

Village of Geneseo
Zoning Board of Appeals
Public Hearing For:
Donald & Diane Merriman
Address: 21 Northview Drive
Tax Map ID. # 81.9-1-10
August 07, 2012; 4:30 p.m.

Present:

Chair C. Meisel
P. Schmied
B. Teall
T. Wilson

Code Enforcement Officer:

D. O'Keefe

Applicant:

Donald & Diane Merriman

Absent:

M. Hamilton

Secretary:

Debra Lund

Public Present:

Calm Dental Representative: sign designer, Bruce Seeber, Alpha Graphics
Teri Thielges
Shuo Chen & Gang Wang
Frank Hicks
Jerry Wrubel

Chair C. Meisel opened the public hearing and meeting at 4:30 p.m. Board members introduced themselves. The applicant was seeking permission to retain a pool that fails to meet the minimum ten (10') foot side yard setback per 113-2 (1) of the Code of the Village of Geneseo; the applicant was seeking an eight (8") inch variance. It was noted proper notice was published and ten (10) certified letters were sent with seven (7) acknowledgment cards returned. Livingston County Planning Board responded there was a determination of "no significant Countywide Impact" and this application is a matter of local option. Chair Meisel invited the Merrimans to state their case.

Donald Merriman explained he and his wife bought the house with a contingency clause that there be enough area to install a pool. They are on a circle and the lot is not a typical rectangle. They had a survey done and had Northern Pool check the parcel to see if a twenty (20') foot by forty (40') foot pool could be installed. The original survey was done by Gary Dutton. The pool would only fit if the corners were cut off on the diagonal to be within the ten (10') foot lot line setback. Northern Pool told the Merrimans the concrete apron could go to the lot line if there was an expansion joint (in effect, making that section of concrete a stand alone item not covered in the code). Surveyor D. Thomas did the the second survey for his neighbor, Teri Thielges' property.

The two surveys did not match and had more than one discrepancy. A copy of the two surveys was shown to the Board. The Dutton survey showed the line three and two tenths (3.2') feet from the front left edge of the Thielges shed and he had placed the marker stake in front of the shed as it would have to be put in the middle of the shed to have been accurate at marking the back property corner. Donald Merriman asked Surveyor Dutton what the three and two tenths (3.2') feet meant. The lot line was redone and Surveyor Thomas was asked about the line and did a survey as well. Code Enforcement Officer D. O'Keefe was asked to draw out the exact line and did so with a laser maker. At this point, Surveyor Dutton agreed there was a discrepancy between his and Surveyor Thomas maps and that the Thomas survey was correct. This put one corner of the concrete deck and part of the fence on the Thielges property. The variance being sought is actually for the pool itself as the accurate survey leaves the pool needing an eight (8') inch variance from the ten (10') foot side yard setback requirement (the pool is nine (9'), four (4') inches from the lot line. As the two neighbors can not reach a resolution, the Merrimans will have the concrete cut and the fence moved.

Chair C. Meisel stated several neighbors were in the audience and asked if any would like to speak.

T. Thielges (the neighbor with the shared property line) stated she would like to see the pool apron to be ten (10') feet from the lot line as per code. She has been checking the code and the pool apron should be ten (10') feet from the property line not just the pool itself. For her, this is a personal issue as she may add on to her house and therefor is not looking to do anything to reposition the lot line. The concrete apron and pool encroach on her privacy and enjoyment of her yard. She has lived in the village for twenty-seven (27) years and has never been in this position before. She showed the Board pictures taken from her dining room window and her pool area. She also showed a picture from before the Merriman pool was installed. T. Thielges noted the amount of landscaping she has done. This is not a personal issue with the Merrimans but rather one of being able to enjoy her dinner and her pool with privacy. She did not realize the Merriman pool would be installed in the side yard not the back yard so was not originally concerned. She has a garden in her back yard and became concerned about the Merrimans yard spraying carrying over to her garden. T. Thielges does not blame the Village for originally allowing the pool due to the survey error; they just used the information available to them. However, she is interested in getting back to code as long as an adjustment must be made. She asked that if the variance were granted, she would like her privacy back and would like to see the current chain link fence replaced with a privacy fence as part of variance. All of this affects the value of her property.

D. Merriman asked to respond and was granted permission. He noted T. Thielges never mentioned a privacy fence when the pool was being installed. Had she done so, he would have complied with her request. The chain link fence cost approximately \$3000.00 to install and will cost about \$1000.00 to take down. A privacy fence would cost around \$6,000.00 to install for a fence he does not want around his pool. He and his wife had a privacy fence at a former residence and noted there was very little air flow.

Another neighbor, S. Chen commented a privacy fence may only be six (6') feet in height, only two (2') feet higher than the current fence. D. Merriman noted the ground rises towards the Thielges property so a new fence would not provide much more privacy than currently exists. There are four other pools in the neighborhood and all have chain link fences.

CEO D. O'Keefe said the pool was placed correctly with the information the Code Office had at the time. He noted the Code section 113-2(1) referenced by T. Thielges was a change in the Code that was adopted in 2008 stating the setback shall be measured from the edge of the apron of the pool and shall be a minimum of ten (10') feet from all lot lines. This was not in effect when the pool was installed; at the time, the rule was ten feet from the water's edge to the property line. The pool was correctly installed according to the survey that has since been questioned and found to be inaccurate.

C. Meisel asked T. Thielges how much privacy a six (6') foot fence would give her compared to what she has now. T. Thielges responded it would block the neighbor's pool from her view at her pool but would not help her dining view as much. Diane Merriman said they can not see into T. Thielges pool area now.

J. Wrubel, another neighbor, wished to speak to the character of the Merrimans- he has found them to be enjoyable neighbors who are impeccable about their property.

D. Merriman stated he has the concrete removal lined up but is having trouble lining up the fence people as they are very busy this time of year. He will use T. Thielges stakes for the line and she replied all four stakes are in the ground.

With no further discussion, the Board reviewed the questions:

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by granting the variance? Yes _____ No X
2. Can the benefit sought by the applicant be achieved by some feasible method other than a variance? Yes _____ No X
3. Is the requested variance substantial? Yes _____ No X
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Yes _____ No X
5. Is the alleged difficulty self-created? Yes _____ No X . Survey error caused the problem.

Chair C. Meisel asked if anyone would like to include the privacy fence in the variance motion. T. Wilson suggested T. Thielges should put up a privacy fence if she feels the need for one and it should not be part of the variance.

D. Merriman asked if he could increase the variance request from eight (8") inches by a couple more in case the survey stakes are off a little from placement by the Code Officer – the laser line was marked with a string which may have shifted a little. CEO D. O'Keefe said the Code Office will verify the fence and pad are not on T. Thielges property.

Chair C. Meisel noted this is an area variance and a type two action that does not require a SEQR. C. Meisel stated it was so noted that the proposed action has been considered under SEQR and has met the requirements for a Type II action: the proposed action is not environmentally significant.

T. Wilson moved to approve the variance for a pool which fails to meet the minimum ten (10') foot side yard setback per 130-131 Bulk & Use Table of the Code of the Village of Geneseo to remain where it is in relation to the property line with an approximate ten (10") inch side yard variance granted. B. Teall seconded the motion. The vote was as follows: Chair C. Meisel – aye; B. Teall – aye; and T. Wilson – aye. P. Schmied abstained. The motion passed.

The Merrimans thanked the Board and exited the meeting with their neighbors.

C. Meisel moved to close the public hearing at 5:03 p.m.; B. Teall seconded the motion. All were in favor and the public hearing closed.

Debra Lund
Secretary