

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

| | | |
|--------------------|---|--------------------------------|
| IN THE MATTER OF | : | |
| | : | Premises at 7729 Magnolia Bend |
| | : | Fairview Township, PA |
| Property owner: | : | |
| Satwinder Singh | : | |
| 7729 Magnolia Bend | : | Index No. (21) 83-23.30-17 |
| Fairview, PA 16415 | : | |

FINDINGS OF FACT

1. The Applicant is Satwinder Singh, 7729 Magnolia Bend, Fairview, Pennsylvania, 16415 (hereinafter “Applicant”).
2. Applicant is the owner of the Subject Property located at 7729 Magnolia Bend, Fairview, Pennsylvania, 16415.
3. The Subject Property is located in Fairview Township, Pennsylvania, and is identified by the Erie County Index No. (21) 83-23.30-17. The parcel is currently zoned R-1.
4. On the Subject Property, Applicant has a single family dwelling. The rear of the existing dwelling is 50 feet 8 inches from the rear property line.
5. Applicant would like to construct a 24' x 24' covered patio on the rear of the property. If the covered patio is built as proposed, Applicant would have a 26 foot 8 inch rear yard. With the covered patio, the Subject Property would have greater than 35% lot coverage.
6. Fairview Township’s Zoning Ordinance Section 700(C)(5)(a) requires a 35 foot rear yard setback.
7. Fairview Township’s Zoning Ordinance Section 700(C)(7)(a) limits building lot coverage to 35% of the total lot area.
8. Applicant is seeking an 8 foot 4 inch rear yard dimensional variance to allow for the construction of the proposed patio roof structure. Applicant is also seeking a variance to exceed the 35% total lot coverage limitation.

9. Applicant offered the testimony of Rose Nouri, a realtor with Coldwell Banker. Ms. Nouri testified that she assisted Applicant in the purchase of the Subject Property. Ms. Nouri testified that since his purchase, Applicant has made several improvements to the Subject Property including finishing the basement and fencing in the rear yard. She testified that Applicant currently has a 16' x 16' cement patio at the rear of his dwelling. She explained that Applicant wanted to expand the patio to 24' x 24' and wanted to erect a roof over the patio. As proposed, the roof would attach to the rear of the dwelling and the patio would have 3 open sides. Ms. Nouri testified that a permanent structure is safer than portable roof structures. She testified that the cost of the proposed patio was \$42,000. She opined that the proposed size of the patio was reasonable and necessary to comfortably accommodate visitors at parties or social gatherings.

10. Sonny Nouri, a realtor with Coldwell Banker and husband of Rose Nouri, testified that Applicant wants to construct a 24' x 24' cement patio at the rear of his dwelling. Fairview Township's Zoning Ordinance would allow such a patio as it is not subject to yard restrictions. Mr. Nouri explained that Applicant was coming to the Zoning Board solely because he wanted to put a roof over the structure. The proposed roof would encroach into the rear yard setback by 8 feet 4 inches.

11. Applicant's contractor, Ron Desko, testified that the roof structure would have lighting and a ceiling fan. The roof would have shingles that match the existing dwelling and would have drainage to the rear of the yard. The patio would have 3 open sides. Mr. Desko explained that the windows on the existing dwelling prevented Applicant from building a wider patio which was in compliance with the 35 rear yard setback. Mr. Desko also explained that with the stairs leading from the rear of the dwelling and the stone columns necessary to support the roof structure, there was not a lot of room, and it was not practical to build a smaller covered patio.

12. James Cardman, Fairview Township's Zoning Officer testified that the rear of the Subject Property is completely fenced in. Mr. Cardman explained that the lot exists as a lawful non-conforming lot in that it is small (approximately 9,700 sq. ft.) and does not meet the Township's minimum lot size of 10,000 sq. ft.

13. John Lance, a neighbor of Applicant testified that Applicant is a good neighbor. He indicated that he hoped that the Board could make an accommodation to help Applicant.

14. Kunwant Singh, Applicant's brother testified that the \$40,000 proposed addition would add value to the Subject Property and would increase tax revenue for both the Township and the School District.

15. 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 Applicant has failed to meet his burden to entitle him to the requested variances of the Fairview Township rear yard setback and lot coverage limitations. Specifically, Applicant has failed to identify any unique conditions which result in practical difficulty or unnecessary hardship that would deprive him of the reasonable use of the Subject Property and existing dwelling. Applicant has a fully functional single family dwelling on the Subject Property with a cement patio at the rear of his property. Applicant could place a roof over the existing patio in compliance with Fairview Township's Zoning Ordinance. Applicant's inability to expand his patio and place a roof over it does not constitute an unnecessary hardship or rise to the level of a deprivation of the reasonable use of his property. For these reasons, Applicant's variance requests must be denied.

DECISION

AND NOW, this _____ day of _____, 2021, the Fairview Township Zoning Hearing Board by a vote of 3-2 hereby denies Applicant's request for variances to Fairview Township's Zoning Ordinance Section 700(C)(5)(a) and Section 700(C)(7)(a).

These Findings of Fact, Conclusions of Law, and Decision are signed this _____ day of _____, 2021.

VOTING TO DENY THE VARIANCES

George Wilkosz, Chairperson

Judy Miller

Kellie Tokar

DISSENTING

Barbara Parchey

Christopher Preston