

BEFORE THE BOARD OF HEALTH AND WELFARE
STATE OF IDAHO

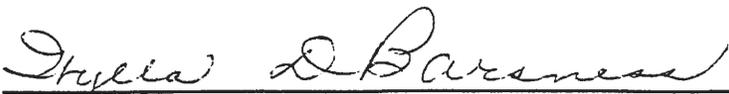
PINES INC.,)	
)	
Appellant,)	Docket No. 0107-91-04
)	
vs.)	O R D E R
)	
IDAHO DEPARTMENT OF HEALTH AND WELFARE,)	
)	
Respondent.)	
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Pursuant to Title 39, Chapter 1, and Section 67-5212, Idaho Code, and after reviewing the HEARING OFFICER'S REPORT and proposal for decision, a copy of which is attached hereto, and no party having filed exceptions to such Decision as provided by Section 67-5211, Idaho Code,

IT IS HEREBY ORDERED, that the variance request from certain swimming pool regulations governing swimming pools in the State of Idaho made by Pines Inc., shall be and is hereby denied.

DATED this 13th day of August, 1991.

MEMBERS OF THE BOARD OF
HEALTH AND WELFARE:



WYLKA D. BARSNESS, Ph.D.
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Donna L. Parsons

DONNA L. PARSONS

CERTIFICATE OF MAILING

I hereby certify that on this 10th day of October, 1991, I mailed a true and correct copy of the foregoing ORDER to the following named individuals by first class mail:

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Administrative Hearings Coordinator
Department of Health and Welfare

Idaho Dept. of Health & Welfare
 Administrative Procedure Section
 RECEIVED & FILED
 MAY 20 1991
 DOCKET NO. 0107-91-04

BEFORE THE BOARD OF HEALTH AND WELFARE
 STATE OF IDAHO

PINES, INC.)	
)	
Appellant,)	Docket No.: 0107-91-04
)	
vs.)	<u>REPORT OF HEARING OFFICER</u>
)	
IDAHO DEPARTMENT OF HEALTH)	
AND WELFARE,)	
)	
Respondent.)	

This matter is before the undersigned hearing officer on appeal by Pines, Inc. of the denial of Pines, Inc.'s request for a variance from certain swimming pool regulations governing swimming pools in the State of Idaho. The variance request was made by Pines, Inc. by its application dated September 3, 1990, regarding overhead lighting power wiring in the area of the outdoor swimming pool at the Pines Resort Motel in Coeur d'Alene, Idaho, and its application dated September 9, 1990, regarding overhead telephone cable also at the Pines Resort Motel outdoor swimming pool. The applications were denied December 12, 1990.

Hearing was had before the undersigned hearing officer on April 5, 1991, at which Pines, Inc. appeared and was represented by its President, Ivar Kljavin and the Department was represented by Deputy Attorney General, Douglas Conde.

Based upon the evidence presented at the hearing, the hearing officer makes the following findings and conclusions:

1. The controlling swimming pool regulation is IDAPA Section 16.01.7300,04 which provides, "There shall be no overhead electrical wiring within twenty (20) feet (horizontal distance) of the swimming pool enclosure". The regulation is intended to protect members of the public who are invited to use swimming pools as motel patrons and also employees or members of the public working in the area of swimming pools, from risk of electrocution.

2. The subject telephone cable and lighting power wire are

within 20 horizontal feet of the swimming pool enclosure at the Pines Resort Motel.

3. The telephone cable and lighting power wire both cross over the concrete pool deck within the swimming pool enclosure (the fenced-in area surrounding the pool).

4. The height of the telephone cable as it comes over the enclosure is not established by the evidence. The height of the power cable is eighteen (18) feet where it attaches to the light pole immediately outside the pool enclosure. The power cable dips to its lowest height over the pool enclosure at the point where it crosses over the fence and leaves the enclosure at the southwest extremity of the pool deck, at a height of sixteen (16) feet.

5. The pool maintenance and safety equipment includes a metal pole used by motel employees with a vacuum attachment and by employees and/or guests with a safety hook attachment for rescue purposes. The pole is hung on the fence at the southwest side of the pool enclosure, for ready access in the event of an emergency. The maximum useable length of the extended pole is sixteen (16) feet; the length of the pole at full extension is eighteen (18) feet.

6. Both the telephone cable and lighting power wire carry some electrical current. The power cable carries a sufficient charge to present a clear safety hazard if it breaks and falls into the pool enclosure or if it is contacted with the metal pool pole.

7. If the power cable breaks loose from the light pole or breaks anywhere across its length as it spans the pool enclosure, it may fall into the pool enclosure, contacting wet surfaces, or it may strike the metal fence and/or persons within the pool enclosure. Pines, Inc. failed to submit competent evidence in support of its assertion that the danger posed by the power wire breaking is prevented by the presence of Washington Water Power's fault circuit breaker system.

8. The power wire is within reach of the metal pole used with the cleaning and rescue equipment. Although contact between the wire and pole is unlikely in usual cleaning and transporting

operations, the proximity of the wiring and the length of the pole presents a potential hazard in less controlled emergency situations.

9. Alternatives regarding the power wire have not been fully considered. No evidence regarding the dollar cost of some of the more extensive modifications such as installation of underground wiring to replace the overhead wiring was offered by Pines, Inc. A number of options are still under consideration by Washington Water Power and by General Telephone and have not yet been ruled out. At least one alternative to the overhead power wiring could be accomplished at a cost to Pines, Inc. of approximately \$1,200.

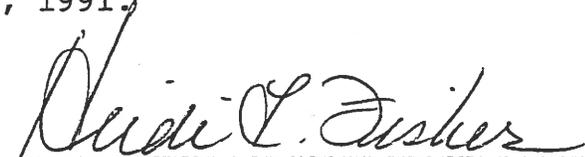
10. Overhead lighting of the outdoor pool similar to that presently in place is clearly necessary for the safety of motel patrons using the swimming pool after dark. Although Mr. Kljavin testified that Pines, Inc. would not consider this option, the Pines Resort Motel has an indoor pool which can remain available to guests for use after dark if the variance request is denied. The indoor pool is also available for use by guests if the outdoor pool must be temporarily closed in order to make modifications necessary to bring the wiring into compliance with the regulation. The existence of the indoor pool should mitigate the economic burden to Pines, Inc. associated with requiring its compliance.

11. Pines, Inc. attempted to rely entirely on hearsay evidence as to G.T.E.'s and Washington Water Power's representations as to the absence of any risk presented by the telephone cable and power wire. The hearing officer generally ruled against admission of this evidence. However, the limited testimony of Mr. Kljavin regarding the electrical characteristics of telephone cable, based upon his own expertise is uncontroverted. The Department, through its swimming pool variance committee has strictly applied the regulation in this case without significant consideration for the electrical characteristics of the subject telephone wire. The committee denied the variance request on the basis that wire carrying any electrical current or charge, regardless of how slight, comes

within the meaning of electrical wiring proscribed by the regulation. From Mr. Kljavin's testimony, the electrical current carried by the subject telephone cable is apparently minimal and the danger of electrocution presented by this "electrical wiring" is small, either from the cable itself or from the possibility of a transferred charge to the cable from the electrical line attached to the same pole. However, the hearing officer is unable to conclude from the evidence that the telephone cable poses no danger to health or safety and Pines, Inc. failed to present sufficient evidence to meet its burden of proof that no reasonable alternatives exist to having the telephone cable transverse the pool deck or that all alternatives are at undue cost.

12. Pines, Inc. failed to establish that compliance with the applicable swimming pool regulation will result in an arbitrary or unreasonable taking of property or that such compliance will impose an undue economic burden on Pines, Inc. Pines, Inc. failed to show that an exception from compliance in these circumstances will not result in a condition endangering health, safety or environmental quality.

DATED this 16th day of May, 1991.



Heidi L. Fisher
Hearing Officer