

STAFF REPORT

CASE: BZA02-2014

APPLICANTS: Ann Gibson

LOCATION: 2471 Lower Bellbrook Road
Parcel L32000200260000600
24.825 acres

ZONED: A-1 (Agricultural) District

REQUEST: The applicant is requesting an area/dimensional variance from Section 4.13, Table 4-6 of the Sugarcreek Township Zoning Resolution, to allow for an in ground pool to be constructed in the front and side yards. The applicant is also requesting an area/dimensional variance to allow for a 5' aluminum fence to be installed around the pool, a portion of which will be located in the front yard in excess of the 42" height limitation for front yard fences, pursuant to Section 7.04 B. 1. of the Sugarcreek Township Zoning Resolution.

DATE: April 24, 2013

DESCRIPTION OF REQUEST

Property Location: The subject property is 2471 Lower Bellbrook Road located in the A-1 (Agricultural) District. The subject property, a 24.825 acre parcel, contains a 3360 SF single-family dwelling constructed in 2004. The subject property also contains a 4800 SF agricultural building constructed in 2006 and a 896 SF detached garage constructed in 2004.

Applicant Proposal: The applicant is requesting approval of the following:

- 1.) Allow for an in ground pool to be constructed in the front and side yards; and
- 2.) Allow for a 5' aluminum fence to be installed around the pool in excess of the 42" height limitation for front yard fences.

Zoning of Adjacent Parcels: The parcels to the north (a 27.342 acre parcel in agricultural production) and west (17.165 acres containing a single-family dwelling and related accessory structures) are located in the A-1 (Agricultural) District. The parcels to the south (residential uses in River Ridge 2, Section 1) are located in the E (Estate Residential) District. The parcels in Sugarcreek Township to the east (a smaller acreage tract fronting on Lower Bellbrook Road and a portion of a five acre parcel with split

- The applicant is requesting a variance to allow for a proposed 720 SF in ground pool to be located in the front and side yards. The pool is proposed to be located in the effective rear of the home (based on the home's orientation on the lot) but in the actual front and side yards.
- Section 4.13 (E.)(5.)(b.) states, ***“Any swimming pool or the entire area of the property on which it is located, shall be so walled or fenced by approved material and construction a minimum of 48 inches high to prevent uncontrolled access from the street or adjacent properties.”***

Section 4.13 (E.)(5.)(b.)(iii.) states, ***“On lots in the A-1 District containing at least 5 acres, in lieu of a wall or fence an automatic pool cover meeting ASTM F1346-91 standards (or as modified) may be installed. The cover must be locked when the pool is not in actual use and/or when the pool is unattended.”***

- The applicant plans to utilize an automatic pool cover meeting the required specifications, in lieu of a fence. The applicant would like to retain the option to install a 5' aluminum fence around the pool in the future. Because a portion of the fence would be located in the front yard, the applicant has requested it be considered by the BZA.
- Section 7.04 (B.)(1.)(a.) states, ***“Fencing and walls in the front yard shall not exceed 42 inches in height, except as permitted in Section 7.04 (C.)(4).”***
- The applicant is requesting approval of a 5' aluminum fence to be placed around the pool, a portion of which will extend into the front yard. Again, it is not the applicant's intent to install a fence with the installation of the pool (they've opted to use an automatic cover) but the applicant would like to retain the option for a fence in the future should she decide one is necessary. The majority of the fence would be located in the side yard and would meet the Zoning Resolution requirements for fences (6' height permitted). Variance approval is being requested for the portion of the fence that would be installed in the front yard.
- The applicant's requests are for area/dimensional variances.
- Area/dimensional variances are subject to the standards established below pursuant to Section 3.07 (D)(1):

1. Area/Dimensional Variances

- a. The following factors shall be considered and weighed by the BZA to determine if a practical difficulty exists that would justify an area/dimensional variance:***

- 1) *Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;*
 - 2) *Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;*
 - 3) *Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;*
 - 4) *Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;*
 - 5) *Whether the variance would adversely affect the delivery of governmental services such as water, sewer, trash pickup;*
 - 6) *Whether special conditions or circumstances exist as a result of actions of the owner;*
 - 7) *Whether the property owner's predicament can feasibly be obviated through some method other than a variance;*
 - 8) *Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance; and*
 - 9) *Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.*
- The applicant has submitted statements relative to the foregoing standards.
 - b. *Decisions should take into consideration all applicable factors, however, not all factors may necessarily apply to a particular case. No single factor shall control.*

Staff Comments:

The subject property contains over 24 acres. Roughly half of the property is in active agricultural production. The home on the lot is oriented in a unique way, such that the back door of the house enters into what is considered the side yard of the property. The house is located roughly 328' from the centerline of the road, the pool is proposed to be located roughly 310' at its nearest point. The applicant did explore alternative locations for the pool (trying to obviate, in particular, the front yard issue). However, based on the orientation of the house and the location of an existing detached garage and driveway, the

ability to avoid the front yard was not possible. That, together with a desire to keep the pool out of the woods, out of a field being farmed, and a desire to have the pool in a location in reasonable proximity to the house all make location in the rear yard as required difficult from a practical standpoint. The BZA will need to determine, based on the standards specified above, whether a practical difficulty exists necessitating the issuance of the requested variances. The applicant has indicated a desire to install landscaping in conjunction with the pool project.

Cara K. Tilford, AICP
Director of Planning and Zoning