

Date of Mailing: November 5, 2021

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

MONTGOMERY COUNTY, PA

APPLICATION OF MOHAMMAD AND PARVEEN HASHIM

APPLICATION NO. 2021-15

PROPERTY: 505 PRINCETON DRIVE

TAX PARCEL NO. 58-00-15349-00-1

DECISION

The Zoning Hearing Board of Upper Merion Township (“ZHB”) considered an application for a use variance to allow the applicants to rent the lower level/basement of their single-family residential dwelling as an apartment where this use is not permitted. The ZHB denied the requested variance. The applicants did not prove entitlement to the grant of relief.

Mohammad and Parveen Hashim (“Landowners”) are the owners of the property located at 505 Princeton Drive, tax parcel no. 58-00-15349-00-1 (the “Property”). The Property is in the R-2 Residential zoning district (“R-2 District”) of Upper Merion Township (the “Township”).

The Property is improved with a single-family dwelling. Landowners propose to rent the lower level/basement of the dwelling as an apartment, while Landowners will continue to use the first and second levels of the dwelling as their residence.

The Landowners require a use variance from section 165-22 *Use regulations* of the Upper Merion Township Zoning Ordinance of 1942, as Amended (the “Zoning Ordinance”), to permit this additional use on the Property. The proposed rental of the lower level/basement floor renders the existing building a “rooming house” under section

165-5 *Definitions and Word Usage* of the Zoning Ordinance. A rooming house is a not a permitted use within the R-2 District under section 165-22 of the Zoning Ordinance.

On October 6, 2021, the ZHB held an advertised public hearing on Landowners' application. The following members of the ZHB were present at the hearing: M Jonathan Garzillo, Chairman; John Tallman, Vice Chairman; Vivian Peikin, Esq., Secretary; Mark DePillis, Esq., member; Maria Mengel, member; and Hedda Schupak, alternate member. The ZHB was represented by Marc D. Jonas, Esq., of the law firm of Eastburn and Gray, P.C. Landowners were not represented.

Neighboring property owners, Kenneth Roberts, Joseph Burkert, Robert Wray, Stephen Geckle, Harry Dorn, and Jean Moon ("Objectors") appeared in opposition to the application.

The hearing was duly advertised, notice was given in accordance with the requirements of the zoning ordinance, and the proceedings were stenographically recorded. Because the application was denied, the ZHB issues this decision with findings of fact, conclusions of law, and reasons.

After careful consideration of the evidence presented, the ZHB makes the following findings of fact and conclusions of law.

A. FINDINGS OF FACT

BACKGROUND

1. Landowners are the owners of the Property. [Ex. ZHB-2]
2. The Property is identified as tax parcel no. 58-00-15349-00-1. [Ex. ZHB-4]
3. The Property is Located in the Township's R-2 Residential zoning district.

[Ex. ZHB-4]

4. The Property is approximately 10,031 square feet and is improved with a single-family residential dwelling. [Ex. ZHB-1; Ex. ZHB-4]

ZHB HEARING

5. The ZHB marked the following exhibits:

- a. ZHB-1 – application, including letters of support from neighbors;
- b. ZHB-2 – deed dated October 19, 2009, between Laurence Leonard and Marjorie Leonard (grantors), and Parveen Hashim and Mohammad Hashim (grantees), recorded in deed book 5750, page 1989;
- c. ZHB-3 – photographs of the Property;
- d. ZHB-4 – Montgomery County Board of Assessment Appeals property information and tax map for parcel 58-00-15349-00-1;
- e. ZHB-5 – Google maps aerial image of Property;
- f. ZHB-6 – legal notice.

6. No exhibits were marked by Landowners during the hearing.

7. Landowner, Parveen Hashim, was the only witness to testify in support of the application.

8. Landowner testified, in pertinent part, as follows:

- a. The Property is presently used as the residence of Landowners and their son. [N.T., p. 5]
- b. The single-family dwelling contains four bedrooms and three full bathrooms. [N.T., p. 5]

- c. Landowners and their son occupy the three bedrooms on the second level of the residence. [N.T., p. 5]
- d. Landowners propose to rent the lower level/basement floor to an individual or couple, while Landowners would continue to reside on the first and second levels of the dwelling. [N.T., pp. 5-6, 8-9]
- e. The lower level/basement floor contains one bedroom, a bathroom, and a separate entrance/exit. [N.T., p. 5]
- f. The lower level/basement floor does not contain a separate kitchen, but does contain a refrigerator, microwave, and toaster oven. [N.T., p. 8]
- g. There is a door between the lower level/basement and the first level that Landowners would keep locked. [N.T., p. 8]
- h. The lower level/basement floor is not currently occupied by Landowners or being rented to another individual. [N.T., p. 9].
- i. Landowners contended that three cars may be parked on the Property's driveway. Another car can be parked in Landowners' garage, and two cars can be parked on the street in front of the Property. [N.T., p. 6]
- j. Landowners have previously allowed people to stay in their residence. Landowners have not charged a fee to rent a room. [N.T., pp. 33-35]

k. Landowners' reason for this variance is personal and financial, based on their desire to generate income because their son is sick, and neither Landowner can work. [N.T., p. 6]

9. Landowners offered no expert testimony in support of their application.

10. Marisa Smith, who resides at 442 Regimental Road, offered to testify in favor of the application. Ms. Smith was not permitted to testify because of the distance between her residence and the Property. [N.T., pp. 10-11]

11. Orlando Love was sworn in as a witness but had no comment in favor or in opposition to the application. [N.T. pp. 11-13]

12. Objectors, Kenneth Roberts (247 Anderson Road); Joseph Burkert (530 Princeton Drive); Robert Wray (537 Princeton Drive); Stephen Geckle (161 Cambridge Road); Harry Dorn (520 Princeton Drive); and Jean Moon (529 Princeton Drive) testified in opposition to the application.

13. Mr. Roberts raised concerns about the effect of the variance remaining with the Property and passing on to a subsequent owner, and negative effect on the essential character of the neighborhood. [N.T., pp. 14-17]

14. Mr. Burkett raised concerns about Landowners' previously renting the Property to multiple people; the number of cars parked in the street and in the yard of the Property; renters walking around the neighborhood at night; noise; and the adverse impact on real estate values in the neighborhood. [N.T., pp. 18-20]

15. Mr. Wray expressed concerns about the increase of high-density housing in the Township; an adverse impact on the value of his home; and the availability of parking in the neighborhood. [N.T., pp. 21-22]

16. Mr. Geckle was concerned about the permanent legal effect of the variance, and the potential for conflict with the Township's regulations regarding the licensing and definition of housing units. [N.T., pp. 23-25]

17. Mr. Dorn testified about Landowners' potentially renting the entire residence and changing the essential character of the neighborhood. [N.T. p. 26]

18. Ms. Moon raised concerns about the legal effect of the variance and changing the essential character of the neighborhood. [N.T., pp. 29-32]

19. Objectors did not present expert testimony in support of their concerns.

20. No evidence was offered by Landowners regarding unique physical circumstances or conditions preventing the reasonable use of the property.

21. The Property is reasonably used as a single-family residence, a permitted use in the Township's R-2 District.

22. No evidence was offered by Landowners that the variance would not be detrimental to the public welfare.

B. DISCUSSION

A zoning hearing board may only grant a variance where:

1. an unnecessary hardship will result if the variance is denied, due to the unique physical circumstances or conditions peculiar to the property;
2. because of the physical conditions, the property cannot be developed in conformity with the zoning ordinance and, therefore, a variance is necessary to enable the reasonable use of the property;
3. the unnecessary hardship was not created by the applicant;
4. the variance will not be detrimental to the public welfare; and

5. the variance sought will represent the minimum variance that will afford relief.

53 P.S. § 10910.2(a); Zoning Ordinance §§ 164-133 and 164-134; *Cope v. Zoning Hearing Bd. of S. Whitehall Twp.*, 578 A.2d 1002, 1005 (Pa. Cmwlth. 1990).

[T]he reasons for granting a variance must be substantial, serious, and compelling. The burden of an applicant seeking a zoning variance is heavy, and variances should be granted sparingly and only under exceptional circumstances. A variance will not be granted simply because a zoning ordinance deprives the owner of the most lucrative or profitable uses of the property. Economic hardship short of rendering the property valueless does not justify the grant of a variance.

Coyle v. City of Leb. Zoning Hearing Bd., 135 A.3d 240, 242 (Pa. Cmwlth. 2016) (citing *Oxford Corp. v. Zoning Hearing Bd. of Borough of Oxford*, 34 A.3d 286, 296 (Pa. Cmwlth. 2011)).

To establish unnecessary hardship to warrant a use variance an applicant must show more than mere economic or personal hardship. *Pietropaolo v. Zoning Hearing Bd. of Lower Merion Twp.*, 979 A.2d 969, 980 (Pa. Cmwlth. 2009). An applicant must demonstrate that the property cannot be used for a permitted purpose, that the cost to conform the property for a permitted purpose is prohibitive, or that the property has no value for a permitted purpose. *Fowler v. City of Bethlehem Zoning Hearing Bd.*, 187 A.3d 287, 297-298 (Pa. Cmwlth. 2018) (“To be entitled to a use variance, Applicant must also show that there is no possibility of developing the Property in strict conformity with the Ordinance, such that a variance is required to enable its reasonable use.”).

In the present application, Landowners have not met this burden. Landowners assert that renting the lower level/basement of their residence would enable them to generate extra income. This testimony falls well short of establishing that the Property

cannot be used for a single-family dwelling or has no value for this use. Rather, Landowners merely established a personal and financial claim, which is not sufficient to warrant a use variance.

Landowners have a reasonable use of the Property as a single-family residential dwelling. Landowners intend to continue using the Property as their residence going forward. The requested relief is not necessary to allow the reasonable use of the Property.

C. CONCLUSIONS OF LAW

1. The ZHB has jurisdiction under section 909.1(a)(5) of the MPC, 53 P.S. §10909.1(a)(5), and Zoning Ordinance §165-215.A(5).

2. Landowners have standing to seek the requested zoning relief as the owners of the Property.

3. The ZHB is obligated to ensure compliance with the Zoning Ordinance.

4. Landowners require a use variance from section 165-22 of the Zoning Ordinance to allow the rental of the lower level/basement floor as an apartment.

5. The ZHB may grant a variance provided that an applicant establishes that: (1) an unnecessary hardship will result if the variance is denied, due to the unique physical circumstances or conditions peculiar to the property; (2) because of the physical conditions, the property cannot be developed in conformity with the zoning ordinance and, therefore, a variance is necessary to enable the reasonable use of the property; (3) the unnecessary hardship was not created by the applicant; (4) the variance will not be detrimental to the public welfare; and (5) the variance sought will represent the minimum variance that will afford relief.

6. Landowners failed to demonstrate an unnecessary hardship entitling them to variance relief from section 165-22 of the Zoning Ordinance.

7. Landowners failed to demonstrate that the Property cannot be used for a permitted purpose, that the cost to conform the Property for a permitted purpose is prohibitive, or that the property has no value for a permitted purpose.

8. The Property is reasonably used as a single-family dwelling, a permitted use in the R-2 District.

9. Any claimed hardship is self-created by Landowners' desire to generate rental income.

At the conclusion of the October 6, 2021 hearing, the ZHB voted unanimously to deny the application. On October 7, 2021, the ZHB mailed the following notice of decision to Landowners:

This letter provides notice of the decision of the Upper Merion Township Zoning Hearing Board following the conclusion of the hearing on Wednesday, October 6, 2021.

The Zoning Hearing Board voted to deny the request for variance relief from section 165-23 of the Upper Merion Township Zoning Ordinance of 1942, as Amended, to rent the lower level/basement as an apartment in a single-family residential dwelling.

Because this application was denied, the Zoning Hearing Board will issue a decision with findings of fact, conclusions of law, and reasons.

This decision may be appealed to the Court of Common Pleas of Montgomery County within 30 days of the date of mailing.

**ZONING HEARING BOARD OF
UPPER MERION TOWNSHIP**

A handwritten signature in black ink, appearing to read 'M. Garzillo', is written over a solid horizontal line.

M. Jonathan Garzillo
Chairperson