

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of August 5, 2010

Members in Attendance

Jeffrey Staub, Chairman  
Sara Jane Cate, Vice Chairperson  
Richard Freeburn  
Gregory Sirb

Also in Attendance

Dianne Moran, Planning & Zoning Officer  
James Turner, Solicitor

**Docket #1282**

Applicant: Barry L. Jenkyn  
Address: 1253 Barley Corn Square  
Property: 1253 Barley Corn Square  
Interpretation: The minimum rear yard setback is 30 feet. An unenclosed porch may encroach into the setback by 15 feet. The applicant proposes to construct a covered deck, which will encroach into the setback, in the R-1 Zoning District.  
Grounds: Section 307.A & C, of the Lower Paxton Township Zoning Ordinance pertains to this application.  
Fees Paid: June 28, 2010  
Property Posted: July 20, 2010  
Advertisement: Appeared in The Paxton Herald on July 21 & 28, 2010

The hearing began at 7:30 pm.

Mr. Staub stated it is customary for the Board to enter as exhibits the application and site plans. The applicant had no objection to its doing so.

The following were sworn in: Barry L. Jenkyn, 1253 Barley Corn Square, Harrisburg, PA 17111; and Dianne Moran, Planning & Zoning Officer.

Mr. Staub stated the house looks like it is in the rear yard setback already. Ms. Moran agreed that it is, probably because the setback ordinances have changed over the years.

Mr. Jenkyn stated he has an existing 10x16 concrete patio, which is uneven and doesn't drain, and freezes in the winter. He stated his neighbor, Glen Knapp has a lot of trees so he gets a lot of tree dirt on the patio. He would like to build a little raised composite deck with a roof on it. He would like a decent place out his back door.

Mr. Jenkyn presented a letter from his neighbor saying he has no issues with the construction. Mr. Sirb asked if this is the neighbor directly behind and most affected by this proposal. Mr. Turner marked the letter as Applicant's Exhibit 1.

Mr. Freeburn asked about the deck being raised. Mr. Jenkyn stated it would be level with his kitchen floor.

Mr. Freeburn asked if a deck requires a permit at a certain height off the ground. Ms. Moran answered that a permit is not required unless the deck would be more than three feet off the ground. Mr. Freeburn asked if he needs a variance if it is less than three feet off the ground. Ms. Moran stated that a variance is required from the Zoning Ordinance, but no building permit is needed.

Mr. Freeburn asked about the proposed roof. Mr. Jenkyn stated it will be a peaked roof that will tie into the existing roof.

Mr. Freeburn asked if the applicant will come back someday asking for a variance to enclose the deck. Mr. Jenkyn answered no, he does not think so. Mr. Staub asked if it would require another variance. Ms. Moran answered that it would. Mr. Jenkyn stated he will not enclose it.

Mr. Staub asked about the driveway to the rear of the house. Mr. Jenkyn stated it belongs to Mr. Knapp. Mr. Staub asked if it encroaches into Mr. Jenkyn's property. Mr. Jenkyn stated he and the neighbor have been friends for years and they have no issues. He stated the driveway may or may not be, but he never cared enough to find out.

Ms. Cate asked about the fence. Mr. Jenkyn stated it was his because he had a dog some years ago.

Mr. Staub called for comments from the audience. There was none.

The Township had no position on the application.

Mr. Freeburn made a motion to grant the application as submitted. Ms. Cate seconded the motion and a roll call vote followed: Mr. Freeburn-Aye; Mr. Sirb-Aye; Ms. Cate-Aye; and Mr. Staub-Aye.

The hearing ended at 7:38 pm.

Mr. Jenkyn asked how he proceeds from here. Ms. Moran stated Mr. Turner will prepare the decision which the Zoning Hearing Board will sign at the following meeting. It will be given to the Township who will mail a copy to him. That is when the 30-day appeal period begins, which he must wait for, or he can waive.

Respectfully Submitted,



Michelle Hiner  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
:  
BARRY L. JENKYN : DOCKET NO. 1282

### DECISION GRANTING VARIANCE

The applicant seeks a variance from rear yard setback requirements in connection with a proposed covered deck. A hearing on the application was held on August 5, 2010.

#### Facts

1. The applicant and owner of the property in question is Barry L. Jenkyn of 1253 Barleycorn Square, Harrisburg, Pennsylvania 17112.
2. The property in question consists of an irregularly shaped lot which is improved with a single family dwelling known as 1253 Barleycorn Square. The parcel is zoned Residential, R-1.
3. The applicant proposes to erect a 12 feet x 16 feet deck on the rear of the existing dwelling. Because of the irregular rear property line, the deck will be set back between 8 feet and 11 feet. The existing house is set back between 20 feet and 23 feet from the rear property line.
4. The deck elevation will be even with the first floor of the existing home and it will have a pitched roof which will tie into the roof of the existing home.
5. The applicant has discussed his project with the adjoining property owner who indicated his approval of the project.
6. Notice of the hearing was posted and advertisement made as required by the ordinance.
7. No one other than the applicant appeared to testify either in favor of or against the proposed variance.

## Conclusions

1. Section 307.A of the ordinance establishes a minimum rear yard setback of 30 feet. Section 307.C allows an unenclosed deck to extend an additional 15 feet into the required setback. The proposed construction would violate these sections of the ordinance.

2. Article 111.D.3 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that the property in question is burdened by a hardship not created by the owner consisting of the irregular shape of the property which severely limits the developable area in the rear of the existing dwelling..

4. Granting the variance will not alter the essential character of the neighborhood nor impair surrounding property values. The adjoining parcel is screened from the proposed deck and there is a large amount of space between the respective dwellings. The deck only encompasses a small portion of the back yard and the overall scale of the project is compatible with the neighborhood. The proposed deck will be barely visible to any other parties.

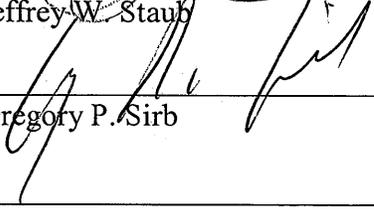
Decision

In view of the foregoing and having carefully considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variance requested should be and is hereby granted allowing the erection of a 12 feet by 16 feet covered deck in strict accordance with the plans and testimony submitted to the Board.

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

Date: 8/26/10

  
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Jeffrey W. Staub

  
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Gregory P. Sirb

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Sara Jane Cate

  
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Richard E. Freeburn