep the spirit, general purpose, and intent of the provisions of the Municipal Code?			PLEASE SEE ATTACHED
5. Is the request the minimum exception that will make possible the reasonable use of the building or structure?			PLEASE SEE ATTACHED
6. Is the exception injurious to the neighborhood or otherwise detrimental to the public, health, safety, and welfare?			PLEASE SEE ATTACHED
7. Will the granting of the exception support the obligations to comply with all other applicable statutes, ordinances, laws, or regulations?			PLEASE SEE ATTACHED

7/31/19

City of Bella Vista  
Community Development Services  
616 W. Lancashire Blvd  
Bella Vista, AR 72715

MEMO: Construction Exception

Property Owners: Jon & Courtney Fitzgerald  
Property Location: 57 Kensington Drive  
Bella Vista, AR 72715

*Exception requested and why you are requesting the exception (include the code section you wish to vary):*

Code 109-251 Fencing Reference Guide: Pools & Spas, Detention & Retention Ponds

We are requesting an exception due to the nature and topography of the land surrounding the swimming pool, plus a fencing system with gates is already installed on the property preventing anyone who resides at said property access to the pool area.

*Exception Review Criteria*

1) Yes, the literal interpretation of the provisions of the Municipal Code deprives us, the homeowner of rights enjoyed by other properties for multiple reasons:

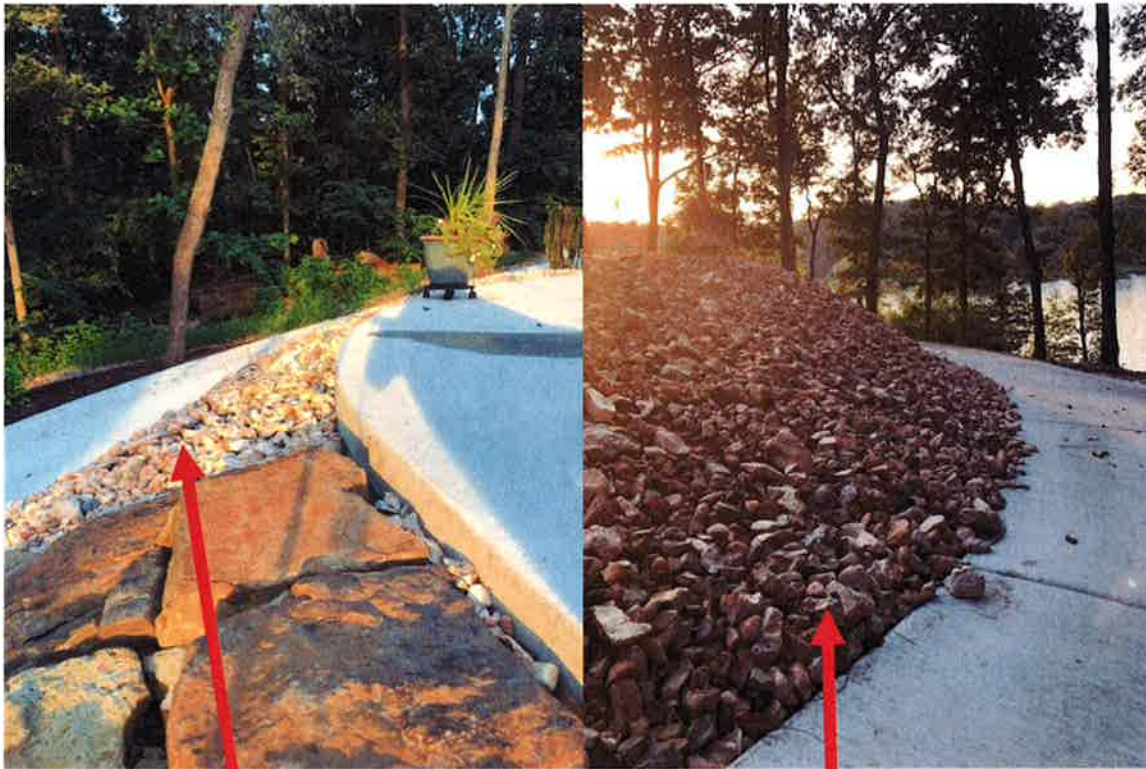
a) Multiple lakefront properties (four to be exact, including our property) exist with in ground pools on Lake Windsor in Bella Vista WITHOUT fencing on the property and/or surrounding the pools. Each property has a pool that is in closer proximity to the lake compared to our property, while our in ground pool is over 250 feet away from the lake.

b) Our property has a fence with multiple gates (that can be locked) that encompasses the entire backyard, restricting access to the pool area from the home.

b) Installing fencing around the pool area in addition to the existing fencing on the property with interfere with the aesthetics of the property and restrict the homeowner's view of the lake from the pool area.

2) Yes, special conditions exist which are peculiar to only this land, structure or building and not to any other. The topography of the land surrounding the pool is extremely steep and prohibits access. There are elevation changes in excess of anywhere of 6 to 20 feet from the lower concrete path to the upper pool deck, of which is carpeted with loose rock and prohibitive for climbing. Wildlife, dogs and humans are unable to navigate this hillside. Please see the below pictures:





Fitzgerald Pool 1

Fitzgerald Pool 2

Fitzgerald Pool 1: Elevation change over 10 feet; over 45 degree angle

Fitzgerald Pool 2: Elevation change ranging from 10 feet to over 20 feet as you progress towards the pool house area on the backside of the pool; over 45 degree angle.





Fitzgerald Pool 3

Fitzgerald Pool 4

Fitzgerald Pool 3: Another view of the significant elevation change, making it prohibitive for access; over 45 degree angle

Fitzgerald Pool 4: Another view of the significant elevation change, making it prohibitive for access; over 45 degree angle



Fitzgerald Pool 5

Fitzgerald Pool 5: Another view of the significant elevation change, making it prohibitive for access; over 45 degree angle



Fitzgerald Pool 6

Fitzgerald Pool 6: Another view of the significant elevation change, making it prohibitive for access; over 45 degree angle

3) No, there are no special conditions that exist as a result of any action by us, the homeowner. The topography of the land was already extremely steep prior to construction of the pool area.

4) Yes, granting the exception does keep the spirit, general purpose, and intent of the provisions of the Municipal Code. The code states that outdoor pools must be protected by an enclosure designed to restrict access by children. Our property already has fencing with gates in place that restricts access to the pool area. The fencing meets the requirement of a minimum 48 inches above the grade as per our approved permits when installed in 2015. Please below pictures:





Fitzgerald Fence 1



Fitzgerald Fence 2

Fitzgerald Fence 1: Arrow indicates location of pool in relation to black chain-link fencing

Fitzgerald Fence 2: Arrow indicates location of pool in relation to black chain-link fencing



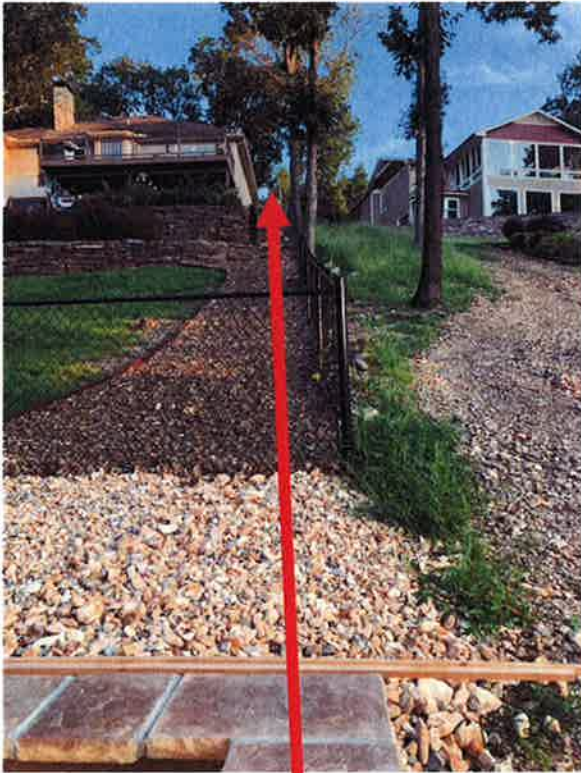
Fitzgerald Fence 3

Fitzgerald Fence 3: Two of three locking gates on property restricting access to pool



Fitzgerald Fence 4

Fitzgerald Fence 4: Another view of locking gate to pool area restricting access to pool



Fitzgerald Fence 5

Fitzgerald Fence 5: Third locking gate on property restricting access to pool

5) Yes, the request is the minimum exception that would make possible the reasonable use of the building or structure. The only way to access the pool area is to trespass across another homeowner's property that is at a 45 degree incline angle covered in rock, or climb over 250 feet uphill from the lakeside. See below picture.



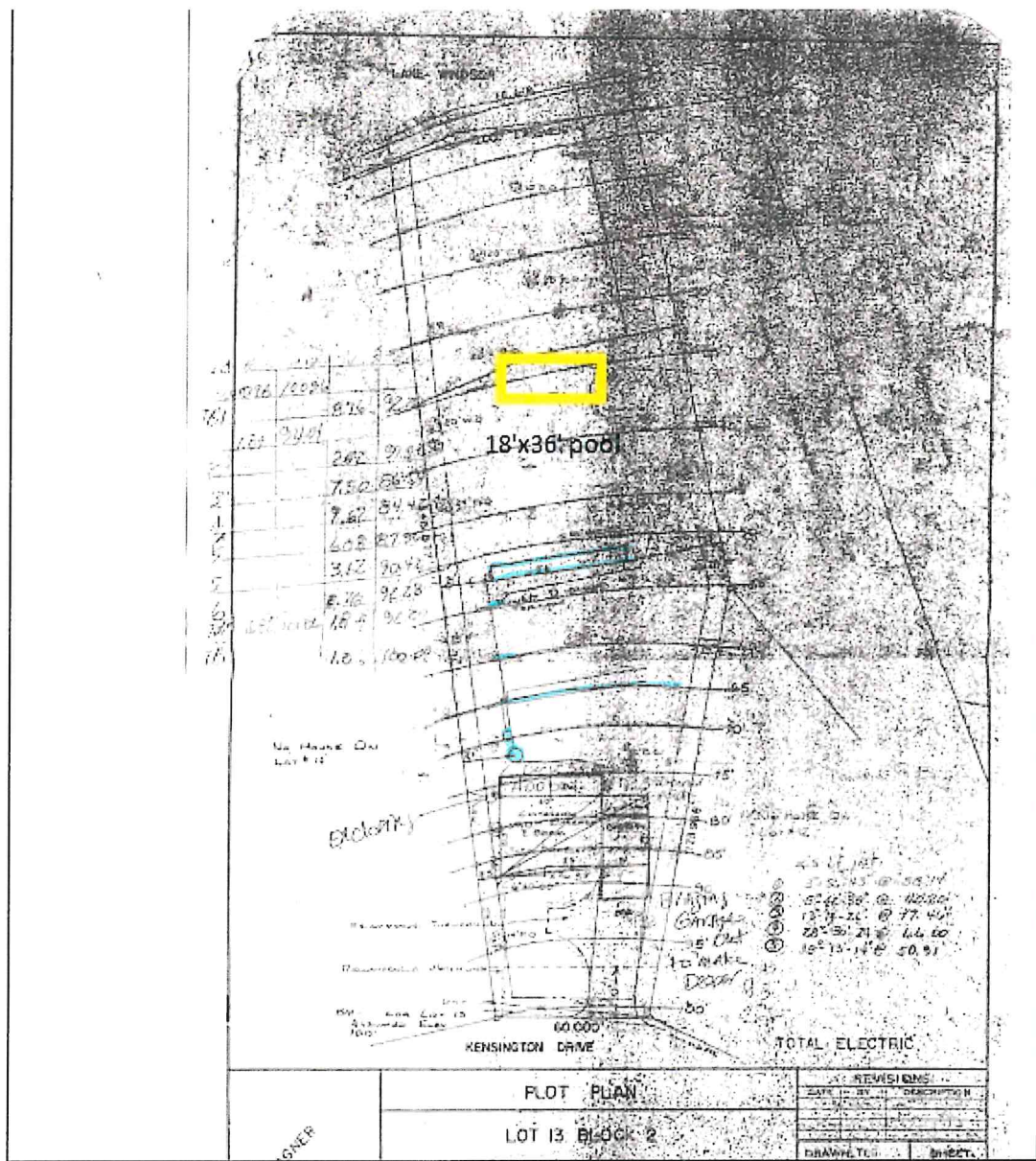


Fitzgerald Pool 7

Fitzgerald Pool 7: View from pool  
looking down toward lakefront

6) No, the exception is not injurious to the neighborhood or otherwise detrimental to the public, health, safety, and welfare.

7) Yes, the granting of the exception will support the obligations to comply with all other applicable statutes, ordinances, laws or regulations. All applicable permits were obtained by our construction company, OAK Homes in compliance with City of Bella Vista building requirements for our project, which included the installation of the in ground pool.



-Inground  
gunite  
swimming  
pool  
3.5'-6' deep



1	096	10096	8.76	92.20
2	189	34.04	2.52	91.52
3			7.50	86.54
4			9.62	84.42
5			6.08	87.96
5			3.62	90.42
6			2.76	92.28
7	6.86	101.86	18.4	92.20
76			10.6	100.00

enclosure

1-0-#12

$x$ 's Lf int.

- ①  $3^{\circ} 56' 43'' @ 58.14$
- ②  $5^{\circ} 42' 38'' @ 40.30$
- ③  $13^{\circ} 14' 26'' @ 17.46$
- ④  $28^{\circ} 30' 24'' @ 66.00$
- ⑤  $38^{\circ} 13' 14'' @ 50.91$

BRINGING  
GAMMA  
95' Out  
to make  
Deeper

BM- COR LOT 13  
ASSUMED ELEV.  
100'

KENSINGTON DRIVE

TOTAL ELECTRIC

WAGNER

# PLOT PLAN

LOT 13 BLOCK 2

# KENSINGTON SUBDIVISION

**COOPER COMMUNITIES, INC.**  
ENGINEERING & PLANNING DIVISION  
BELLA VISTA VILLAGE, ARKANSAS

## REVISIONS

DATE	BY	DESCRIPTION
DRAWN TEG DATE: 7-18-74		SHEET 1 OF 1
CHECKED DAS DATE: 7-17-74		DWG. NO.
JOB NO. 2511		SCALE 1" = 30'

APPROVED: