

IN THE MATTER OF : **BEFORE THE FAIRVIEW TOWNSHIP**
THE APPLICATION OF : **ZONING HEARING BOARD**
JUSTIN NELSON : **YORK COUNTY, PENNSYLVANIA**
: **DOCKET NO. 2014-04**

**DECISION GRANTING A VARIANCE TO § 706 OF THE ZONING ORDINANCE
REGARDING THE BUFFER YARD REQUIREMENTS IN THE COMMERCIAL
BUSINESS (CB) ZONING DISTRICT**

The Applicant applied for a variance to Fairview Township Zoning Ordinance Section 706 for the purpose of constructing a pole barn type building on the unnumbered lot between 303 and 309 Limekiln Road, New Cumberland, Pennsylvania 17070, in the Commercial Business (CB) Zoning District of the Township. The hearing on the application was held on June 19, 2014, at 7:00 p.m. at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070.

FINDINGS OF FACT

1. The applicant is Justin Nelson, 280 Grandview Road, Hummelstown, PA 17036.
2. Mr. Nelson made the application as agent for and on behalf of the owner of the property, Masley Investments, LLC, of the same address as Mr. Nelson. The property is an unnumbered, unimproved less-than-one-acre parcel located between 303 and 309 Limekiln Road. The parcel has split zoning, with the frontage back to approximately 300 feet in the Single Family Residential (RS) Zoning District and the remainder of the lot to the rear in the Commercial Business (CB) District of Fairview Township. The applicant wishes to construct an accessory building on the property, in the rear commercially-zoned area, for the purpose of storing landscaping equipment.
3. Both lots adjoining the applicant's parcel have existing residential uses.

JUL 11 AM 11:47

Therefore, pursuant to Section 706 of the Zoning Ordinance, a 45 foot buffer yard is required, along with 80% opacity screening, for the location of the proposed accessory building. The applicant requests that the buffer yard requirement be reduced to 15 feet, which is the setback otherwise required in the CB district. See Fairview Township Zoning Ordinance, Section 503.F (Table 5-8).

4. The dimensions of the proposed business-use, pole-style building will be 24 feet by 60 feet. The applicant proposes to place it at the rear of the property, 15 feet from the adjoining CB parcel to the rear (south), and toward the eastern side of the lot.

5. The applicant has not requested any variance to the screening requirements of the Ordinance.

6. Notice of the hearing was properly advertised; the property was properly posted; and all neighboring property owners required to be notified of the hearing were notified in accordance with the Township Ordinance and the Pennsylvania Municipalities Planning Code.

CONCLUSIONS

1. The applicant for a variance has the burden of demonstrating that because of unique topographical or other features or circumstances in his case, literal compliance with the requirements of the Ordinance would impose an unreasonable and unnecessary hardship upon the applicant in the use of his property. A dimensional variance may also be substantiated where it represents a *de minimus* deviation from the requirements of the Ordinance.

2. On the basis of the testimony and evidence presented, the Board concludes that the unique characteristics of this lot, in particular the fact that it is in two zoning districts, result in the situation that in order for the CB area of the lot to be most beneficially and reasonably utilized for permitted CB uses, with the most limited impact on the adjoining residential uses, the

literal requirements of the Ordinance regarding the buffer yard should be relaxed. Therefore, the Fairview Township Zoning Hearing Board should grant the requested variance from the literal requirements of Section 706 of the Zoning Ordinance to allow the proposed accessory building to be built within 15 feet of the lot line of the adjoining residential use to the east. This variance only applies to the border with the lot to the east and not to the border with the residential use to the west.

DECISION

On the basis of the foregoing findings and conclusions, and on the basis of all testimony and evidence presented at the hearing, the application for a variance should be granted to allow the construction of the the proposed accessory building to be built within 15 feet of the lot line of the adjoining residential use to the east. This variance only applies to the border with the lot to the east and not to the border with the residential use to the west.

The application was approved upon the motion made by Mr. Guy, seconded by Mr. Shaffer, and adopted 3-0 by the Board members present and voting.

FAIRVIEW TOWNSHIP ZONING HEARING
BOARD

Dated: July 17, 2014

By: 

David R. Guy, Chairman

Distribution:
Applicant