

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

IN THE MATTER OF	:	
	:	Premises at 3707 Guilford Drive
Property owner:	:	Erie, PA
Charles Faulkerson, deceased and	:	
Johnie Faulkerson, deceased,	:	
Mark Atkinson, personal representative	:	
3707 Guilford Drive	:	Index No. (21) 59-83-36
Erie, PA 16506	:	

FINDINGS OF FACT

1. The Applicant is Mark Atkinson, 4129 Venice Drive, Erie, PA, who is stated to be the personal representative of the estates of Charles Faulkerson and Johnie Faulkerson, last owners of record of the subject property who are both deceased (hereinafter “Applicant”).

2. Applicant has indicated that he is the personal representative of the estates of Charles Faulkerson and Johnie Faulkerson, last owners of record of the subject property located at 3707 Guilford Drive, Erie, PA 16505.

3. The Subject Property is located in Fairview Township, Pennsylvania, and is identified by the Erie County Index No. (21) 59-83-36. 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 for accessory structures in the R-2 district.

5. On August 31, 2016, Amanda Bair, Fairview Township’s Assistant Zoning Officer, issued Applicant a Notice of Violation of Zoning Ordinance asserting that Applicant had a storage building constructed within the 5 foot rear yard setback.

6. 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 4 feet for the existing storage building on the Subject Property.

7. Applicant testified that the property owners had lived on the Subject Property for many years. He testified that approximately 15 years ago, the storage building/shed at issue was built at or around the rear property line as it was thought to be located at the time.

8. The property owners obtained a permit from Fairview Township prior to construction of the storage building/shed.

9. Applicant testified that both the property owners and the neighboring owners believed at the time of construction of the storage building/shed that the property line at issue was marked by a line of trees.

10. In May of 2016, a survey of the property line was performed by Henry T. Welka on behalf of the owners of the neighboring property, Mr. and Mrs. Thomas Galla. A copy of this survey map was offered as evidence at this hearing.

11. Applicant testified that any encroachment of the subject structure into the setback was minimal, had been existing for approximately 15 years, and caused no injury to any party.

12. John Hoover, a contractor working with applicant, testified that one corner of the shed itself encroached into the 5' setback. A portion of an overhanging roof attached to the shed also encroached into the setback, but could be modified to comply with the setback. The shed itself could not be modified to comply with the 5' setback.

13. Mr. Galla testified that he is a resident of 3714 Winthrop Drive. Mr. Galla's property abuts the Subject Property. Mr. Galla testified that he had his property surveyed recently, and that it was his belief that Applicant's structure and other items belonging to Applicant encroach onto his property and/or into the 5' setback.

14. Mr. Galla testified that the shed at issue was an eyesore and that it was causing damage to his shrubs.

15. Mr. Galla testified that he did not want any of Applicant's structures on his property or within the Township setback, and asked the Board to deny Applicant's variance request.

16. James Cardman, Fairview Township Zoning Officer, testified that the Applicant's predecessors in interest had received a permit in 2003 for construction of a storage shed. Mr. Cardman testified that he inspected the site at that time and believed that the proposed shed location was compliant with the zoning ordinance.

17. Mr. Cardman testified that he recently visited the Subject Property at the request of Mr. Galla. At that time Mr. Cardman noted that according to the placement of survey stakes, the shed appeared to be within the boundary lines of the Subject Property, but that the structure encroached into the 5' setback.

18. Mr. Cardman testified that a Notice of Violation was issued because it appeared that the structure/shed was constructed within the 5 foot setback required by Fairview Township's Zoning Ordinance.

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

CONCLUSIONS OF LAW

The issue before this Board is whether Applicant is entitled to a variance to allow the subject storage building/shed to be located 4' from the property line shared with the Gallas. In other words, is Applicant entitled to a variance of 1' from the 5' setback required under the Township's Ordinance?

The Board discussed and reviewed the elements required to support a variance request as set forth in Section 1103 of the Township Zoning Ordinance.

The Board heard no evidence establishing any unique physical conditions or other irregularities affecting the Subject Property. There was conflicting testimony as to whether the location of the storage building/shed was injurious to the neighborhood, although there was testimony from the closest neighbor, Mr. Galla, that the shed was an eyesore and had caused damage to his shrubs.

The Board acknowledges that the removal of the structure/shed may create a hardship for Applicant, however, said hardship does not deprive Applicant of the reasonable use of the Subject Property for its intended purpose, that being a single family residence. Furthermore, the evidence presented at the hearing leads the Board to conclude that any hardship imposed by the application of the Ordinance was created by the Applicant (or, in this case, his predecessors in interest). While the prior owners may not have intended to construct the subject structure in a manner inconsistent with the Zoning Ordinance, they were ultimately responsible for its construction and placement.

After consideration of the testimony and evidence presented, the majority of the Board determined that Applicant has failed to establish that he is entitled to the requested variance under the terms of the Fairview Township Zoning Ordinance.

DECISION

AND NOW, this _____ day of _____, 2017, the Fairview Township Zoning Hearing Board hereby DENIES, by a vote of 4-1, Applicant's request for a 1 foot variance from the rear yard setback requirement as outlined herein.

These Findings of Fact, Conclusions of Law, and Decision are signed this _____ day of _____, 2017.

Voting To Deny Variance

Brian McGrain, Chairperson

Judy Miller

Barbara Partchey

George Wilkosz

Voting to Grant Variance

Keith Farnham