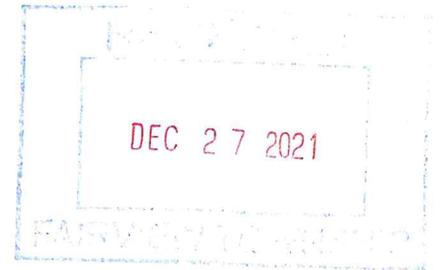


ATTORNEYS AT LAW
**JOHNSON
DUFFIE**

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2021-12



WRITER'S EXT. NO. 169
mbeshore@johnsonduffie.com

December 21, 2021

Harvey B. Smiley
1108 Highland Drive
Mechanicsburg, PA 17055

Re: Decision of the Fairview Township Zoning Hearing Board
Docket No. 2021-12

Dear Mr. Smiley:

Enclosed please find the Decision of the Fairview Township Zoning Hearing Board on your request.

Thank you.

Very truly yours,

JOHNSON, DUFFIE, STEWART & WEIDNER

copy
Tara L. Swartz, CRP, Pa. C.P.
Paralegal to Marvin Beshore, Esquire

Enclosures

cc: Timothy C. Mader, Chairman, *Fairview Township Zoning Hearing Board* {w/o enclosure}
Steve Waller, *Fairview Township Codes Administration Director*

:1353794_1

501 MARKET STREET PO. BOX 109 LEMOYNE, PENNSYLVANIA 17045-0109
WWW.JOHNSONDUFFIE.COM 717.761.4540 FAX: 717.761.3015

JOHNSON, DUFFIE, STEWART & WEIDNER, P.C.

IN THE MATTER OF : **BEFORE THE FAIRVIEW TOWNSHIP**
THE APPLICATION OF : **ZONING HEARING BOARD**
HARVEY B. SMILEY : **YORK COUNTY, PENNSYLVANIA**
: **DOCKET NO. 2021-12**

DECISION DENYING A VARIANCE TO SECTION 300-16
OF THE ZONING ORDINANCE

The Applicant applied for a variance to Section 300-16, Table 4-3, Area and Design Requirements, of the Fairview Township Zoning Ordinance from the 20-foot side yard setback requirement for the placement of a steel shed accessory structure located at 1108 Highland Drive, Mechanicsburg, PA 17055, in the Rural Living Zoning District of the Township. The hearing on the application was held November 18, 2021, at 6:30 p.m., at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070.

FINDINGS OF FACT

1. The Applicant is Harvey B. Smiley, 1108 Highland Drive, Mechanicsburg, PA 17055. The Applicant is the owner and resides at the property which is the subject of the application. The property is 43,967.93 square feet (just over one acre) in area according to the zoning hearing application.
2. 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.
3. The Applicant requests a variance to Section 300-16, Area and Design Requirements of the Zoning Ordinance which establishes setback distances in the Rural Living Zoning District. The setback at issue in this case is the twenty (20) foot side yard setback.

4. The Applicant wishes to construct an 18' x 30' shed within six (6) feet of the adjoining property line, fourteen (14) feet within the twenty (20) foot side yard setback.

5. The Applicant testified in support of the request. He indicated that the structure would be used for storage of a boat and a large recreational vehicle. The location desired is in line with his existing driveway and will allow for convenient access for the desired use. He testified further that while there is clearly ample room on the lot to locate the structure in compliance with the Ordinance, the slope of the lot would require some excavation if the location were moved, and relocation could require removal of two (2) existing pine trees. Further, there is a septic field in the vicinity which could affect the relocation, although he did not know the precise location of the septic drainage field.

6. Testifying in opposition was the adjoining property owner, Jeffrey Tobias, 1094 Highland Drive, Mechanicsburg, PA. Mr. Tobias provided photographs of the lot and testified that the proposed shed could readily be constructed toward the interior of the lot where no variance would be required. As the immediately affected adjoining property owner, he requested that the Board require adherence to the Ordinance where that is possible.

7. The request to intrude fourteen (14) feet into the side yard setback area is a request for a substantial deviation from the Ordinance requirements.

8. The size of the lot allows for a structure of the size desired to be located further to the rear of the lot and/or to the interior of the lot in compliance with the Ordinance.

9. The pictures of the lot show that the topography is not such as to make location of the shed in compliance with the Ordinance an unnecessary hardship.

DISCUSSION

An Applicant requesting a variance from the requirements of the Zoning Ordinance has the burden of demonstrating that compliance with the requirements of the Ordinance creates an unnecessary hardship in use of the property; and that the hardship is created by the terms of the Ordinance as they apply to the unique characteristics of the property. In this matter, the Applicant did not show that his property is unique in any material way with respect to the application of the side yard setback requirements of the Ordinance. It is a one acre rectangular-shaped lot with no extraordinary topographical features. The requested deviation from the Ordinance requirements was not substantiated as necessary to support the variance requested.

CONCLUSIONS

1. The Applicant has the burden of establishing his entitlement to the requested variance in accordance with the requirements of Fairview Township Zoning Ordinance Section 300-99.E(4).
2. On the basis of the testimony and documentary evidence presented, the Board concludes that the Applicant did not establish entitlement to the requested variance from the 20-foot side yard setback requirement in the Rural Living Zoning District of the Township.

DECISION

On the basis of the foregoing findings and conclusions and on the basis of all the testimony and evidence presented at the Hearing, the Zoning Hearing Board hereby denies the application for a side yard setback variance for the construction of an 18' x 30' accessory structure at the property located at 1108 Highland Drive, Mechanicsburg, PA 17055.

The application was denied upon the motion made by Mr. Bashore, seconded by Mr. Perry, and adopted 2-0 by the Board members present and voting.

FAIRVIEW TOWNSHIP ZONING HEARING BOARD

Dated: December 31, 2021

By: Mark A Perry
Mark A. Perry, Vice-Chairman

Distribution:
Applicant



ZONING HEARING BOARD APPLICATION
YORK COUNTY, PENNSYLVANIA

❖ Part 1:

APPLICANT(S)/EQUITABLE OWNER

Name: Hervey B. Smiley
Address: 1108 Highland Drive
Mechanicsburg PA 17055
Phone: 717-421-8408

EXISTING OWNER OF PROPERTY:

Name: Harvey B. Smiley
Address: 1108 Highland Drive
Mechanicsburg PA 17055

PROPERTY LOCATION:

Address: 1108 Highland Drive
Mechanicsburg PA 17055
Lot Size: 43 967.93 sq. ft.
Date Purchased: Dec. 31. 2007
Location: Between Moore's Mt. Rd
& Yellow Breeches Creek at Brenneman Dr

PRESENT USE OF PROPERTY:

Single family Dwelling

EXISTING ZONE: RL

❖ Part 2:

ZONING REQUEST (Identification of the applicable request(s)):

- () SUBSTANTIVE CHALLENGE
- () SPECIAL EXCEPTION
- () VARIANCE
- () APPEAL OF THE ZONING OFFICERS DECISION

SECTION(S) OF ZONING ORDINANCE WHICH APPLY TO THIS REQUEST - Please identify the specific section(s) of the Zoning Ordinance involved in the request):

Article IV section 300-16 (see table 4-3) in reference to the 20ft. set back for accessory building from property line in RL zoning.

❖ Part 3:

DESCRIPTION OF REQUEST:

I request that I be permitted to construct a steel shed in line with my driveway. As to house my bass boat & utility trailer, the limits of a corner lot, landscape, and septic placement limit where I can put this proposed shed. But this puts the shed closer than 20 feet from my property line. A smaller shed was in this same spot when I purchased the property but was nowhere large enough to house a boat.

