

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

IN THE MATTER OF	:	
	:	Premises at 6390 Lake Shore Drive
	:	Fairview Township, PA
Property owner:	:	
Kevin and Lisa Baird	:	
6390 Lake Shore Drive	:	Index No. (21) 30-16-108
Erie, PA 16505	:	Appeal Number 2022-1

**FINDINGS OF FACT**

1. Applicant is Skip Knoll, 2312 Peach Street, Erie, Pennsylvania, 16502 (hereinafter “Applicant”).
2. Kevin and Lisa Baird are the Owners of the Subject Property located at 6390 Lake Shore Drive, Erie, Pennsylvania, 16505 (hereinafter “Owners”).
3. The Subject Property is located in Fairview Township, Pennsylvania, and is identified by the Erie County Index No. (21) 30-16-108. The parcel is currently zoned R-2 and A-3.
4. On the Subject Property, Owners have a single family dwelling. The existing dwelling consists of 3,768 sq. ft. of living space with 4 ½ bathrooms and 4 bedrooms.
5. Applicant would like to construct a 26'4"x 48' detached 2 story structure on the Subject Property in the R-2 zone. The first floor would be used as a 3 car garage. The second floor would be approximately 1,200 sq. ft. of additional living space consisting of a kitchen, full bathroom, and bedroom.
6. Fairview Township’s Zoning Ordinance Section 401 defines a “dwelling” as “a . . . structure . . . used primarily for human habitation that is a minimum of 1,000 square feet of living space and located on a permanent foundation.”
7. Fairview Township’s Zoning Ordinance Section 701A(1) allows “Single-family detached dwellings” as a permitted use in the R-2 zoning district.
8. Fairview Township’s Zoning Ordinance Section 201A limits each parcel to only “one principal or permitted use.”
9. Brandon Pratt, Fairview Township’s Assistant Zoning Officer, denied Applicant’s request to build the proposed detached structure as he deemed it to be a 2<sup>nd</sup> principal use (2

single-family dwellings) located on one parcel. James Cardman, Fairview Township's Zoning Officer, noted that in the past 35 years, Fairview Township has not permitted 2 single-family dwellings to be located on one lot in an R-2 district.

10. Applicant is seeking a use variance from Section 201A to permit the Subject Property to have 2 separate single-family dwellings located on the Subject Property.

11. Applicant offered his testimony as a builder who is working with Owners. Applicant explained Owners' desire to add a 3 car garage and approximately 1,200 sq. ft. of living space to their existing home. Due to the steep slope of the property surrounding Owners' home, the desired addition can not realistically be attached to the existing home. Applicant proposes to construct a separate structure consisting of a 3 car garage on the first floor and approximately 1,200 sq. ft. of living space on the second floor. The second floor would have a full kitchen, full bathroom and a bedroom. Applicant explained that this would give Owners an additional area for children, visitors, and for a home office with a view of Lake Erie.

12. Michael Micsky, an attorney representing Mr. and Mrs. Naughton of 6380 Lake Shore Drive, argued that Applicant's proposed addition constituted a 2<sup>nd</sup> single-family dwelling on the Subject Property. He noted that Fairview Township does not permit two principal uses on one parcel and asserted that Owners failed to establish a hardship. He urged the Board to deny the requested variance.

13. Neighbor Debra Naughton testified that she opposed construction of the proposed structure because it would be intrusive to her privacy.

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

### **CONCLUSION OF LAW**

Fairview Township Zoning Ordinance Section 1103(D) authorizes this Board to grant variances from the strict application of the Township's Zoning Ordinance under limited circumstances. Specifically,

- D. The Zoning Hearing Board may adapt or vary the strict application of any requirements of the Ordinance in the case of irregular, narrow, shallow or steep lots, or other physical conditions whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved but in no other case.
  - 1. No such variance in the strict application of any provision of this Ordinance shall be granted by the Zoning Hearing Board unless it finds the conditions stated in Section 1103D above are such that the strict application of this Ordinance would deprive the applicant of the reasonable use of land or buildings.

2. The granting of any variance shall be in harmony with the general purpose and intent of this Ordinance and the Comprehensive Plan, and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare and shall be the minimum necessary to afford relief.
3. The board must determine that any unnecessary hardship has not been created by the appellant.

This Board finds that Owners have failed to meet their burden to entitle them to the requested variance. Specifically, Applicant has failed to identify any unique conditions which result in practical difficulty or unnecessary hardship that would deprive Owners of the reasonable use of the Subject Property and existing dwelling. Owners have a fully functional single family dwelling on the Subject Property. Owners' inability to expand their living space by 1,200 sq. ft. does not constitute an unnecessary hardship or rise to the level of a deprivation of the reasonable use of their property. For these reasons, Applicant's variance request must be denied.

### **DECISION**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, the Fairview Township Zoning Hearing Board by a vote of 5-0 hereby denies Applicant's request for a variance to Fairview Township's Zoning Ordinance Section 201A.

These Findings of Fact, Conclusions of Law, and Decision are signed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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Kellie Tokar, Chairperson

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Judy Miller

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Barbara Parchey

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Christopher Preston

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George Wilkosz