

BEFORE THE CITY OF GREENSBURG ZONING HEARING BOARD

In the matter of:
Timothy and Gayle Kantor

Variance:
Section 265-128

Property Location:
306 Walnut Avenue

Hearing Date:
April 20, 2016

PROCEDURAL BACKGROUND

The application dated March 30, 2016 by Timothy and Gayle Kantor of 306 Walnut Avenue, Greensburg are requesting a variance to the City Code, Section 265-128 in order to construct a pavilion/patio that encroaches in their required side yard. Subject property is zoned *R-2 General Residence District*.

Members of the board present: Charlotte Kuhns Chairwoman
Barry Gaetano
Patsy Iapalucci

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. Patsy Iapalucci made a motion to approve the variance. Barry Gaetano seconded the motion. All were in favor.

DISCUSSION

The property is located at 306 Walnut Avenue, Greensburg, PA 15601. The property owners Timothy and Gayle Kantor, are requesting a variance to the City Code Section 265-128 in order to construct a pavilion/patio that encroaches in their required side yard. Their lot is a nonconforming lot with an area of 40 x 128 or 5,120 square feet. Subject property is zoned *R-2 General Residence District*.

Charlotte Kuhns: We will hear testimony. The first person who would like to speak, state your name and come to the podium please.

Dennis Rafferty: Good afternoon. My name is Dennis Rafferty, I'm an attorney here on behalf of Mr. and Mrs. Kantor. This is Tim Kantor. Gayle is with us also. Whatever information you might want from either one of them, please feel free to ask them directly. Tim asked me to assist him in the procedure here because this thing got off to a bad start because the contractor they hired felt that it didn't need a building permit. He just went ahead and started building it; not realizing that there was a zoning implication to it. Then in the context of that, there was a misjudgment with regard to the property line as it exists. That led to some initial construction, which actually is off the actual property of Mr. and Mrs. Kantor. I don't know if you have the latest survey that shows the as erected to the point where construction was stopped, and then as proposed from this point on for which we are seeking the variance. That's the property I think as it was constructed, and you will see that it's a fraction of an inch actually over the property line.

Barb Ciampini: For the record it's .40.

Dennis Rafferty: So on the property there's an existing garage structure which also is nonconforming, and that historically is based on the time period it was built. But the idea that we're now asking for the variance is to allow us to construct a covered patio in the back yard. What they are looking to do is to have a sort of a spring/fall type thing, and I assume during the summer as well; a covered area where there will be an outdoor TV with a grilling area encompassed underneath the covered portion of the patio. The patio will extend out beyond what's actually shown here. It shows that concrete pad, but that concrete pad will be under the covered area. And so what they're asking is for permission to use the same side lot line that they have for the garage, the existing garage, just extend it out from the back of the garage. It encroaches certainly into the side yard requirements as they are set forth. That's what we are asking for the variance for. But that's it as simply put. The other parts of the violations in that the construction was done without a permit. We understand that now and if it hasn't been complied with and paid in way of fees, the intent is to certainly comply with that if the variance is granted. What they propose to do, again there has been concrete put down and there is an actual structure put in place and they actually

intend to build a wall inside of the existing wall and get it completed to support the roof with the addition, hopefully in compliance of what we are asking. Then they are going to go back and cut off the portion that extends out over and beyond the setback that's being proposed. So they are actually going to remove that and cut the roof and everything. It's on a peak roof, it comes out so it will just cut off this portion of the peak that is over the line, and then go down unless they put in a wall that would be compliant with whatever is permitted. They'll then cut off the portion that extends back over. I don't know if that's clear enough.

Lou DeRose: Dennis, so you want the Zoning Board to give you a variance for how much area? How much distance?

Dennis Rafferty: Well, we would like the variance to be in accordance with, if you have the same survey that I have in front of me, it would be to allow them to have the roof and what would be, I guess, as we are looking at it the left edge of the property. They would like it to come within a foot of their property line, consistent with the garage. They will stay exactly consistent with the existing garage, and that's the intent of the request. There will be some uniformity to the structure.

Lou DeRose: Now did I understand that the garage is .4?

Barb Ciampini: The garage is .97 and .95.

Lou DeRose: From one end to the other?

Barb Ciampini: Yes.

Lou DeRose: Okay. And so your request is to keep it in conformity with the garage?

Dennis Rafferty: We are trying to keep a square with that wall of the garage. I'm looking at the – there must be something about the side boundary that comes in that's not exactly 40 feet front to back.

Lou DeRose: That's alright. Again we have to grant you a variance, if we do grant you a variance, of this much space.

Dennis Rafferty: Yes

Barb Ciampini: Yes, he needs 3.8 feet, if that's what you are asking.

Dennis Rafferty: Yes

Lou DeRose: 3.8 feet will do it?

Dennis Rafferty: Yes, well that's the variance from what – yeah I couldn't find out the calculation, but I assume it's based off of a percentage reduction.

Barb Ciampini: Yes, we reduce them down because the lot's only 40 feet wide.

Dennis Rafferty: Right.

Lou DeRose: And again to help you support the record, the request is for a variance because there's something about the property that inflicts an undue hardship on the property owner to build this addition to their home.

Dennis Rafferty: This garage, again pre-existed, so the sidewalk and developments on the other side of the garage, including a sidewalk and then the adjoining property owner somewhat encroaches, so there's a problem on that side that forces them over to this side. The layout basically forces that because the sidewalk—

Barb Ciampini: The topography, is an issue. Is that also included in your statement

Dennis Rafferty: Yes, everything about it.

Lou DeRose: You mean start off by having less square footage on the lot than the ordinance currently requires.

Dennis Rafferty: Right. And then you have an existing structure that predated the zoning which brings it to that nonconformance issue.

Lou DeRose: And this new structure apparently is encroaching on a neighboring property.

Dennis Rafferty: Well, it's a wall type thing.

Barb Ciampini: Yes it currently encroaches.

Lou DeRose: But it just makes it impossible to really build something the way you want.

Dennis Rafferty: Right.

Lou DeRose: Okay and there's no rear yard problem here.

Barb Ciampini: No.

Lou DeRose: It's just the one side on, I can't see from this what's North, South, East and West.

Barb Ciampini: It would on the South side.

Lou DeRose: The South side. Okay. And so that's the request.

Dennis Rafferty: Right.

Lou DeRose: Because of that hardship, you didn't really create these issues. You bought the property that way –

Dennis Rafferty: Right. That's what we're appealing.

Lou DeRose: Okay.

Dennis Rafferty: Again, we didn't intend to get into this situation but –

Lou DeRose: Yes..

Dennis Rafferty: But it developed because of the lack of knowledge of the requirements.

Lou DeRose: Is this an open sided pavilion?

Dennis Rafferty: Yes.

Lou DeRose: Except for the wall you put in.

Dennis Rafferty: Well, that's for the structure to put the TV and the grill.

Lou DeRose: Okay.

Patsy Iapalucci: How are you going to get in there to make repairs and the upkeep on it in between there, without going on the other guy's property?

Dennis Rafferty: We think everything can be done from our property, it's just a plain block structure where there won't be any maintenance required, and the neighbor is actually here with us this evening.

Patsy Iapalucci: What happens when that neighbor moves and someone else comes in and they don't want it? Then what do you do?

Dennis Rafferty: Well, my thinking is we do the same thing we would have done for the garage. Which is either hang over and do it that way, or be nice to your neighbor and –

Patsy Iapalucci: It probably would have never happened, but you never know.

Barb Ciampini: We like nice. The City of Greensburg wants all neighbors to be nice to one another.

Barry Gaetano: The actual roof will not extend over the property line, it will stop?

Barb Ciampini: Yes, so what Barry is asking, from the ground to the sky, that .8 will be cleared?

Dennis Rafferty: Yes. Yes. That will be cleared.

Lou DeRose: Any photos, Dennis?

Dennis Rafferty: Yes, we do.

Barb Ciampini: They do.

Dennis Rafferty: We have photos of what's actually there right now.

Barb Ciampini: Yes, oh you have them on your phone.

Dennis Rafferty: Show them what you have.

Barb Ciampini: Yes, the printed out ones can add to the record.

Dennis Rafferty: Here's a shot. These are all looking from the house back towards it.

Barb Ciampini: Right.

Dennis Rafferty: And there's an idea of what they have.

Barb Ciampini: We can we keep these as exhibits?

Dennis Rafferty: Yes. You can have these too.

Barb Ciampini: Okay. I don't think he gave us pictures on his application, but that would be nice. Thank you.

Dennis Rafferty: Okay?

Barb Ciampini: Yep, very good.

Barry Gaetano: So, you would actually have to move the wall in?

Dennis Rafferty: That's right. You would have to deconstruct the wall. They're going to build a new wall inside it, and just like it wasn't there, build a new wall in, put new supports in for that side and then cut off the extension.

Barry Gaetano: And tear down the other wall?

Dennis Rafferty: Yes

Barry Gaetano: You're going to have to cut the roof too?

Dennis Rafferty: Yes.

Patsy Iapalucci: You're going to tear down what you already submitted?

Dennis Rafferty: Right.

Gayle Kantor: We spoke with our contractor; we asked him several times—

Barb Ciampini: Gayle, you have to come to the podium. We are recording this hearing, you must speak into the microphone.

Gayle Kantor: When we sat down with our contractot we spoke with him and asked him if we needed any type of permits. We wanted this done right. This is the project we've saved for five years for....and he said no. So we started it, and when this all came about, he said whatever it takes for him to fix it, that he would do it--

Patsy Iapalucci: Who's the contractor?

Gayle Kantor: --He'll rebuild the wall and the roof and everything. His name is Tom Holgerson.

Charlotte Kuhns: That's a shame though.

Barry Gaetano: It is.

Patsy Iapalucci: All that money tied up.

Barb Ciampini: I don't know if he's done a project in the City before. His name does not sound familiar.

Tim Kantor: Yeah, I don't know if he works much in the city.

Barb Ciampini: We'll get it resolved. Maybe he works in rural areas where nobody sees it.

Barry Gaetano: So, actually this roof is there now. It looks like it extends pretty far over-- The property line is-- The end is here--

Tim Kantor: That corner is right on the property line, it's the other side--

Barry Gaetano: So the roof is about a foot over the property line?

Tim Kantor: Right.

Barb Ciampini: 1.2

Barry Gaetano: 1.2 feet over. Okay, so you're going to have to cut that whole end off? So you're going to lose one and a half feet off the end of that?

Gayle Kantor: Yes.

Barry Gaetano: Okay.

Gayle Kantor: Too bad we can't move it over somehow. Move the whole thing over. The whole building structure--

Tim Kantor: Well, part of the hardship, though, is on the other side of that is we have a retaining wall as you can see there, you have the property line, there's some grass area, a sidewalk, then there's a flower bed, then a retaining wall. So we really don't have 40 feet to play with.

Gayle Kantor: Right.

Tim Kantor: That's probably going to entail-- we don't really want to take the pad the whole way up to the retaining wall to meet with the structure. So you're looking at probably 12-13 feet on that side that we can't really do.

Barry Gaetano: So, just out of curiosity, if the neighbors-- is the neighbor here by chance?

Tim Kantor: Yes.

Gayle Kantor: Two of them are--

Barry Gaetano: Is the neighbor here that has the yellow house?

Gayle Kantor: No, but we have talked to her all the way along, and she's supportive. With her work schedule she couldn't make it here today.

Barry Gaetano: She offered to sell a portion to you?

Gayle Kantor: She offered to sell it, yes. We spoke with all of our neighbors before the project. Everyone was in agreeance and happy for us to do it. Sue was even willing to see us two feet, whatever we needed.

Barry Gaetano: Well I guess my question is, if they or any new neighbor wanted to come in and build a structure, would that variance cause them any issues?

Lou DeRose: I don't think so.

Barb Ciampini: No.

Lou DeRose: It's all contained within house.

Barb Ciampini: And the variance stays with the property, so if the Kantors leave, it stays. They remain legal.

Barry Gaetano: Okay.

Charlotte Kuhns: Are there any other questions?

Lou DeRose: These photos are part of the record.

Barry Gaetano: Thank you.

Barb Ciampini: Thank you.

Lou DeRose: Thank you.

Charlotte Kuhns: Okay. Is there anyone who wishes to speak against it? They may speak now.

Barb Ciampini: There might be some that are for it.

Charlotte Kuhns: Are there some that are for it that would like to speak?

Barb Ciampini: I knew he wanted to. Eric's been dying to come to the podium.

Eric Sarn: I'm Eric Sarn. I live at 37-39 Park Street, which is directly behind the Kantor's house. I just want to say that I have no issue with it. I have the most view of the structure, and I have no issue with it.

Charlotte Kuhns: Okay, well thank you.

Barb Ciampini: Thanks Eric.

Sandy Furlo: Sandy Furlo of 310 Walnut, it's right next to us. Ditto to what \Eric said.

Barb Ciampini: Thanks Sandy.

Lou DeRose: Dennis, are there any other issues-this is it right? You want what we talked about in terms of the variance.

Dennis Rafferty: The answer's no.

Lou DeRose: Alright, thank you.

Charlotte Kuhns: Okay, so if there's no one opposed, we need a motion. I'd like to entertain a motion.

Patsy Iapalucci: I'll make the motion that we grant the variance. Going through the rules that Barb has set forth there--

Barb Ciampini: It's a 3.8 feet.

Lou DeRose: 3.8 feet.

Patsy Iapalucci: 3.8 feet.

Lou DeRose: That's 3.8 feet on the-- what was that South side?

Barb Ciampini: That's on the South side of the house, the South side of the property.

Lou DeRose: Patsy and I usually double team these motions. Your motion is really that you wouldn't want to grant them 3.8 feet on the South side of the property running at least through and up to the garage building, and stopping from the back alley. And the reason for that is the hardship that is relevant to this case, is really all five reasons as stated within the ordinance, that they didn't create it and it won't affect the neighborhood and all the things that are in there because they've testified that that is the situation. It's just unfortunate that these properties were built many years before the ordinance came into effect. They are undersized to begin with. That was your motion.

Charlotte Kuhns: Can I have a second to the motion?

Barry Gaetano: I will second that.

Charlotte Kuhns: Okay, thank you. Can we have a roll call please?

Barb Ciampini: I'll do it.

Barry Gaetano: Can I just ask one more question?

Barb Ciampini: Yes, go ahead.

Barry Gaetano: When you say 3.8 feet, what is that telling me?

Barb Ciampini: Well, he's requesting 3.8 feet because he was required to have a 4.6 foot--4.6 foot-- 4 feet 6 inches side yard.

Lou DeRose: So we're forgiving 3.8 feet.

Barb Ciampini: Yes. Okay?

Barry Gaetano: Okay, I understand. Thank you.

VOTE:

Barry Gaetano	Yes
Patsy Iapalucci	Yes
Charlotte Kuhns	Yes

All were in favor.

Charlotte Kuhns: Motion passes. Within 30 days of the date of decision by this board, this decision may be appealed to the Court of Common Pleas of Westmoreland County. It is important to understand that the person requesting the action may take an appeal with the decision of this board is against him, but those opposed to his/her request may also take an appeal within a 30 day period. If an action of the board results in the 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 the decision, please leave your name and address with the secretary. That will be all, you've been approved.

Barb Ciampini: And what we normally do is, we will issue you a permit, but there will be a clause in it that you will take on the full liability if you start this project before the 30 day appeal period is over. Someone that might not be here might not like it and might appeal. I doubt it, but it could happen. We'll give you the permit; you'll just have to sign off on that, that you'll take on the liability.

Tim Kantor: Thank you.

Barb Ciampini: Okay? Alright.

Lou DeRose: We need a motion to adjourn.

Patsy Iapalucci: I make a motion to adjourn.

Meeting adjourned at 4:45

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

FINDINGS

OWNER: Timothy and Gayle Kantor

LOCATION: 306 Walnut Avenue
Greensburg, PA 15601

NATURE OF APPEAL: Variance
Section 265-128

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 the Kantors, property owners, with respect to the construction of a pavilion/patio in the sideyard of the property that encroaches into the restricted area.

After proper notice was given according to the Greensburg Zoning Ordinance and the Pennsylvania Municipalities Planning Code, a public hearing was held on Wednesday, April 20, 2016 at 4:00 p.m. at the Greensburg Municipal Building, 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, both of the applicants appeared and offered testimony in support of the application. The applicants were represented by Attorney Dennis Rafferty. The application was unopposed by neighboring property owners, several of whom were present and supported the application. No one appeared in opposition.

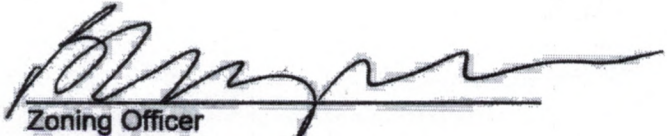
FINDINGS OF FACT

1. That the applicants have standing before the Zoning Board by virtue of a deed which denotes ownership in their favor.
2. That the applicants testified that they are prepared to modify the structure in place currently in the side yard. This will make the pavilion/patio no more of an incursion into the side yard than an existing and pre-existing garage on the property.
3. It is the intention of the applicants to reconfigure the patio structure to extend into the side yard no more than the pre-existing garage.
4. That the applicants have demonstrated that the sideyard is the only available area in which to build this type of patio because of the garage and the topography of the land as well as size of the lot which is nonconforming.
5. That the applicants have fewer square feet than the ordinance contemplated because it is an undersized lot.

6. The applicants are seeking a Variance of 3.8 feet on the south side of their property to the garage to accommodate the pavilion.

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 sustained their 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 are unique physical circumstances or conditions existent with respect to this parcel for the construction of this pavilion, which impose an unnecessary hardship and justifies the Board in granting this type of relief.
- C. That granting a variance in this location would place the pavilion in the only desirable area of the property for such a use. The Board concludes that this is a de minimus type variance request since it is one that calls for a minimal deviation from the strict enforcement of the code provisions allowing the construction of a pavilion in the sideyard next to a garage already within the sideyard.
- D. It is the opinion of the Board that the Grant of the Variance will not be detrimental to the character of the neighborhood and will not adversely affect public health or welfare. Accordingly, this application is Granted.


Zoning Officer

Date: May 12, 2016

City of Greensburg Zoning Hearing Board

APPEAL OF: Gail & Timothy Kantor

DATE: 20 April 16

SUBJECT PROPERTY: 306 Walnut Street, City of Greensburg

HEARING HELD: 20 April 16

INTERPRETATION

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

II. VARIANCE

DECISION: _____X_____ 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

DocuSigned by:

Charlotte Kulens

DocuSigned by:

Patsy Lapalucci

DocuSigned by:

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[Signature]

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CERTIFIED MAIL sent to property owner: