



# City of Blaine Anoka County, Minnesota

Blaine City Hall  
10801 Town Sq Dr NE  
Blaine MN 55449

## Legislation Details (With Text)

**File #:** RES 21-125    **Version:** 1    **Name:** Pool Fence Variance  
**Type:** Resolution    **Status:** Passed  
**File created:** 6/7/2021    **In control:** City Council  
**On agenda:** 6/7/2021    **Final action:** 6/7/2021  
**Title:** Pool Fence Variance Request For 3062 117th Avenue NE  
**Sponsors:** Erik Thorvig

### Indexes:

### Code sections:

**Attachments:** 1. Air Photo, 2. Application and Survey, 3. Residential Swimming Pools & Hot Tubs P, 4. Property Photos, 5. Similar Property Across Lake

Date	Ver.	Action By	Action	Result
6/7/2021	1	City Council	Adopted	Pass

**Administration** - Erik Thorvig, Community Development Director

### Title

## Pool Fence Variance Request For 3062 117<sup>th</sup> Avenue NE

### Executive Summary

The owner of 3062 117<sup>th</sup> Avenue NE has requested a variance to Chapter 18 of the city code to require only three sides of a pool barrier fence be installed.

### Background

The owner of 3062 117<sup>th</sup> Avenue NE installed an in-ground pool after receiving a permit on August 26, 2020. The permit was submitted on behalf of the property owner by Atlantis Pools who is the installer of the pool. The plans submitted for the permit showed a 4-foot, non-climbable safety fence with latching gates around the entire perimeter of the pool which is required by city ordinance. Prior to final inspection of the pool this spring, it was observed by a building inspector that only three sides of the fence were installed. The property abuts one of the lakes in the Lakes development and the portion of the fence that abuts the lake was not installed. A stop work order was issued until the fence issue is resolved. After receiving the stop work order, the homeowner connected with city staff regarding options to keep just three sides of the fence.

Chapter 18, Article IX of the city code regulates swimming pools and provides a variance provision that states “Any proposed deviations from these standards and requirements shall require a variance from the council in accordance with city ordinances”. After consultation with the city attorney, this option was offered to the homeowner who requested to proceed with a variance request. The variance process outlined in Chapter 18 is different than a typical zoning variance as there is no specific criteria to consider when granting or denying a variance or public hearing requirement. Staff and the city attorney determined that if a variance is granted, there should be findings identified as to not set a precedent and identify any unique circumstances, similar to what is required when a zoning variance is granted.

As previously stated, Chapter 18 of the city code requires “*Installed pool barriers should be at least 48 inches high from finished ground level, as measured along the outside of the barrier, and should have no more than a two-inch gap from the bottom of the barrier to the ground. Such height shall exist around the entire perimeter for a distance of three feet where measured horizontally from the required barrier. Openings in the barrier shall not allow passage of a four-inch diameter sphere.*”

The International Swimming Pool and Spa code introduced the option a number of years ago of powered pool covers as an alternative to the 4-foot fence requirement. In 2016, the City Council amended the city code to allow powered pool covers as an alternative to a fence. After receiving a complaint in 2018 from a resident adjacent to a pool that was installed with this provision, the City Council chose to revert to the fence requirement and remove the provision allowing powered pool covers as an alternative. There were only two pools (of 14) installed in Blaine that did not install a full perimeter fence from 2016-2018 and utilized the powered pool cover provision.

One of the two pools installed between 2016-2018 that did not install a full perimeter fence is located across the lake from the subject property (see attached photo). This property has similar site characteristics along the waterfront as the subject property. This example is the main reason the homeowner believes that a perimeter fence barrier should not be required if an approved powered pool cover is installed. Building inspections staff confirmed that the homeowner of the subject property has a pool cover that meets the International Swimming Pool and Spa code.

When granting a variance, there should be findings identified as to not set a precedent and identify any unique circumstances. Safety is the primary concern in requiring a barrier. The homeowner has installed a fence on three sides of the pool and has an approved powered pool cover so it could be argued that sufficient safety measures exceeding the requirements of the International Swimming Pool and Spa code have occurred. The subject property is unique in that it abuts a natural lake barrier and is adjacent to only two other properties on each side. Staff would not support a variance if the property owner did not install three sides of the fence and was not adjacent to a natural lake barrier which reduces the amount of people that would have direct access to their backyard. Staff would also not support the variance unless a powered pool cover consistent with the International Swimming Pool and Spa code was installed.

#### **Strategic Plan Relationship**

Not applicable.

#### **Board/Commission Review**

No board or commission review is required for this request.

#### **Financial Impact**

Not applicable.

#### **Public Outreach/Input**

Chapter 18 of the city code does not outline a public outreach process for variances.

#### **Staff Recommendation**

Based on the findings and rationale identified in the staff report, staff recommends approval of the variance.

#### **Attachment List**

Site Location/Air Photo

Permit Application and Survey  
Residential Swimming Pool Handout  
Photos of the Subject Property  
Pictometry Photo of Similar Pool

**WHEREAS**, the property owner at 3062 117<sup>th</sup> Avenue NE installed an in-ground pool; and

**WHEREAS**, Chapter 18 of the Blaine City Code regulates installation of swimming pools and requires a barrier fence of at least 4-feet around the perimeter of a pool; and

**WHEREAS**, the property owner has installed only three sides of the barrier fence; and

**WHEREAS**, the property abuts a natural water barrier; and

**WHEREAS**, the property owner has installed a powered pool cover consistent with the International Pool and Spa Code; and

**WHEREAS**, the property owner has requested a variance through provisions identified in Chapter 18 of the Blaine City code to require only three sides of the barrier fence; and

**WHEREAS**, when granting a variance, there should be findings identified as to not set a precedent and identify any unique circumstances; and

**WHEREAS**, the homeowner has installed a fence on three sides of the pool and has an approved powered pool cover therefore sufficient safety measures exceeding the requirements of the International Swimming Pool and Spa code have occurred; and

**WHEREAS**, the subject property is unique in that it abuts a natural lake barrier and is adjacent to only two other properties on each side.

**NOW, THEREFORE, BE IT RESOLVED**, that the Blaine City Council hereby approves a variance to Chapter 18 of the Blaine City Code to allow for only three sides of a pool perimeter fence to be installed at 3062 117<sup>th</sup> Avenue NE provided an operable powered pool cover remains installed that is approved by the International Swimming Pool and Spa code.

**PASSED** by the City Council of the City of Blaine this 7<sup>th</sup> day of June, 2021.