



Zoning Hearing Board

Wednesday, December 19, 2018 4:00PM

City Council Chambers



BEFORE THE CITY OF GREENSBURG ZONING HEARING BOARD

In the matter of:
Barbara A. Angelo

Appeal:
Variance

Property Location:
201 Kenlane Street

Hearing Date:
December 19, 2018

PROCEDURAL BACKGROUND

201 Kenlane Street – Property owner Barbara A. Angelo is requesting a VARIANCE per the City Code §265-128 related to the front yard setback requirement in order for the tent/shed structure to remain in their front yard required setback. 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 – Arrived at 4:05pm

Absent: Jon Hillwig
Barbara J. Ciampini, Planning Director

Also Present: Lou DeRose, Solicitor

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

Charlotte Kuhns: The first hearing today is in relation to 201 Kenlane Street. I'll read the Zoning Notice. Property owner Barbara A. Angelo is requesting a VARIANCE per the City Code §265-128 related to the front yard setback requirement in order for the tent/shed structure

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to remain in their front yard required setback. Subject property is zoned *R-1 Single Family Residence District*. State your name and address please.

Barbara Angelo: Barbara Angelo, 201 Kenlane Street, Greensburg. I had written a summary of what was going on. I don't know if you want me to read that or—it was in the little booklets that we turned in. It's about a page and a third that pretty much sums up—

Charlotte Kuhns: We have seen the information that was sent to the Zoning Board.

Barbara Angelo: Okay, so that pretty much sums up everything that it's about for me. It really isn't a shed, it's a cover over our driveway because we're have such—I see that you have samples of the leaves up there. The leaves, the reason that they're the problem is because when they fall and they cover our drain—if you read the write up too, it mentions about the pitch of the lane when it was paved; it was tipped. So, when that happens out garage floods. We've spoken to the neighbor about the trees numerous times about pruning them or removing them or whatever and she really isn't giving us much satisfaction. This thing has been there for about 14 years and it seemed to be the line of least resistance for us. We didn't really want to get into something to stir up a lot of neighborhood animosity and this seemed to be the simplest way to solve a problem that we really didn't think would end up like this. It was more a covering for the driveway to protect when these leaves fall, and I mean there's millions of them, and when they fall and even if we'd be away from the house for a day and there would be rain we've had our garage flooded numerous times because these cover the sewer. The cover over the driveway protects the sewer. So, it's really not a carport, it's not a shed, it's not a tent. It may look like all of that, but really its protection. Like I said, it seemed to be a simplest way to solve a problem without causing a bigger one.

Charlotte Kuhns: We'll look at the pages briefly and put them up on the screen too. That's the tree, right?

Barbara Angelo: We had gotten some information—in fact we didn't even know what these trees were to be honest and we took some samplings out to Penn State Agricultural Department. They didn't know what it was and they sent it away and they believed that it was a Kentucky Coffee Tree. The people years ago when they first had that property, I guess, had probably had them planted and many years ago the original owners kept everything pruned very well. They had gardeners so these things never got out of hand years ago. They were taken care of quite well, but now they're far too high and being that they've been growing over the years—well you can see the growth. In the fall when these things fall it's quite a disaster, and to redo the sewer thing is out of the question. I don't want to get into legal costs for her to remove the trees and that's not even a guarantee either, because we've found out there's many things involved with trying to deal with people's trees. As I said 14 years this seemed to be a very simple solution to a problem.

Barry Gaetano: Do these shed all year?

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Barbara Angelo: They start, I would say maybe in August or July. It starts maybe mid-summer and then into the fall and actually they just pretty much finished up right now. So, they're shedding when we're getting the worst of the rain and the worst of the weather that would—and then in the spring they'll start to come up again; they'll start to bloom again and then when the mid-summer they'll fall again. Then these big poomy things come along with it eventually.

Charlotte Kuhns: And you've spoken to the neighbor over the years about having them trimmed and—

Barbara Angelo: Over the years—well the first time we spoke to her about it, we said would you consider pruning them or removing them, and she said well I'd like to maintain a park like atmosphere in my yard. That was quite a number of years ago and as I said as the years go on this thing gets worse and worse and worse, so we did talk to her back in the fall about possibly pruning or even removing the trees would be the best thing because they're so high now that even pruning—I don't know what they would prune I mean they're too high up to prune that it wouldn't really make much of a difference right now and she said she didn't know if that could be in her budget and that was the last we heard of it.

Charlotte Kuhns: Would anyone else like to comment on it?

Barry Gaetano: Have you spoken with an attorney to just as a informational meeting to find out what your options are?

Barbara Angelo: Well the thing is that we were told that even to have her remove these trees that there's so much to go into that to get an arborist to determine this, that and the other thing. I really just don't and can't get into doing anything on a legal basis for having these trees removed. She should have been taking care of them. This should have been something that should have never happened.

Barry Gaetano: See I guess when I look at this if we grant a variance in allowing you to have this you almost set a precedent that you say well if another neighbor has something you're not happy with and you want to be able to build a structure for that specific reason then we open ourselves up to we've set a precedent, we've allowed for this when there hasn't been all legal recourse to solve the problem. I mean if you went to an attorney and the attorney said we can try this and I don't know if the family can bear the cost of legal representation for you, but if they come back and you've lost the case I guess then at that point in time you've done, at least for me, you've done what you can do. I guess the question is for us to be able to grant a variance if you haven't done everything else that you can try to do to solve the problem that puts us in a predicament.

Barbara Angelo: Well I think it's kind of asking a lot to expect me to, for something that wasn't my fault, to get into the expense of legal fees. I just really can't do that. It's not that I don't like the trees it's that they're causing me a problem. They're causing flooding and damage in my

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garage and then we're back again to the part of the thing that the street was paved and the pitch was changed and the water runs into the driveway, so there's several factors going on here. Like I said—

Barry Gaetano: I guess what I'm looking at is, is you have rights as a property owner—

Barbara Angelo: That's right.

Barry Gaetano: So that if somebody has branches, I'm not here to give legal advice I'm just talking about my own property when I've had issues with neighbors with things, if those branches are in cringing or encroaching on your property and they are causing an issue like branches hanging over your house you have the right to either ask them to trim them or you cut them yourself. My question is, are these trees causing her problems also with—

Barbara Angelo: She doesn't seem to care.

Barry Gaetano: But she still gets the same kind of debris that you get?

Barbara Angelo: She does, but she'll just call someone. She's had issues where she's had to have people come in and do stuff with her sewers. I can't afford to do that. I'm a simple person, a simple property owner, and like I said it's not just that I don't like—I love trees, I think they're beautiful and I just said to him that I like the fall when the leaves changes colors and everything. I don't want my garage flooded. This is the problem, and it just seemed like to me I would rather resolve the problem the simplest way without getting everybody mad at one another. We felt this would be a simple solve.

Lou DeRose: Well you've asked for a variance and you don't qualify for a variance under the rules. We've already turned down requests for this type of tent structure in front and side yards where it isn't allowed. It really doesn't matter what the reason is. To get a variance you'd have to be talking about something unique to the land that wouldn't allow you to develop the land and that isn't here at all. The circumstances that the property can't be developed. You already have a very nice home on the property. You might want to consider a very high fence. You just can't do it this way. I can tell you that you do have some recourse legally that would be an expense to that. You might be able to get some of that expense back, but what you've asked for here does not qualify for a variance because that's the front yard of the property. The ordinance defines what you're allow to do in the front yard; a tent, a shed, call it what you will is not one of the things you can do. It's very unfortunate.

Barbara Angelo: Yes, it is. It's very unfortunate, like I said again, that I should have to put out any money—this should have never happened. This house—my father built this house. At some point or another our family—this is from 1952. When they passed on I got the house, so I've been a property owner and paid taxes here for a long, long time, and up until the time that we began to have problems with that particular property over there with the trees everyone was

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really respectful of other people's properties and that's really the way it should be. No one should cause a problem to then cause me to have to go into some expense that really shouldn't be my—that shouldn't have to happen.

Lou DeRose: That's why I say, like Mr. Gaetano said, you should have a little consult with a lawyer which you could probably do for nothing or next to nothing.

Barbara Angelo: Well this is what we were told, to do the variance that as far as going into a lawsuit to get somebody to remove their trees is virtually next to impossible.

Lou DeRose: That may not be the only recourse. The removal of the tree may not be the only answer. There may be some other remediation that can be done, but I can't advise the board to give you a variance when you don't meet the criteria for the zoning under 910. Unfortunately, you don't even come close.

Pete Angelo: What is the criteria?

Lou DeRose: The criteria is, there are five things you can do to get a variance. I don't know if they passed this out to the audience—

Barbara Angelo: Did we not write the right thing? Did we not do—

Lou DeRose: That had nothing to do with that. You asked for a variance, this is how you get a variance. It's got to fit all of these criteria not just one of them, all of them.

Barbara Angelo: No, I did not see this.

Charlotte Kuhns: Did you get a copy to read?

Barbara Angelo: I have this here. I'm seeing it now for the first time, but yes.

Justin Calisti: What's the main use of the carport?

Barbara Angelo: It's not a carport, it's a—well I know it looks like one, but because we have to also park in the driveway it has to be enough so that we can get our car in. The sewer that's back in there is what the problem is. When these leaves cover the sewer and the sewer can't drain properly and the water comes into the house. And then because of—see it's a small sewer.

Justin Calisti: It's just a basic sewer line.

Barbara Angelo: Right, which should be fine for that house if wasn't for the problem with the other situation and then when I said the street was paved the pitch was changed. There was a

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curb put in on the other side of the side so that the water can't even drain off over the side of the street; it all comes rolling in our driveway.

Justin Calisti: So this really all started when the street was repaved or was it ongoing?

Barbara Angelo: That added to it. The leaves have been a problem all along. Then when the street was repaved that just compounded it, so now we have this bigger mess going on.

Pete Angelo: My name is Pete Angelo and I'm Barbara's husband. I reside with her at 201 Kenlane Street. The issue we're discussing here is the litter issue and tent, shed whatever the City wants to call it. Now, I'm not as nice as her. You all probably know that from other people, okay, I take so much and that's it. There's a responsibility here with this City that they've neglected to fulfill their duty to the tax payers of this City, and controlling the mess with these streets. Not only do I have an issue with this set of trees here, I've got pictures and documentation of the trees in my back yard from my neighbors. You brought the point up about if they're over in your property you can take them down. I've been tempted to do that. My neighbor will not allow the landscapers to go back there and climb the trees to cut them. You can verify this because the Police Department was up there on Veteran's Day to tell me to quit throwing the debris that falls in my yard back over where it belong. I tried to manage that batch of garbage in my back yard. So, if we could go back to the first picture, ma'am. Okay, there are two of these Kentucky Coffee Trees that are the issue; this one in the front and a second right past my garage probably about 30 feet from this tree. They are about 75 feet high. The branches extend probably a radius of 50 feet and over the years, as you can see here, they were left not being taken care of or pruned or manicured. So, back about 20 years ago right at this spot here, this one bough was hanging way over my driveway. It snapped off on a Sunday morning, took our electric power off of the house. I had West Penn come later in the morning to put my wire back up and he said that's a tree issue. The guy was real nice, it was a Sunday, and he put the power back on my house. I approached her at that time about this; she's accusing me of cutting it. First of all, I don't have anything that high to get up there and cut it with. I said you've got to do something with this tree, I'm having an incident here already. Good thing they were at church that morning, the car was out of the driveway. It just took the powerline down. This is the second tree. This thing is a little bit bigger in diameter. It's toward my back. This one really causes me trouble with my garage roof and the back side of my house on the roof, because it's so high that it blocks all the sun. This will be the third roof I have to put on my house in less than 30 years, because there's no sun, no nothing that can get back there and keep that roof dry because of this stuff being so high it's ruining my property. It's ruining my roof. I've got fungus growing on it. I've had roofers there and they say your problem is these trees. They're too high and they're causing this debris that ruins my roof. This is the litter; this is what comes mainly all year long, fellows and ma'am. This comes almost all year long. As it states in here and in the next couple of pictures, you'll see when it starts and I've taken pictures of it when it starts. They start with the Rachis first. I had to throw this one in here. It's just comical. Anyone who comes to my house, they say do you do blacktop work? I said no this is the *incomprehensible word* --I'll clean it up, this litter off of my property because I can't

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rake it—you can't rake these things. You can't use a regular blower or these guys that have backpacks that blow this stuff off. I had to buy an eight horsepower blower to keep this stuff off my property 16 years ago; 16 years ago I bought that. The receipt is on the next page. That's how I have to clean them. I can't rake them. That's when I was a young guy 16 years ago and I trouble doing it. This here starts, well this has the protective cover. This is what it looks like over it, and if you see here where the cover meets the brick here these things still get in here because they blow. They blow in here when they come off this high—as high as they are. This stuff gathers here. This is the second course of action. These come after the Rachis, the little leaves. These little leaves completely fill your driveway, they completely fill your ground and that's why I got that eight horsepower. I just have to blow them off so the City can come and pick them up. This picture is of the leaves, the fine leaves. This starts in mid-summer these leaves start to fall off of these trees. This starts in mid-summer, then it winds up—this is the big tree in the back now and you can see how it just fills in my pavement back there and yard. Then comes the Tobys or the fruit. If you see up there what I have the arrow at the top of the page it shows the protective covering. If I didn't have the protective covering there this is the stuff that gets in my driveway. It's what starts the compound in my driveway and also you can see it in my gutters there. Next slide please. This is the back yard from the other tree. Okay, now it's getting to be a combination of the trees across the lane, which I'm under the understanding that the City is responsible for, and their leaves. I don't mind leaves. Leaves would be very easy for me to clean up. That's no time, but it mingles in with this other debris that compounds and if I don't constantly keep after it it's next to impossible to try and keep it maintained. I then have to take it and put a piece of canvas down there, plastic down there, blow them off there and try to pull them off because they just embed so bad. As you'll see in there, over the years I have to keep updating this system, because it gets worse. I would think as these trees got older they should be dying off and not giving you as much garbage. These things just compound, so this past year I had to wind up putting gutters on the side of this thing, which looks like hell and I know this looks like hell. I don't want it there either, but there's no other recourse for me. I had to come up with a system because between the rain, the wind and these things would blow in because we've had a lot of rain this year. I understand it's the second heaviest rain season we had and this was the ideal time for anybody on this board to come and see what I deal with. This would have been the year for it. I had to come up with this invention. I trap those Rachis, the little things, and the Tobys, the bigger things, will sink to the bottom of that drum, the other stuff floats to the top. I have a pipe coming out of that going into another drain, you'll see a screen there, which finalizes and captures the rest of those little leaves so all I have is water coming out of there that goes to my sewer so my sewer has a chance to drain without getting cold. On top of that, I have to minimize that amount of debris because anything over a medium range that we have with the lane that was pitched, I blacktopped my driveway again last year and had them raise it; I can't raise it much more. The guy says you can't raise it much more, because now I'll be adding to the problem because now I'll be adding more of an angle into my driveway, so I had a lip there. Over the years this erosion takes place—this is when they raised the lane six inches; six to eight inches in spots and it's peculiar, like Barb says, our house is the house really on that lane that slumps this way. Everybody else's house is either up higher, like Mrs. Tripoli's driveway it's up and nothing

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can get into her driveway, the neighbors where the trees is nothing there. My neighbor on this side, her driveway goes down back to her house and it just runs right of into the back yard. I'm the only one there and this is what we couldn't understand when I came back from Fort Leonard Wood that year when my wife told me they're paving the lane. They made the lane wider and they took two feet of property off to the other side. They widened the lane. When I came home I said, geez they turned this lane and they put a curb in. Not this curb. A curb on the other side of the lane, which you've been up there I'm sure because there were pictures taken here from the City, and years ago the water used to run a little bit that way I didn't get as much. Well when they put the curb there and raised it, they turned the pitch of that lane and it comes my direction, okay? The sewer is only a five inch bell sewer. It was engineered for the design of the house when it was built back in 1952, and with all this other stuff it just can't absorb it. If you clog anything it won't drain. My neighbor put this wall up a few years back, this stone back—well if we go back further there was this other curb that was put in, this curb. My neighbor next door to me on the other side installed this curb on a City street, which I thought was kind of strange because I knew a guy that had apartments down on Center Avenue and he put a curb up and the City made him take it down because it didn't meet the specs of the City. I was shaking my head when I saw this curb put in, so I inquired about it and this was put because the water runs down and was flooding her front yard there. She put the curb up. She did what she had to do and I don't think she's been cited for anything, so you've got to do what you've got to do. This wall was put up and bricks where this wall was were chopped down, they didn't stick above the lane now. These bricks used to stick above the lane, but when they raised it they don't. The water comes down that trough, runs down just like you'll see the arrow here, runs down just like this, comes down to my driveway, it mixes with all that dirt and mud and of course that just flows into my driveway and acts like a mud base. That clogs the drains. I had three times I had to go rent the augers and sewer augers to open up my drain because of the mud and debris stuck in it, and this is when I decided that we need to deal with this and put this canopy up, or this cover, over our driveway. The erosion takes this and I should have took the movie of this the day I did this. I was so amazed myself when we had the real heavy rain that day, like it rained almost six or seven hours that day, that water just came down there and I was just amazed to see how that water came down along there and it just knew how to follow that patch down in there, and I should have made a movie of it instead of just taking still pictures of it. It would really show you what I'm dealing with there. I have a five inch aluminum curb I had to put up on the side of my driveway to try to block this stuff. I didn't ask for this issue, I didn't ask for these problems. I don't try to make any trouble with the City, I never did. I did approach the guy when I came home. That was like talking to the wall over here, because he had an attitude about it; Mr. Hoyle the guy that was in charge when they paved the streets at that time. I have my own interpretation of that like I do this other one and that's what really got me. Goddammit you took my property, you didn't send anybody letters on this thing, you didn't notify anybody up here that you were widening this lane, because I'm an old engineer in the Army and if I was told anything like that I'd say wait a minute here people let's look at this. You're going to pave this lane, you've got to mill this thing down because now you're going to dump—do you know how many gallons of water you're going to dump in my driveway? Now I think I would qualify for that because I had 40 years of that—

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38 years at that time in the service for engineering. I didn't go to Florida and go take a damn course down in Florida to know how to maintain streets, so I worked around engineering almost all of my life so I know what I'm talking about when this happens. The City walks away from it. The City does that, okay. First of all, they should have notified like they did here, sent everybody a letter about this problem. This problem is not only my problem, but it's going to be the City's problem also. I'm serious people, because enough of the tree situations in this City and some of these ordinances that are in the City that maintain and how they're being maintained and how they're being enforced and how they're being ruled on is questionable in a lot of peoples' eyes. You're a lawyer, you're an attorney and some of that is questionable. Okay, you know how that's going down, alright? So, my other point here is I tried to resolve it with the neighbor and she's telling me she doesn't have the—it's not in her budget, but meanwhile she's in Spain, she's in England, she's in France. We don't have the money. I'm telling her it's destroying my property and if you rode up that lane like you did you'll see stuff growing up out of her gutters. She's had more plumbers up and people opening up her sewers than I can even shake a stick up, but we don't have money to take care of this. But I'm supposed to fork out money because of this? I'm an old engineer. I can tell you how those trees can come down. I don't want anybody in this City come and bother me; no police, no court, no magistrate. I'm an old engineer, I know how they can come down just like the ones in the back. I told the City police, that guy in my back and I've got pictures of that if you all want to look at them, almost killed me that day. Two hours after I was done cutting the grass this enormous branch, 21 feet long eight feet high, snapped right off of that tree and crashed into my yard and yet he won't give people permission to climb that tree so I can take them off of my side; it's growing on my side. Where's the City out looking out for us kind of people? The BS about running it through the lawyers, giving the money to the attorneys, going to fight it in the system; we know how that works in Westmoreland County. Not going to happen. It's not going to happen, because I've been down that route. I've talked to people. It's a big vicious circle. It isn't going to happen okay? I'm a guy with 42 years in the military. I know how to get results and it's not in the system we're doing here. I was told the guy was told to prune the trees in the back and he totally ignored it. So, what the City can do for me there? It's ruining my property in the back. It almost killed me. I've got a three year old grandson that's coming this summer to spend time with me. Three years old, the only grandson I have. His father's in the service too and he's coming back from Hawaii. He's going to spend some time with me in the summer. How can I go out there in that back yard with a peaceful mind to know that this shit of my other neighbor's falling off in my yard at any given time, and I can't get it resolved because he won't let people climb the tree? They can't get equipment back there so he has to climb the tree, so I'm dealing with tree issues here. The City's dealing with tree issues here, like that tree up on Maple Avenue off of Kenneth Street. It's falling down in the middle of the street every damn day and I don't understand that. Why isn't the City taking that tree down, because it's a hazard; it's going to kill somebody. There's shit laying out there every day. Kenlane, where we live, there's about five trees that are rotted and just lying in that clump of trees waiting to fall over, but I'll tell you what if we go up to Mt. Odin golf course I'll betcha those trees are all gone up there that were falling down and being eaten out by bugs.

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Patsy Iapalucci: I think we're getting off track here.

Pete Angelo: Well no, it's a related issue. You're saying about the variance and that it doesn't qualify for a variance. Pardon me?

Patsy Iapalucci: We don't handle all of that. You'd have to go to the Police or go get a lawyer and take them to court and fight it. We can't do anything about that.

Pete Angelo: Well I'm explaining to you that the variance we're asking for is because not of me. I can't go—I've already been to lawyers and talked to different lawyers and it's not a guarantee that those trees can come down. If she doesn't want them to come down, they're not coming down.

Patsy Iapalucci: That's probably true.

Pete Angelo: It is true.

Patsy Iapalucci: I'm not a lawyer; I don't know that.

Barry Gaetano: Mr. Angelo, I can feel for your situation. When I moved into my home five years ago in Underwood, I had tree issues. I had to pay to tear them down myself because they were rotted, but I had a neighbor who had an issue and I talked to her and we dealt with it. I had a curb that the water came up and ruined the sidewalk. I had to spend \$5,000 to redo a sidewalk and put an 18 inch curb in to meet the City guidelines. I understand where you're coming from. Hear us though, we have five guidelines that we have to go by. If we don't go by those we set a precedent for other people who have built and we've had to deal with those issues in the Northmont areas or other structures, maybe not exactly similar but a structure that was built and didn't fit the guidelines. You have to understand where we're coming from too. We only have certain guidelines we can follow.

Pete Angelo: Well let me ask you this, you're telling me then I have to take this down and then if my house, which is going to have damage done to it from the water, who's responsible for that then? All I'm asking for is this—there's nothing the City can do with helping us with these trees? Is there nothing?

Barry Gaetano: You need to be able to speak with legal counsel.

Pete Angelo: We've done that.

Barry Gaetano: We don't own the property. You own the property. The lady next door, or the man next door owns the property. It has nothing to do with the City. If the City was burdened with dealing with every property owner's trees on their property with other neighbors, because either one they don't want to have to go to an attorney or two that they're not going to get it

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resolved. Your taxes would be sky high. Understand where we're coming from. We only have a limited ability. We have guidelines that we have to go by. We can't deviate from those guidelines if they don't meet these to be able to allow for you to have a structure. You have that structure and you still have a roof problem. You brought up about how these things are causing you roof problems, well you have this structure for the drain. This doesn't resolve your problem with the roof.

Pete Angelo: I understand that. That's why I said I've got to put another roof on here. Three roofs in 32 years and you know. Do I want to do that? Do I want my structure to fall down? Do I want my structure to leak? No.

Barry Gaetano: So maybe you need heed what we're trying to say to you is that you need to at least invest an hour with an attorney to say what are my options, because you're going to spend \$8,000 or whatever it is to put a new roof on but you're not willing to go talk to an attorney from what I—

Pete Angelo: We did talk to some legal advice.

Barbara Angelo: Nobody wanted to go up against the Zoning Board.

Barry Gaetano: This has nothing to do with the Zoning Board.

Charlotte Kuhns: It doesn't have—

Barbara Angelo: That's what we were told.

Barry Gaetano: If you're talking about coming to the Zoning Board as having a legal representation on this issue that might be what they're saying, but what I'm saying is go talk to an attorney, find out what your options are with this neighbor and the back neighbor because what you're telling me if you have a neighbor that has branches you have rights for those branches and you have to talk to an attorney to get those rights taken care of. We only have certain guidelines that we can go by. I can empathize with you, with your issues, but this doesn't resolve what we can do. We can't say to you, because the next person could say I'm going to build this because I'm having this problem.

Pete Angelo: I thought the board weighed the evidence and ruled on every individual case pertinent to it. If those trees come down this would be down tomorrow. I don't want that there. It would be down tomorrow.

Barry Gaetano: But you have to go by the guidelines.

Pete Angelo: But I can't take it down and cause more property damage.

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Barry Gaetano: We have to go by the written guidelines that we have to work with.

Pete Angelo: I think I made that opening statement like that, didn't I?

Barry Gaetano: What's that?

Pete Angelo: Who writes the ordinances, who enforces the ordinances and rules on the ordinance.

Barry Gaetano: These were not written by the City. These are Municipal Authority Guidelines. These are guidelines for municipalities. This has nothing to do with anybody in the City writing these guidelines. We are enforcing the municipal guidelines that are already in place.

Pete Angelo: So there's nowhere in the municipal guidelines for property owners with neighbor's trees? That's what I'm understanding there isn't.

Barry Gaetano: You have the right to speak with an attorney or legal counsel.

Pete Angelo: We've done that.

Barbara Angelo: What if you can't afford that?

Barry Gaetano: That's not something that we as a board can—

Pete Angelo: I'm not going to do that. We already talked to two attorneys already.

Barbara Angelo: They won't go against the board.

Lou DeRose: That has nothing to do with us. You need to try again.

Charlotte Kuhns: Does the City have anyone that they could talk to? Is there anybody—

Lou DeRose: The City Solicitor won't touch it because it may come before him.

Charlotte Kuhns: Can they recommend someone to help them?

Lou DeRose: No, they won't do that.

Barry Gaetano: Is the Shade Tree Commission still enforce?

Lou DeRose: I didn't think it is.

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Barry Gaetano: You might want to call the City Administrator's office and ask if the Shade Tree Commission is still active and ask them to—but you brought up about the arborist. An arborist would have to evaluate—I mean let me just tell you, I don't want to stretch this out any longer but I'm had a neighbor where I used to live that had a tree that was bad, I told him about it and a branch came off and crushed three roofs on my cars. I had three vehicles out of four that were crushed because of this branch. There was nothing that I could do about that either but I told him about it and he didn't want to do anything about it, so you have the right to get legal representation. I empathize with you, but this is not something that we can deviate from when it comes to that.

Pete Angelo: Okay. Appreciate your time to just hear me out.

Barry Gaetano: I appreciate you coming. I would like to call a vote. So, there already has been a cease and desist? What was issued?

Lou DeRose: It doesn't look like there's an appeal on this property. It looks like it's just a request for a variance.

Barbara Angelo: That's what we were told to do. We were advised by a legal person to do that.

Lou DeRose: Well the motion would be to then deny the variance. I don't see anything about overruling some citation. You didn't get a citation that you appeal.

Charlotte Kuhns: Yes, here it is. The notice is right here.

Lou DeRose: You didn't appeal that.

Barbara Angelo: We were told to do the variance that's why. Then we were mistold.

Lou DeRose: Who told you that?

Barbara Angelo: Your brother.

Lou DeRose: Well, that's fine. **Laughter from board and audience members.** I remember one other time David was wrong. What I see today is a request for a variance and my recommendation would be that the motion should be to deny that variance. Of course the board can do anything it wants.

Charlotte Kuhns: Patsy?

Patsy Iapalucci: I make a motion that we deny the request for 201 Kenlane Street.

Charlotte Kuhns: Yes ma'am?

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Josephine Tripoli: May I make a comment?

Charlotte Kuhns: Yes you may. State your name and address please.

Josephine Tripoli: I'm a resident of Kenlane Street, a couple houses from the Angelos.

Charlotte Kuhns: Your name?

Josephine Tripoli: When I received the notice of the hearing—

Barry Gaetano: Ma'am, your name?

Josephine Tripoli: Josephine Tripoli, 127 Kenlane Street.

Charlotte Kuhns: Thank you.

Josephine Tripoli: When I received the notice I thought it was just about the structure. I didn't realize the problems the Angelos were having. They're bad problems. I get in my yard Oak leaves from other neighbors, but that's nothing compared to what they're getting. My comment is I do not object to the structure. Anything that helps keep cars off of Kenlane Street, which is narrow, is good to me because it's a safety thing. Many times when other residents have parked on the street I'm afraid I'm going to lose the mirrors on my car, so I think a lot of this is good. The encroachment, you know, I don't know much about it and I think they've done a great job by putting the extra parking so that they are off the street with their vehicles. I wish some others would think about that because I have a narrow driveway too, but I just came to support my neighbors.

Charlotte Kuhns: Thank you.

Lou DeRose: There's a motion on the floor.

Patsy Iapalucci: Do you want me to say it again?

Barry Gaetano: Second?

Charlotte Kuhns: I'll second it. Can we have a roll call?

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Patsy: Yes to deny the variance

Jon: absent

Barry: Yes to deny the variance

Justin: Yes to deny the variance

Charlotte: Yes to deny the variance

Motion passed by a majority vote.

Barbara Angelo: What happens now?

Charlotte Kuhns: With your issue?

Barbara Angelo: Like if I don't rush home right now and take it down what are you going to do me?

Lou DeRose: I'd imagine you'd be good until after the New Year.

Charlotte Kuhns: Let me clarify.

Pete Angelo: My son is stationed in Hawaii. It's his last year in Hawaii, so he invited us out there for Christmas and New Year's. We're leaving Saturday morning for Hawaii to stay the holiday with him. We won't be back until the fourth of January.

Patsy Iapalucci: That shouldn't be a problem. They're work with you. The Zoning Officer will work with you and give you time to take it down. If you're not going to be there for a couple of weeks I don't think it's going to hurt anything.

Chairwoman Charlotte Kuhns made the following statement: Within 30 days of the date of this decision of the board, this decision may be appealed to the Court of Common Pleas of Westmoreland County. It is important that you understand that the persons requesting the action may take an 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. Anybody who would like to request a copy of this decision, you can leave your name and address with the secretary.

*Items entered as Exhibits:

1. Exhibit 1 – Racchis (Flowers)
2. Exhibit 2 – Fruit (Tobys)
3. Exhibit 3 – Stems (Long Needles)

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BEFORE THE CITY OF GREENSBURG ZONING HEARING BOARD

In the matter of:
Emmarcin Inc./Marvin Sheffler

Appeal:
Variance

Property Location:
449 College Avenue

Hearing Date:
December 19, 2018

PROCEDURAL BACKGROUND

449 College Avenue – Property owner, Emmarcin, Inc./Marvin Sheffler is requesting a **VARIANCE** per the City Code §265-17 (G) (3) related to the distance between student homes. Subject property is zoned **R-2 General Residence District**.

Members of the board present: Charlotte Kuhns-Chair
Patsy Iapalucci-Vice Chair
Barry Gaetano
Justin Calisti – Arrived at 4:05pm

Absent: Jon Hillwig
Barbara J. Ciampini, Planning Director

Also Present: Lou DeRose, Solicitor

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

Charlotte Kuhns: If you'd like to give us your presentation, give us your name and address.

Edward Kelly: Hello, my name is Edward Kelly. I represent the applicant Emmarcin, Inc. and Marvin Sheffler. Emmarcin is fully owned by Marvin Sheffler, so if I use one or the other they're interchangeable for today's purposes. Just briefly about the subject property, 449 College Avenue, it's a multi-unit apartment complex, as you said it's situated in an R-2 General Residence Zoning District; multi-family structure that consists of about 26 apartment units. As a multi-family dwelling

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unit it is a permitted use of an R-2 zone, subject to other provisions. As I said, it's on College Avenue and it's on the corner of O'Hara Street as well. Going behind the property is behind Brushton Avenue and on the other side is a residence, so three sides of the property there are streets. Across from College Avenue is the property of Seton Hill University. We are requesting a variance for §265-17 (G) (3) regarding the 500 feet distance between student homes. My client would like to rent some of these apartment complexes to students of Seton Hill University and other students. He bought the property back, I believe, back in 2000. Since then he has invested substantial funds in the apartment building and renovated it fully. It's my understanding that it was a bit run down before then, but now he's put substantial renovations into it. At the property's location, as I stated, being directly across the street from Seton Hill University and being on a pretty busy street and being an apartment complex, my client's concern is that not many people outside of college students will be looking to rent in an apartment complex right across from the university, or at the very least that would be his easiest cliental. If unable to rent to students, we think he'd be in a position where after investing substantial funds he wouldn't be able to fully rent the apartment out and may be left with some cost. The issues that we understand it with putting several student homes together within 500 feet I think boil down to basically parking issues and maybe noise and other activities; partying and things of that sort. In terms of parking, there is a parking lot for the property that would comply fully with all of the ordinances and be enough for the complex.

Lou DeRose: Get to how many feet you're talking about. There's a property that's student housing within how many feet of your building?

Edward Kelly: It's within 500 feet.

Lou DeRose: I understand that, but is it—

Barry Gaetano: How far is it?

Edward Kelly: It's about 150 and 200 feet. It's on Burkey Road.

Lou DeRose: Burkey?

Edward Kelly: Burkey Way. Burkley Way.

Patsy Iapalucci: It must be that side road.

Edward Kelly: Yes, it looks like a smaller road off of O'Hara.

Lou DeRose: Up O'Hara to an alley.

Edward Kelly: To the right.

Lou DeRose: Where is it?

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****Board members viewed a map on the TV screen that had the existing registered student home marked.****

Lou DeRose: Oh, and it's right behind another apartment building.

Barry Gaetano: No, that's the old—

Justin Calisti: It's an apartment building.

Lou DeRose: It's a four or five unit building. There's a house right across the street as you can see the gray roof and then you have the Wilps Aparments, the historic name not your name. So, if you're 130 feet to the nearest student house from the nearest point of your building then—We've had this issue many, many times before this board over the years and I think if memory serves me correctly we've granted 20 feet, 50 feet, something minor league that just was unfortunate, and yet the properties for student properties were not all that close really. If you're asking for a variance, and of course if we grant variances, we have to grant a variance of this many feet. You're asking us to reduce the 500 foot limit down to 370 feet.

Barry Gaetano: No, down to 150 feet.

Lou DeRose: Well, I thought he said it was—

Charlotte Kuhns: It's 171 feet.

Lou DeRose: Whether my math is right or wrong, it's an enormous reduction in the footage between the properties. Was that the only one that's close by?

Edward Kelly: That was the closest, I believe.

Patsy Iapalucci: There's a couple in there, aren't there? Aren't there a couple more in that area?

Edward Kelly: As far as I was informed we were only notified of that one. There may be more.

Lou DeRose: But only one within 500 feet. Again, if it were 490 feet away I don't think you'd have a hard time at all.

Edward Kelly: I understand.

Barry Gaetano: Again, if we allow a 350 foot reduction we're opening ourselves up to another person that wants to buy a home and getting a variance for 350 feet.

Edward Kelly: I understand. I think the distinguishing factor, and maybe this is something you guys have dealt with before, is the fact that it's an apartment building. I think a lot of—the 500 feet

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ordinance I think seeks to prevent a situation where you have five individual family dwellings on a house or on a street that are filled with four individual unrelated college students, the issues with parking, the issues with house parties, things of that nature. I think the fact that it's an apartment complex, while I understand it would be a significant drop in the setback or in the special requirement I think a lot of the—

Barry Gaetano: So they won't have parties in the apartments?

Edward Kelly: What's that?

Barry Gaetano: They won't have any parties in the apartments?

Edward Kelly: Well I don't know, but I think there's still, well 'A' they're still obviously governed by the noise ordinance and other laws—

Lou DeRose: I think that Marvin is selling himself short. There's a need for housing for non-college, adult individuals in the City of Greensburg and he's done a very nice job in renovating that building. I see it almost every day. I think he's selling short the fact that he can't rent to anybody because he's across the street from the college, and that's only a technical argument. He's 1,000 feet away from the college. You have to go across the stream and up a hill. That area used to be called Mudville, I mean it's a long way away. It just so happens that Seton Hill owns a lot of that property.

Justin Calisti: Is he not renting it out now? Is every apartment in there vacant?

Edward Kelly: I'm not entire sure of the vacancy.

Patsy Iapalucci: I think they are empty, because I go by there a lot.

Justin Calisti: I thought when he bought the property he wanted to rent it out to graduate students.

Lou DeRose: Which is alright.

Edward Kelly: I believe there's a—you can only have so many grad students.

Lou DeRose: Well, yes.

Justin Calisti: But there's two colleges within our area that have graduate classes. They may be able to rent them out. I understand that he did—being in through that building, yes, your owner has done a substantial job making it to renovate that place to where it's live able and a thriving place for even a young couple to move in freshly married, but to put a 171 feet you're creating an IUP and a State College all over again. I don't want to see that in this community, because I lived it in IUP. I know what the residences were like when I rented a house and I had to use a driveway because the house in front of me had five students and we rented a garage behind it. I asked permission from the

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neighbor if I could get up because they had five people. I'm not saying that that applies here, but the main variance is I don't want to have kids on top of kids, because I know what's going to happen. You're not that far out of college either. You know what went on in college.

Edward Kelly: I understand. I get it. We just see the rationale behind the 500 feet.

Patsy Iapalucci: I had them by me and they're terrible.

Justin Calisti: I have them across the house from me and thankfully they have been very pleasant for us. I've had minor issues with the college kids across from me, and if I did I talked to the owners and they dealt with the issues. My problem is, I don't want to see the issue come in if we do this we open ourselves up to a can of worms.

Barry Gaetano: I don't know how many parking spots are there and that's not the only issue here, but I have a college house in Underwood down the street from me. I feel bad for my neighbors down there, because parking is a horrendous problem because there's five people in the house and each one of them have a car and there four other houses and everybody has two cars. It becomes a problem. Again, we're setting a precedence; 171 feet. If someone comes back and says, well mines 175 will you give it to me? Has he tried to rent to other people other than college students?

Edward Kelly: I believe he wanted to get this issue taken care of so he could then see who could go out and get.

Lou DeRose: Do you have anything else that would change our mind on this, because I think you can tell which way it's going to go.

Edward Kelly: I can tell. No, I think I've reached all my arguments. I did just want to—we had filed an action in the Court of Common Pleas, which was dismissed for failure to exhaust administrative remedies, so I had that order that I just wanted to put on the record.

Lou DeRose: That's fine, and obviously we make a decision here. Let's assume for the moment it goes against you, you have the right to appeal that.

Edward Kelly: Correct. Would you like this as an exhibit?

Lou DeRose: It's not necessary. I know the history.

Barry Gaetano: So we were asked for a variance? I make a motion to deny the request for a variance for 171 feet.

Justin Calisti: I'll second it.

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Patsy: Yes to deny the variance

Jon: absent

Barry: Yes to deny the variance

Justin: Yes to deny the variance

Charlotte: Yes to deny the variance

Motion passed by a majority vote.

Chairwoman Charlotte Kuhns made the following statement: Within 30 days of the date of this decision of the board, this decision may be appealed to the Court of Common Pleas of Westmoreland County. It is important that you understand that the persons requesting the action may take an 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. Anybody who would like to request a copy of this decision, you can leave your name and address with the secretary.

Board member Barry Gaetano motioned to adjourn the meeting.

*Meeting adjourned at 5:04pm.

BEFORE THE ZONING HEARING BOARD
CITY OF GREENSBURG
DECISION OF THE ZONING HEARING BOARD

FINDINGS

OWNER: Barbara A. Angelo

LOCATION: 201 Kenlane Street
Greensburg, PA 15601

NATURE OF APPEAL: Variance
Section 265-128

ZONING DISTRICT: R-1, Single Family Residence District.

This matter comes before the Zoning Hearing Board of the City of Greensburg on the Variance request of Barbara A. Angelo, and Pete Angelo, her husband, with respect to a change relating to the front yard setback requirements. The applicants desire to keep a shed/tent structure currently on or over the driveway in the front yard and in violation of the zoning ordinance.

After proper notice was given according to the Greensburg Zoning Ordinance and the Pennsylvania Municipalities Planning Code, a public hearing was held on Wednesday, December 19, 2018 at 4:00 p.m. at the Greensburg City Hall, Greensburg, Pennsylvania. Notice of the hearing was properly published in the Tribune Review newspaper and the property was posted by the Zoning Officer in advance of the hearing. At the public hearing the applicants appeared and offered testimony in support of the application.

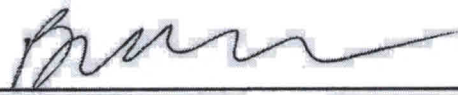
FINDINGS OF FACT

1. That the applicants have standing before the Zoning Board by virtue of a deed to the property in their names.
2. The applicants have installed this tent or shed to cover their vehicles in the front driveway and also to cover a drain that is situated in front of their garage.
3. The tree or trees that are dropping their leaves and other debris are situated on an adjoining neighbor's property.
4. Despite speaking to the owner of the trees several times, they have not been able to convince the neighbor to prune those trees to eliminate the droppings that have become a large problem for them.
5. The shed or tent that they have installed is a driveway cover to protect the drain and the vehicles.
6. The flooding of their garage caused by the pile up of the debris of the water drain has stopped because of this covering.

7. The applicants argue that this is a protection device for their driveway and garage.
8. The trees in question are believed to be Kentucky coffee trees that have grown significantly higher in the last fifteen years.
9. One solution to the problem would be to prune the tree or trees that are dropping leaves and other debris.
10. The applicants indicate that the trees do not directly hang over the driveway or encroach on the applicant's property.
11. The applicants are requesting a variance to totally eliminate the front yard setback requirements contained in the Zoning Ordinance at least in the area of their driveway.

CONCLUSIONS

- A. On the basis of the testimony submitted by the applicants and the facts contained in the application itself, and all of the exhibits presented to the Zoning Board, the Zoning Hearing Board is of the opinion that the applicants have not met their burden of proof with respect to the granting of a Variance request pursuant to the requirements of the Pennsylvania Municipalities Planning Code.
- B. That the granting of this Variance would not be in keeping with the dictates of the City Ordinances and the applicable law.
- C. The allowance of any variance permitting a shed/tent running from the City street to the garage located on the property would not be in keeping with the character and development of the neighborhood. Therefore the request for the variance, which would permit this shed/tent to remain, is denied.
- D. It is the opinion of the Board that the Grant of the Variance would be detrimental to the character of the neighborhood and would adversely affect public health or welfare. Accordingly, this application is denied.



Zoning Officer

Date: January 15, 2019

BEFORE THE ZONING HEARING BOARD
CITY OF GREENSBURG
DECISION OF THE ZONING HEARING BOARD

FINDINGS

OWNER: Emmarcin Inc./ Marvin Sheffler

LOCATION: 449 College Avenue
Greensburg, PA 15601

NATURE OF APPEAL: Variance
Section 265-17(G)(3)

ZONING DISTRICT: R-2 General Residence District

This matter comes before the Zoning Hearing Board of the City of Greensburg on the variance request of Emmarcin Inc./Marvin Sheffler, property owner, with respect to the distance requirement for student housing. The property is within the 500 foot zone around an existing registered student property.

After proper notice was given according to the Greensburg Zoning Ordinance and the Pennsylvania Municipalities Planning Code, a public hearing was held on Wednesday, December 19, 2018 at 4:00 p.m. at the Greensburg City Hall, Greensburg, Pennsylvania. Notice of the hearing was properly published in the Tribune Review newspaper and the property was posted by the Zoning Officer in advance of the hearing. At the public hearing, the applicant was represented by Edward Kelly and he offered testimony in support of the application.

FINDINGS OF FACT

1. That the applicant has standing before the Zoning Board by virtue of a deed which denotes ownership in his favor. Marvin Sheffler is the sole owner of Emmarcin Inc.
2. The applicant requests a variance of the 500 feet distance separation between student housing as mandated by the Ordinance.
3. The property in question at 449 College Avenue is approximately 150 – 200 feet from another already approved student housing parcel.
4. The applicant's request would be to give a variance from the 500-foot separation down to 350 feet or less.
5. The applicant has recently completely remodeled the subject property into approximately 26 apartments.
6. As a multi-family dwelling it is a permitted use in this R-2 Zone and is subject to the 500-foot separation distance between student housing units.
7. That the applicant desires a variance, which will reduce the distance requirement between student housing parcels to below 350 feet.

CONCLUSIONS

- A. On the basis of the testimony submitted by the applicant and the facts contained in the application itself, and all of the exhibits presented to the Zoning Board, the Zoning Hearing Board is of the opinion that the applicant has not sustained his burden of proof with respect to the granting of a variance request pursuant to the requirements of Section 910.2 of the Pennsylvania Municipalities Planning Code.
- B. That there has been no evidence presented that would support a request for a Variance.
- C. That to grant a Variance to this property would effectively gut the Ordinance based on no evidence at all.
- D. It is the opinion of the Board that the Grant of the Variance would be detrimental to the character of the neighborhood and would adversely affect public health and welfare. Accordingly, this application is Denied.



Zoning Officer

Date: January 16, 2019

City of Greensburg Zoning Hearing Board

APPEAL OF: *Barbara A. Angelo*

DATE: *19 December 18*

SUBJECT PROPERTY: *201 Kenlane Street, City of Greensburg*

HEARINGS HELD: *19 December 18*

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 CODE RELATED TO THE FRONT YARD SETBACK REQUIREMENT IN ORDER FOR THE TENT/SHED STRUCTURE TO REMAIN IN THEIR FRONT YARD REQUIRED SETBACK.

DECISION: _____ Granted
 _____ **X** _____ 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

Katey Appa-cci
Charles Kuhn

[Signature]
[Signature]

CERTIFIED MAIL sent to property owner:

City of Greensburg Zoning Hearing Board

APPEAL OF: *Emmarcin, Inc. / Marvin Sheffler*

DATE: 19 December 18

SUBJECT PROPERTY: 449 College Avenue, City of Greensburg

HEARINGS HELD: 19 December 18

INTERPRETATION

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

**VARIANCE AS PER §265-17 (G) (3) OF THE CITY CODE RELATED TO
DISTANCE BETWEEN STUDENT HOMES.**

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

Patsy Saparucci
Charlotte Kuhn

[Signature]
[Signature]

CERTIFIED MAIL sent to property owner: