

**BEFORE THE  
ZONING HEARING BOARD OF  
FAIRVIEW TOWNSHIP, ERIE COUNTY, PENNSYLVANIA**

IN THE MATTER OF	:	
	:	
Property owner:	:	Premises at 6791 Walnut Creek Drive
Dr. Wade A. Schauer	:	Fairview Township, PA
6791 Walnut Creek Drive	:	
Fairview, PA 16415	:	Index No. (21) 53-93-29
	:	

**FINDINGS OF FACT**

1. The Applicant is Dr. Wade A. Schauer, 6791 Walnut Creek Drive, Fairview, Pennsylvania, 16415 (hereinafter "Applicant").

2. Applicant is the owner of the Subject Property located at 6791 Walnut Creek Drive, Fairview, Pennsylvania, 16415.

3. The Subject Property is located in Fairview Township, Pennsylvania, and is identified by the Erie County Index No. (21) 53-93-29. The parcel is currently zoned R-2.

4. Fairview Township's Zoning Ordinance, Section 701C.5.b, requires a 5 foot rear yard set back in the R-2 district.

5. On February 3, 2014, James Cardman, Fairview Township's Zoning Officer, issued Applicant a Notice of Violation of Zoning Ordinance asserting that Applicant had two storage buildings and deck that were constructed within the 5 foot rear yard setback.

6. Applicant filed an appeal to the Notice of Violation of Zoning Ordinance, asserting that there is no violation of Fairview Township's Zoning Ordinance.

7. In the alternative, Applicant requests a variance to Section 701C.5.b of Fairview Township's Zoning Ordinance. Specifically, Applicant proposes to reduce the rear yard setback to 0 feet for existing structures on the Subject Property.

8. Applicant testified that he has lived on the Subject Property for about 20 years. He testified that approximately 15 years ago, he built sheds at or around the rear property line.

9. Applicant testified that several years later he was installing a pool on the Subject Property. At that time, Applicant was told by a neighbor (Greg Lucas) that portions of the sheds and the proposed pool were on his Mr. Lucas' property. Applicant testified that after this

discussion, he then moved the sheds and the pool location onto his property. Applicant testified that he used existing surveyor stakes to determine the property boundaries.

10. Applicant testified that several years after the pool was installed, he was adding a concrete pad and decking around the pool. At this time, surveyors came to the site and indicated that portions of the sheds and concrete pad were on Mr. Lucas' property.

11. Applicant disputed that the above referenced structures were on Mr. Lucas' property but admitted that with placement of the new survey stakes, many of the existing structures were not set back five feet from the rear yard boundary of the Subject Property. Applicant testified that it would be extremely difficult to move the existing structures into conformity with Fairview Township's Zoning Ordinance.

12. Greg Lucas (hereinafter "Mr. Lucas") testified that he is a resident of 4260 Bear Creek Road. Mr. Lucas' property is 23 acres in size and abuts the Subject Property. Mr. Lucas testified that his property is predominantly woods and that he had his property surveyed several years ago. He indicated that he recently had the property re-surveyed after some of the stakes had been removed. He testified that it was his belief that many of Applicant's structures encroach onto his property.

13. Mr. Lucas testified that he did not want any of Applicant's structures on his property and asked the Board to deny Applicant's variance request.

14. Mr. Cardman testified that Applicant has received permits in the past. Specifically, 15 years ago, Applicant received a permit for construction of a storage shed. Mr. Cardman testified that he inspected the site and believed that the proposed shed location was 5 feet from the rear boundary line.

15. Mr. Cardman testified that he recently visited the Subject Property at the request of Mr. Lucas. At that time Mr. Cardman noted that according to the placement of survey stakes, two of the sheds and a portion of the concrete pad appeared to be over the property line. While at the site, Mr. Cardman looked at the neighboring properties. He indicated that other sheds also appear to be constructed over their apparent property lines.

16. Mr. Cardman testified that he issued Applicant a Notice of Violation because it appeared to him that several structures were constructed within the 5 foot setback required by Fairview Township's Zoning Ordinance.

17. There was no other testimony offered either in favor of or in opposition to Applicant's request.

18. No survey maps were offered into evidence and no surveyor offered testimony before the Board.

**CONCLUSION OF LAW**

There are two issues before this Board. The first is whether the February 3, 2014 Notice of Violation of Zoning Ordinance was proper. The second issue is whether Applicant is allowed to keep existing structures which are within the 5 foot setback on the Subject Property.

With regard to the first issue, this Board unanimously finds that the Notice of Violation Zoning Ordinance was properly issued. Specifically, this Board finds that Applicant has erected structures within the 5 foot rear yard setback in violation of Fairview Township's Zoning Ordinance.

The Board was divided on the issue of whether to grant Applicant's request for a Variance. This Board was troubled by the absence of survey maps or testimony from a surveyor. There has been testimony that Applicant may have structures located on his neighbor's property. Just to be clear, the decision of the Board is limited to the location of structures on the Subject Property as this Board does not have the power to allow Applicant to keep any structure or cement pad which is located on Mr. Lucas' property.

After consideration of the testimony and evidence presented, the majority of the Board has elected to grant Applicant the requested 5 foot relief under the unique circumstances presented to this Board. The granting of this Variance is limited to existing structures on the Subject Property and is in no way permission for Applicant to construct any new structures within the 5 foot setback.

**DECISION**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2014, the Fairview Township Zoning Hearing Board hereby:

1. DENIES, by a vote of 5-0, Applicant's appeal of the February 3, 2014 Notice of Violation of Zoning Ordinance; and
2. GRANTS, by a vote of 3-2, Applicant's request for a 5 foot rear yard variance for existing structures.

These Findings of Fact, Conclusions of Law, and Decision are signed this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**Voting To Deny Appeal and Grant Variance**

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David Biletnikoff

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Judy Miller

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Barbara Parchay

**Voting to Deny Appeal and Deny Variance**

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Brian McGrain, Chairperson

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Keith Farnham