

**BEFORE THE FAIRVIEW TOWNSHIP
ZONING HEARING BOARD**

DECISION

**IN RE: APPLICATION OF BREND HIMES
 APPLICATION NO. 2024-02**

APPLICANT(S): Brenda Himes
HEARING DATE: March 21, 2024
DECISION DATE: March 21, 2024
APPEARANCES: Brenda Himes
 Scott Webb (neighbor)
 David Smiley (neighbor)
 Stephen Waller, Township Zoning Officer
EXHIBITS: Exhibit 1 – Application (including all submittals)
 Exhibit 2 – Tax Map of Property (marked as Twp. 1 in record)
LETTER SUBMITTAL: N/A
SUBJECT PROPERTY: 770 Siddonsburg Road, Lewisberry, PA 17339

BACKGROUND

This decision of the Fairview Township Zoning Hearing Board (the “**Board**”) is from an application filed with Fairview Township (the “**Township**”) on February 23, 2024 (the “**Application**”), seeking zoning relief under the Township’s Zoning Ordinance (the “**Ordinance**”), including: (i) a variance from Section §300.30.C(1)(a) to permit more than two (2) accessory structures for a single family residence in the RS Zoning District, and (ii) a variance from Section §300.21 to permit an accessory structure within the front yard setback which is prohibited in the RS Zoning District. The subject property is located at 770 Siddonsburg Road, Lewisberry, Pennsylvania, 17339, located in the Township’s Single-Family Residential (RS) Zoning District.

A hearing was held on the Application on Thursday, March 21, 2021, with the meeting starting at 6:00 p.m. The Zoning Hearing Board was represented by Timothy Mader (Chairman), Mark Perry (Vice Chairman), Keith Bashore, and Daniel Alderman (as the alternate member in attendance but not voting). All published and posted notices were duly given. No testimony in opposition to the Application was offered or taken, however David Smiley did cross examine the Applicant. Numerous individuals attended the hearing, however no parties asserted opposition on the record. After hearing the testimony and viewing the evidence in this matter, the Board makes the following determinations:

FINDINGS OF FACT

1. Brenda Himes (“**Applicant**”), is the current owner of property located at 770 Siddonsburg Road, Lewisberry, Pennsylvania, 17339 (the “**Property**”), which is used as her primary residential dwelling.

2. The Property is located in the Township’s Single-Family Residential (RS) Zoning District (the “**RL Zone**”) and is improved with a residential dwelling, a detached garage, an above ground swimming pool, and a shed.

3. The House was constructed when the side yard setback was 20 ft., however the current side yard setback in the RL Zone is 30 ft.

4. The Property is bounded by unopened paper alleys, with the alley termed “East Street” running along the east side/rear of the Property and the alley termed “West Street” running along the east side, and the front of the Property bounded by Siddonsburg Road.

5. A discrepancy exists regarding where the Applicant’s property line ends in relation to East Street, with Applicant testifying that a surveyor staked the property lines of the Property, showing the property (being Applicant’s driveway - or a portion thereof) within East Street.

6. Applicant testified to damages due to delivery trucks using said alley (being Applicant’s claimed portion of her driveway) as an access or turnaround area despite attempts to prohibit such use.

7. Applicant did not provide any survey plan or other documentation to establish the boundary lines of the Property, except testimony and photos claiming to show the property line.

8. The zoning officer established the Township treats unopened paper alleys as access easements for the benefit of those properties adjoining and having access to such alleys.

9. Applicant seeks to construct a 24’ x 24’ pole building (the “**Proposed Structure**”) in the front yard of the Property and eventually tear down the existing detached garage, the purpose for such pole building being ease of access (due to age), the dilapidated state of the existing garage, and in an effort to block the use of the East Street paper alley (or portion Applicant claims to be on her driveway).

10. Applicant seeks (i) a variance from Section §300.30.C(1)(a) to permit more than two (2) accessory structures for a single family residence in the RS Zoning District, which after Applicant’s testimony, the Proposed Structure would be the fourth (4th) accessory structure on the Property, and (ii) a variance from Section §300.21 to permit the location of the Proposed Structure in the front yard and within the front yard setback, both of which are prohibited in the RS Zoning District.

11. Stephen Waller, as the Township Zoning Officer, testified that all public notice of the application and hearing were legally conducted and performed, with the hearing being advertised in the newspaper on March 7th and 14th, the Property being posted at multiple locations on March 13th, and the adjoining property owners having letters mailed to them on February 29th.

CONCLUSIONS OF LAW

1. The Applicant has failed to establish the elements required by Section 300-99(E)(4) of the Ordinance regarding the general criteria for a variance in order to grant a variance from

Section §300.30.C(1)(a) to permit more than two (2) accessory structures for a single family residence in the RS Zoning District, specifically the unique physical characteristics of the Property exist creating a hardship which makes use of the Property in strict conformity with the Ordinance unavailable, and that such hardship are not created by the Applicant.

2. The Applicant has failed to establish the elements required by Section 300-99(E)(4) of the Ordinance regarding the general criteria for a variance in order to grant a variance Section §300.21 to permit the location of an accessory structure in the front yard and within the front yard setback, specifically the unique physical characteristics of the Property exist creating a hardship which makes use of the Property in strict conformity with the Ordinance unavailable, and that such hardship are not created by the Applicant.

DECISION

Mr. Perry moved to deny the zoning relief requested by the Applicant in the Application, being (i) a variance from Section §300.30.C(1)(a) to permit more than two (2) accessory structures for a single family residence in the RS Zoning District, and (ii) a variance from Section §300.21 to permit an accessory structure in the front yard and within the front yard setback which is prohibited in the RS Zoning District..

Mr. Bashore seconded the motion. Upon a vote, the Fairview Township Zoning Hearing Board unanimously approved the motion.

APPLICANT SHALL ABIDE BY ALL FEDERAL, STATE AND LOCAL LAWS, REGULATIONS AND ORDINANCES PERTAINING TO PERMISSIONS GRANTED BY THIS DECISION.

APPLICANT SHALL PROCEED PURSUANT TO THIS DECISION IN ACCORDANCE WITH THE TESTIMONY AND EXHIBITS PRESENTED AT THE HEARING.



Timothy Mader, Chairmen

Date: March 25, 2024

ANY PERSON AGGRIEVED BY THIS DECISION OF THE FAIRVIEW TOWNSHIP ZONING HEARING BOARD MAY APPEAL TO THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA. THE APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS FROM THE MAILING OF THESE FINDINGS OF FACT, CONCLUSIONS OF LAW AND THE ABOVE DECISION.

MAIL DATE: March 25, 2024

PUBLIC NOTICE

The Fairview Township Zoning Hearing Board will hold a Public Hearing on Thursday, **March 21, 2024**, at 6:00pm, at the Fairview Township Municipal Building, 599 Lewisberry Road, New Cumberland, PA 17070, to discuss the following:

Docket No. 2024-02: The applicant, Brenda Himes is requesting the following Variances: (i) from Section §300.30.C(1)(a) – Accessory buildings and similar structures in order to permit more than two (2) accessory structures for a single family residence in the RS Zoning District, and (ii) from Section §300.21 – Area and design requirements to permit an accessory structure within the front yard setback which is prohibited in the RS Zoning District. Applicant proposes to construct a 24x24 pole building within the front yard and side yard. The subject property is located at 770 Siddonsburg Road, Lewisberry, PA 17339, which is located in the Single Family Residential Zoning District.

PART 1:

APPLICANT/EQUITABLE OWNER

NAME: BRENDA HIMES
ADDRESS: 770 SIDDBONSBURG RD
LEWISBERRY 17339
PHONE: 717-580-3653

EXISTING OWNER OF PROPERTY

NAME: BRENDA HIMES
ADDRESS: 770 SIDDBONSBURG RD
LEWISBERRY 17339

PROPERTY LOCATION:

ADDRESS: 770 SIDDBONSBURG RD
LEWISBERRY 17339

LOT SIZE: 34,195 SQ FT

DATE PURCHASED: 21 OCT 1983

LOCATION:

PRESENT USE OF PROPERTY:

SINGLE FAMILY RESIDENCE

EXISTING ZONE:

RESIDENTIAL R-1

PART 2

ZONING REQUEST:

- SUBSTANTIVE CHALLENGE
- SPECIAL EXCEPTION
- VARIANCE
- APPEAL OF ZONING OFFICERS DECISION

SECTIONS OF ZONING ORDINANCE WHICH APPLY TO THIS REQUEST:

- §300-30 C(1)a
- §300-21

PART 3:

DESCRIPTION OF REQUEST:

OWNER WISHES TO CONSTRUCT A 24X24 POLE BUILDING – NO UTILITIES. PROPERTY HAS A SF HOME, DETACHED SINGLE CAR GARAGE AND ABOVE GROUND POOL. STRUCTURE WILL EXTEND IN FRONT OF THE HOUSE _25_FT AND WILL BE SETBACK OFF SIDDBONSBURG ROAD _26_FT AND SETBACK FROM SIDE YARD OF _13_FT.

****ALL ADDRESSES ARE LEWISBERRY, PA 17339

NAME	ADDRESS	USE TYPE
STROWSER PENROSE L & DONNA M ATTN DENNIS SCHAFFNER	804 WEST ST	SF Home
KUNKEL KATHI D	778 SIDDONSBURG RD	SF HOME
STOUFFER STEVEN R & HAMER TRUDY E	780 SIDDONSBURG RD	SF HOME
YINGER GALEN A	1254 LEWISBERRY RD	VACANT PARCEL
FORGAS BARBARA E & TOPPER PAMELA J	763 SIDDONSBURG RD	MF HOME
PURSHAHA OLEG & INNA	766 SIDDONSBURG RD	SF HOME
BOEHM CHARLES JUSTIN & STEPHANIE JEAN	760 SIDDONSBURG RD	SF HOME
FINK GIOVINA R	814 EAST ST	SF HOME
SMILEY DAVID L & MONICA L	810 EAST ST	SF HOME
SHELLENBERGER DENNIS R & CATHERINE L	811 EAST HILL ST	SF HOME
SMILEY HARVEY D & BRENDA L	805 EAST ST	SF HOME
HEDIN PAUL E JR & SARAH Y	805 WEST ST	SF HOME
BENNETT MICHAEL T & CHRISTINE A	804 WEST ST	SF HOME
WEBB SCOTT & KATHLEEN M TR FOR WEBB LIVING TRUST	803 WEST ST PO BOX 271	SF HOME
TAYLOR JOHN R & DEBRA MCGEE	801 WEST ST	SF HOME
Jason & Christina Culley	800 West St.	SF Home

View from where the 24' x 24' pole building would be to the house. Shows the telephone pole and stairs that would have to be moved if the pole building has to be placed within 10 feet of the house.



March 2023 survey markers/pins for 770 Siddonsburg Road.



Property Line Survey dated March 2023, done by Hoovers.



770 Siddonsburg Rd. – This shows the property line in orange paint a long side of Kunkle property.



Back & left side of planned 24ft x 24ft pole building area.



Left front corner to left rear corner planned placement.



New 24' x 24' pole building planned placement



This shows fencing, sidewalk and pine trees that would need to be removed to place the 24' x 24' pole building within 10 feet of the house.



Left front corner of planned garage



10 feet from the house from the driveway



Turquoise mark is 10 ft from house.

Tele Pole approx. 25' from house

Tape measure marks the spot that is exactly 10 feet from the house, which is off picture to the right.



Rear back wall and right side of planned garage.



Planned pole building design. 24 ft x 24ft.

