

APPROVED

**SPRINGETTSBURY TOWNSHIP
ZONING HEARING BOARD
MAY 1, 2014**

The Springettsbury Township Zoning Hearing Board held a regularly scheduled meeting on the above date at the Township offices located at 1501 Mt. Zion Road, York, Pennsylvania 17402.

MEMBERS IN

ATTENDANCE: Dale Achenbach, Chair
Michael Papa
Sande Cunningham
David Seiler
Kevin Hevner

ALSO IN

ATTENDANCE: Gavin Markey, ZHB Solicitor
Trisha Lang, Director of Community Development
Jean Abreght, Stenographer

NOT PRESENT: James Deitch
John Schmitt

1. CALL TO ORDER:

Chairman Achenbach called the meeting to order at 6:00 p.m. He introduced the members of the Board. It was noted that Mr. Hevner will be filling in as a voting member for this meeting. .

Chairman Achenbach led the Pledge of Allegiance.

2. ACTION ON THE MINUTES:

A. February 6, 2014

MOTION MADE BY MR. PAPA, SECONDED BY MR. SEILER TO APPROVE THE MINUTES OF FEBRUARY 6, 2014 AS PRESENTED. MOTION UNANIMOUSLY CARRIED.

Chairman Achenbach asked Ms. Lang if all cases were properly advertised. She responded that notifications had been made.

Chairman Achenbach noted the applicants agreed to the expedited process for presentation.

3. OLD BUSINESS - NONE

4. NEW BUSINESS

A. Case Z-14-02 Malkin Shaw

Malkin Shaw – 173 Heistand Road

All witnesses were sworn in.

General Case Summary:

325-20 Area and bulk requirements

- A. The yards shall be as required in the chart for permitted uses in the R-10 District. Side Yard Setback = 15'

325-139 Residential decks and patios

- A. A residential deck or patio, whether attached to the dwelling or not, can be erected within the building area of any residential zoned lot, but cannot be constructed to encroach into any required setback of that lot.

PATIO: An unroofed area or courtyard which shall not be completely enclosed, except for any side which may adjoin a structure or for any fences, walls, shrubs, or hedges. Outdoor areas covered by a roof, trellis or fixed awning shall be considered to be a structure.

Comments: The applicant is proposing to construct a 22' roof over an existing concrete area to the side and rear of the existing dwelling. Zoning regulations state that a driveway must be located at least three feet off the property line; and that a patio cannot encroach into any required setback. The setbacks for a patio would be regulated by zoning district, which in this case would be 35 feet from the rear and 15 feet from the side.

As this situation currently exists, it appears that both the driveway and building setbacks are nonconforming. The driveway sits 2.01' off the side property line. The dwelling sits 14.01' off of the side property line. It appears that the back portion of the driveway was fenced in at some point over the years and is currently operating as a gathering area.

The definition of a patio states that in order to be considered a "patio", it must be an unroofed area which shall not be completely enclosed, except for any side which may adjoin a structure or for any fences, walls, shrubs or hedges. Outdoor areas covered by a roof, trellis or fixed awning shall be considered to be a structure. The applicant is proposing to install a roof over the concrete area that they are considering a "patio". From the definition, if a roof were to be constructed over that area, it would then be considered a structure and must meet the required setbacks of 15 feet from the side yard and 35 feet from the rear.

The existing home that is located on the property sits nonconforming at 14.01' from the side property line, as previously stated. Since this is an existing structure, the township would allow the homeowner to continue this nonconforming setback for additional structures that are added onto the house. In other words, they would be permitted to construct the roof over the patio extending no farther to the side property line than this existing 14.01' measurement and no closer than the required 35' rear setback.

Recommendations: Due to the potential for the grant of such variance to negatively impact the ability to regulate patio enclosures in a manner that respects the ordinance requirements, staff would not make a favorable recommendation regarding the applicant's request.

Mr. Shaw stated he has lived in the house at this location for 36 years and is requesting a variance to construct a roof over the back door of the house to extend directly behind it to his patio. He noted the driveway on the side of the property and patio at the back. He stated the driveway is at the point where the proposed add on is 2 feet from the property line to the pavement. It is an angular property line due to being at the start of the bend in the road. Mr. Shaw indicated he is in possession of the surveyors map from 1962 showing the existing driveway and patio, which has since been redone but within the same confines. He provided photos of the proposed structure which will be a roof with no enclosures on the side. A drawing was also submitted which shows the outline of the proposed structure in red.

Mr. Shaw stated that he researched the variances for non-conforming structures which show a 3 foot minimum setback on the side, so he set it back a foot onto the patio in order to minimize the imposition into the setback.

Ms. Lang clarified that the area being used as a patio is by Township definition not actually a patio since it currently has no roof; technically it is no different than the driveway. Therefore, the setback for the

existing piece is required to be 3 ft. and the applicant is one foot into the setback. When placing a roof it becomes a patio and then the required setback is the same as the house - 15 feet. So while the house encroaches 1 ft into the setback, the encroachment will be 13 feet into the setback, with approximately a 2 ft. space on either side.

In response to an inquiry regarding control of storm water, Mr. Shaw indicated that presently on the side on the site towards his neighbors, he already has a drain line that runs to the back of the property and it would be connected with this project to prevent water on the neighbor's property.

Ms. Lang stated Township standards require when building a patio that it maintains the same setback as the house because of the possibility of enclosing it and putting a roof on it. It changes the character when it is a deck, paved area or patio and when it is added to a roof. She further noted when looking at the definition, patio is an unroofed area and as soon as it has a roof on it, it stops being a patio and starts to be a structure, and is subject to the 15 ft. setback in this case.

A question was raised as to the size of the roof which is proposed to extend over almost the entire patio.

Attorney Markey agreed with Ms. Lang's interpretation of the definitions as applied to the circumstances, and noted the Township's concern with setting a precedent. He noted the concept if applying the variance standards to a given property it is not necessarily creating a precedent since each case is going to be analyzed on an individual factual basis, and there would be the ability to determine if the variance criteria are satisfied in that case.

Chairman Achenbach asked if there was anyone in attendance who wished to speak for or against the applicant.

Mr. Shaw indicated he would be willing to compromise on the size of the proposed roof.

MS. CUNNINGHAM MOVED TO APPROVE THE VARIANCE WITH THE CONDITION THAT THE SIZE BE MODIFIED FROM THE ORIGINAL REQUEST SUCH THAT THE PROPOSED ROOF WOULD EXTEND 5 FT. FROM THE BACK CORNER OF THE HOUSE AT THE LOCATION OF THE BACK DOOR MOVING FORWARD TO COVER THE BACK DOOR AND FROM THAT POINT OUTWARD TOWARD THE SIDE PROPERTY LINE 5 FT. THE STRUCTURE MAY CONTINUE AT THAT 5 FT. MARK CONTINUING TOWARDS THE BACK OF THE HOUSE TO CREATE THE PATIO ORIGINALLY APPLIED FOR.

CHAIRMAN ACHENBACH CONFIRMED WITH THE APPLICANT THAT THEY UNDERSTOOD THE MODIFIED MOTION AS STATED.

MR. PAPA SECONDED. MOTION UNANIMOUSLY PASSED.

5. ADJOURNMENT

Chairman Achenbach adjourned the meeting at 6:40 p.m.

Respectfully submitted,

Secretary

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