



Zoning Hearing Board

Wednesday, April 18, 2018 4:00PM

City Council Chambers



BEFORE THE CITY OF GREENSBURG ZONING HEARING BOARD

In the matter of:
Timothy and Angeletta Henry

Appeal:
Variance §265-128

Property Location:
707 Curtis Road

Hearing Date:
April 18, 2018

PROCEDURAL BACKGROUND

Timothy and Angeletta Henry of 707 Curtis Road are requesting a *Variance* as per §265-128 of the City's Zoning Ordinance to place a swimming pool and pool house in the front yard of the property due to a hardship. Subject property is zoned R-1 Single Family Residence District.

Members of the board present: Charlotte Kuhns-Chair
Patsy Iapalucci-Vice Chair
Barry Gaetano
Justin Calisti

Absent: Jon Hillwig

Also Present: Lou DeRose, Solicitor
Barbara J. Ciampini, Planning Director

Charlotte Kuhns introduced the Board Members present and advised all persons present who planned to participate in the scheduled hearing to stand and be sworn in.

There were no objections to advertising or procedure at the onset of the hearing.

DISCUSSION

Timothy Henry introduced himself to the board members and explained why a variance is being requested. The property that Mr. and Mrs. Henry own used to be an old Carriage house that was converted into a single family home. Mr. and Mrs. Henry have spent 12 years to continually fix up the property, restore certain areas of the house to the specifications of when the building was built, and to maintain landscaping and older trees that are located within the area. The original cobblestone driveway where the original owners of the land led their horses to and from the Carriage house is still at this location. The property itself technically has two front yards on either side, one facing Curtis Road and the other facing Tribune Review Drive, per Planning Director Barbara Ciampini. The left side of the property is flat, and the rear of the property is on

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a slope with a retaining wall in the far back corner. The hardship is based on the topography (slope) of the property and the lot being irregular with two front yards. The location of the proposed pool placement will not fully inhibit the trees and the roots on the property. There is no entrance to the rear of the house from the side of the house or from the other street frontage and due to the concrete flooring in the house, plumbing and stairs cannot be ran to the side of the house where the pool will be located, so the pool house will contain a shower and restroom for guests. The pool house will act as a partial blockade on the side of the property between Mr. Henry's property and the neighboring property, and mature trees and bushes along with a fence around the pool will enclose the area to provide a buffer. Currently, between the property lines is a railroad tie wall, a pergola and a small pond among many mature burning bushes and other older trees. The pool will be situated back 37 feet from the property line in the front of the property and 22 feet from the nearest corner of the neighbor's property. The size of the pool will be approximately 16' by 40'.

Board member, Barry Gaetano, asked exactly what the hardship is for this project. Mr. Gaetano wasn't sure if it was a financial hardship or something entirely different. Mr. Henry explained that in order to build an in ground driving pool, the pool would need to be of a specific length and width to have a large enough to ensure that the shallow end is large enough. The deep end would be eight feet and would contain a slide, not a diving board. The pool itself will not fit based on the topography and the existing deck in the back of the house. The fill excavated from the pool area will be used to build up the pool house to make it level and fit in with the rest of the topography of the property. If the pool would be moved to the rear of the house, the area would need a large amount of fill and a second retaining wall to ensure that the runoff and way that the topography runs to that back corner of the lot does not cause a safety concern or other problems. Another issue of placing the pool behind the house would be that quite a few mature Japanese trees would be compromised for the construction. Mr. Gaetano mentioned that Mr. Henry stated that there would be a financial burden based on the topography of the irregular lot. If the pool would be placed behind the house, a second retaining wall that would cost \$40-60,000 would need to be placed and Mr. Henry doesn't believe that the cost is worth the outcome since the Mr. and Mrs. Henry may not get the amount out of the house that they have put into fixing up the property.

The question of concern of noise levels was brought up by board members. Mr. Henry responded by stating that his family is generally running back in forth between hockey and gymnastic activities, and are extremely well behaved. The pool will only be used three to four months out of the year. There have never been any noise complaints in this area of the City, and noises from automobiles on Route 66 can be heard night and day along with the printing machines from the Tribune Review that run daily.

Gerry Fajt of 706 Curtis Drive asked board members what the variance is actually for in this case. Barbara Ciampini responded by saying that the lot is irregular and technically has two front yards and does not have typical front, side and rear yards. The need of the variance is due to the pool and pool house being accessory structures that, per Zoning, have to be placed in the rear

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yard of the property. Since this property does not technically by zoning standards have a rear yard, the variance would allow for the pool to be placed in front of the house. Solicitor Lou DeRose asked the record to show that the initial notice that was mailed to neighbors and printed in the Tribune Review was incorrect when asking for two variances. There is only one variance needed for the placement of and accessory structure in the front of the house due to the irregular lot. Per the survey, the pool would be located within one foot from the building line and the concrete would be approximately six feet over the building line. An engineer's scale was used to verify the measurements on the survey.

Barbara Ciampini read a section of law aloud from the *Pennsylvania Municipalities Planning Code* Act of Jul. 31, 1968, P.L. 805, No. 247 Cl. 53 (Reenacted and amended Dec. 21, 1988, P.L.1329, No.170) for the audience and board members, which states the Zoning Hearing Board's functions in relation to variances. Section 910.2 (a) states:

(a) The board shall hear requests for variances where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The board may by rule prescribe the form of application and may require preliminary application to the zoning officer. The board may grant a variance, provided that all of the following findings are made where relevant in a given case:

(1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) That such unnecessary hardship has not been created by the appellant.

(4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

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5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

In granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of this act and the zoning ordinance.

Mr. Gaetano again asked if the hardship is due to the financial constraint. Ms. Ciampini stated that the hardship is due to the topographical layout and irregularity of the lot. Mr. DeRose stated that he couldn't remember a time when the law allowed a variance for financial reasons. Money may have affected the decision for some of the other decisions in the past and for other locations, however that's not a reason in the matter of this case. Tim Henry stated that the property is level until the location of the proposed pool house. If the pool would be moved back on the property, the pool house would be 12 feet above the ground and would look odd.

Marian DeBone of 713 Curtis Road commented on the proposed project. Mrs. DeBone is located directly next to Mr. and Mrs. Henry and would be most impacted, and she does not have one problem with the location of the pool. Mrs. DeBone testified that the Henry's have taken the initiative for years to fix up their property, and that they don't hear any noise from their children. Marian stated that there are 12 children in the neighborhood and they have not had a problem. Mrs. DeBone stated that she was certain that the Henry's would not cause problems with the trees.

George Austin of 714 Curtis Road has lived at this location for the last 40 years. Mr. Austin lives directly across the street from Tim Henry's. George wanted to state that although he is sympathetic to Mr. Henry's views he feels as though the pool and project would interfere with his enjoyment of the neighborhood. Mr. Austin sees the property every day and has determined that with a lack of an artist's rendering of what the property will look like with the completed the project, he would rather look at trees and flowers compared to a pool and pool house. Mr. Austin stated that he is unable to hear noise from the Tribune Review or the traffic from Route 66.

Linda Austin of 714 Curtis Road spoke with concern against the project. Mrs. Austin first stated that the photograph that Mr. Henry mentioned that was in the rear of the structure was actually on the opposite side of the property and wasn't sure how it was related to the project. Mr. Henry reviewed the photographs that were presented to the board and again assured that the pool would be back further than the Gingko tree in the front of the house and would be covered with mature trees. Mrs. Austin explained that background of the private Curtis Drive, which is located within the area known as Rose Fountain Farms. The old Carriage House that Tim and Angeletta Henry own once belonged to the Rose Fountain Farm mansion that was once located in the rear of Mr. and Mrs. Austin's property. Linda stated that when she and Mr. Austin purchased their property in 1980, a covenant stated that signs, fences and pools were not permitted in this area of Greensburg. Neighbors also pay to maintain Curtis Road with snow removal, paving, etc. as it's

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a private drive. Mrs. Austin stated that neighbors are concerned about heavy machinery destroying the road, as well as the large tree root systems being destroyed. Linda spoke with a tree specialist that informed her that the root system would most likely be damaged and destroyed from the construction. Mrs. Austin asked if she could read a letter that was written by Tina Phillips Johnson of 718 Curtis Road in concern to the project. Board members allowed Mrs. Austin to read the letter, which was then admitted as an exhibit for the hearing.

Board member Justin Calisti asked if the property owners belong to a homeowner's association since it's a private area. Tim Henry stated that the neighbors pay \$400 per year for maintenance, and when paving is needed then the property owners pay more money. Mr. Henry addressed the issue of heavy machinery on the roadway and informed board members that there is a large Waste Management truck that drives down the road weekly for garbage pickup. Tim is not expecting the machinery for this project to weigh more than the Waste Management truck, and if possible the machines will be brought in from the Tribune Review side of the property. Mr. Henry also informed board members that he never signed an agreement stating that he wasn't allowed to cut down trees on his property or place a pool on his lot. The agreement is only for road maintenance and salting. Planning Director Barbara Ciampini clarified that there were once covenants for the area, but they have probably since gone away with time and lack of a homeowner's association to manage the covenants. After 20 years covenants naturally expire unless a member of association re-enacts them.

Marian DeBone of 713 Curtis Road mentioned that Judge Richard McCormick, who also lives in the Rose Fountain Farms has a pool on his property. As far as the money paid for the road maintenance, neighbors pay fees directly to Linda and George Austin but do not see reports of how the money is spent. Mrs. DeBone also stated that there is also a tennis court located within the neighborhood as well.

Property owner Tim Henry made comment that the pool will be a rectangle and will have an auto cover that costs roughly between \$12-14,000 that will protect the pool from leaves, branches and other nature items. The auto cover will also act as a heat saver for the pool and a safety device. Mr. Henry wants to keep the trees on the property without disrupting them as much as possible.

Board member Barry Gaetano again asked if the pool was placed in the back corner of the lot, could the pool be turned and also turn the pool house to have the pool fit better. Mr. Henry stated that the current deck is already six feet off the ground. To place the pool at this location would mean affecting the Redwood tree on the lot, void spaces would be created between the deck area and pool house, and water would not be able to be run to the pool. The back corner of the lot has an irregular topography that doesn't allow for building due to the slope without having to build up the land and add an additional retaining wall on to the current retaining wall, which is not aesthetically pleasing for the neighborhood. Mr. Gaetano was interested in tabling the hearing for a week to view the rear of the house area.

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Barbara Ciampini reiterated that board members are allowed to request an extension to do more research, but the overall goal is to ensure that all members of the neighborhood have a positive outcome. While board members were discussing the information amongst themselves, Ms. Ciampini was able to pull up Google images of the property to show the retaining wall in the rear of the house as well as the surrounding area.

Donald Lettrich, the architect for Mr. and Mrs. Henry, commented on the irregular topography of the lot and how the pool and pool house would need to be placed. If the pool would be turned and placed behind the house level with the deck and bottom of the ground, which is six feet above the ground, would make the pool approximately 12 feet above the ground by the time it makes it to the corner of the lot where the retaining wall is located. The project would then add more topographic and irregularities to the lot if moved, along with the removal of additional trees. Mr. and Mrs. Henry would prefer not to take down trees to ensure that there is still some privacy of the lot from the traffic on Tribune Review Drive and Cabin Hill Drive.

Ms. Ciampini, as the Zoning officer, felt that all conditions have been met for the pool and pool house to be built in the 30 foot buildable set back area and through the testimony by the property owners and the neighbors.

Board members discussed the project amongst themselves for several minutes, prior to member Patsy Iapalucci **motioning to grant approval of the variance**. Board member Justin Calisti **seconded the motion**. Charlotte asked for questions on the motion and hearing none asked for a roll call vote:

Patsy: yes
Jon: absent
Barry: no
Justin: yes
Charlotte: yes

Motion passed by a majority vote.

Solicitor Lou DeRose asked that the record once again show that the motion differs from the initial notice that was mailed to neighbors and advertised in the local Tribune Review newspaper. The variance is only about the location of the pool and has nothing to do with side yard restrictions or front yard restrictions. The pool is not able to be placed behind the house due to hardships not caused by the applicant/property owners. The motion that passed is giving Tim and Angeletta Henry permission to place the pool and pool house on the property according to the plans that were presented to the Zoning Hearing Board. The approval has nothing to do with a variance for front and side yards.

Chairwoman Charlotte Kuhns made the following statement: Within 30 days of the decision of the board, this decision may be appealed to the Court of Common Pleas of Westmoreland

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County. It is important that you understand that the persons requesting the action may take the appeal of this decision to the board against him, but those opposed to his or her requests may also take an appeal within the 30 day period. If the action of the board results in an approval of the request or an individual, no work may proceed on the property until the 30 day appeal period has expired. Any person requesting a copy of this decision, you can leave your name and address with the secretary.

Board member Justin Calisti motioned to adjourn the meeting.

*Meeting adjourned at 5:23pm.

City of Greensburg Zoning Hearing Board

APPEAL OF: Timothy and Angeletta Henry

DATE: 18 April 2018

SUBJECT PROPERTY: 707 Curtis Road, City of Greensburg

HEARINGS HELD: 18 April 2018

INTERPRETATION

The Board adopted the following order, which states its interpretation of the Zoning Ordinance as requested in your Appeal.

VARIANCE AS PER §265-128 OF THE CITY'S ZONING ORDINANCE TO PLACE A SWIMMING POOL AND POOL HOUSE IN THE SIDE AND FRONT YARDS OF THE PROPERTY DUE TO A HARDSHIP.

DECISION: ☒ Granted
☐ Denied
☐ Other

A list of the Findings of Fact, as determined by the Board is attached and is made part of this decision.

Unless otherwise stated, any authorization by the Board for a Special Exception, Variance, or other determination shall expire if the applicant fails to obtain a Building Permit within six (6) months from the date of authorization, noted above.

BY:

CITY OF GREENSBURG ZONING HEARING BOARD

Ratsy J. Applegate
Charlotte Fuhrer
James G. Calvert

[Signature]

CERTIFIED MAIL sent to property owner: