

Date of Mailing:

**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP  
MONTGOMERY COUNTY, PENNSYLVANIA**

**APPLICATION OF DEBORAH LASPAS AND JILL LOWDERMILK**

**No. 2019-05**

**PROPERTY: 531 HANSEN ROAD**

**DECISION**

This application involves a request for two variances for a home addition. Landowners sought a variance to allow an aggregate side yard of 20.4 feet where 25 feet is required, and a variance to allow 2 parking spaces where 3 are required for a four-bedroom dwelling. The Zoning Hearing Board granted Landowners' request for a variance from the aggregate side yard requirement, but denied Landowners' request for a variance from the minimum parking requirements.

Deborah Laspas and Jill Lowdermilk ("Landowners") are the owners of the property located at 531 Hansen Road, Upper Merion Township, tax parcel number 58-00-09253-00-4 (the "Property"). The Property is located in the R-2 zoning district and is improved with a single-family detached dwelling. Landowners requested variances from sections 165-23.A<sup>1</sup> and 165-191.A.(1)(a)<sup>2</sup> of the Upper Merion Township Zoning Ordinance of 1942, as Amended (the "Zoning

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<sup>1</sup> §165-23 Area, width and yard regulations.

Lots, buildings and structures may be created and/or constructed in the single-family districts in accordance with the following dimensional criteria:

A. Dimensional regulations for all single-family detached dwellings...

...  
Yards

...  
Side (aggregate) 25 feet [in the R-2 District].

<sup>2</sup> §165-191 Minimum requirements.

Any building or other structure erected, altered or used and any lot used or occupied for any of the following purposes shall be provided with minimum off-street parking spaces as set forth below, together with adequate passageways, driveways or other means of circulation and access to or from a street or way. Where a use is not specifically listed below, the requirement of the most similar use shall be applied. If a use falls into two or more of the following categories, the category which requires the greatest parking shall apply.

A. Dwellings.

(1) Single-family dwellings (detached, semidetached, rowhouse).

(a) Number of off-street parking spaces: two spaces plus one additional space for each bedroom in excess of three bedrooms.

Ordinance”), to construct an addition which Landowners plan to use as a bedroom and living space for Ms. Laspas’s elderly mother.

On June 5, 2019, the Zoning Hearing Board (the “ZHB”) of Upper Merion Township (the “Township”) held an advertised public hearing on Landowners’ application. The hearing was stenographically recorded. The following members of the ZHB were present at the hearing: Mark S. DePillis, Esq. served as Chairman; Maria Mengel, Member; M. Jonathan Garzillo, Member; Vivian Peikin, Member; Hedda Schupak, Member. The ZHB was represented by Marc D. Jonas, Esq., and Zachary A. Sivertsen, Esq. of the law firm of Eastburn and Gray, P.C. Landowners were not represented by counsel.

After careful consideration, the ZHB makes the following findings of fact and conclusions of law:

**A. FINDINGS OF FACT**

**BACKGROUND**

1. Landowners are the legal owners of the Property. [Ex. ZHB-2.]
2. The Property is located in the Township’s R-2 Residential Zoning District. [Ex. ZHB-3.]
3. The Property is 10,125 square feet. [Ex. ZHB-3.]
4. The Property is improved with a 2.5 story single-family detached dwelling. [Ex. ZHB-3.]
5. The home is a brick and frame split-level dwelling. [Ex. ZHB-3.]

**ZHB HEARING**

1. The following exhibits were included with Landowners’ application:
  - a. ZHB-1 — ZHB application including attachment
  - b. ZHB-2 — Deed dated July 26, 2012 between First Niagara Bank, N.A. Executor of the Estate of Sime Bacinich a/k/a Sime J. Bacinich, deceased,

grantor, and Deborah Laspas and Jill Lowdermilk, grantees, recorded in deed book 5843, page 1125

- c. ZHB-3 — Plan entitled "Zoning Hearing Board Application Plan", sheet no. 1 of 1, prepared by Joseph M. Estock, dated April 11, 2019
  - d. ZHB-4 — Two photos of the front and back of the house
  - e. ZHB-5 — Montgomery County Board of Assessment property information and tax maps
  - f. ZHB-6 — Legal Notice
  - g. ZHB-7 — Proof of Posting
  - h. ZHB-8 — Proof of Publication
  - i. ZHB-9 — Aerial of Property
2. No Landowner exhibits were offered during the hearing.
  3. Landowners presented three witnesses: Landowner Deborah Laspas; Wesley Richardson; and Landowner Jill Lowdermilk.
  4. Landowner, Deborah Laspas, offered the following testimony:
    - a. She plans to build an addition to the Property for her mother. [N.T., pp. 6, 9.]
    - b. The addition will be located 10.7 feet from the side property line. [Ex. ZHB-3; N.T., p. 8.]
    - c. The aggregate side yard will measure 20.4 feet after completion of the addition. [Ex. ZHB-3.]
    - d. The addition will contain a bedroom and a bathroom. [N.T., p. 9.]
    - e. She is concerned for her mother's safety because her mother is losing her sight and requires the use of a walker. [N.T., p. 9.]
    - f. The size of the addition would be insufficient to accommodate her mother's needs if it did not encroach into the side yard. [N.T., pp. 9-10.]

- g. A neighboring property owner constructed a similar addition. [N.T., p. 11.]
  - h. Landowners' neighbors support the plans. [N.T., p. 11.]
  - i. The Property currently has sufficient space to park three cars, one in the garage and two in the driveway. [N.T., p. 12.]
  - j. Landowners can expand the driveway to include a third parking space. [N.T., pp. 14-15.]
  - k. Landowners do not intend to build a kitchen in the addition. [N.T., p. 21.]
  - l. Landowners plan to keep an existing entrance to the addition from the rear yard. [N.T., p. 28.]
  - m. Landowners will not add a separate entrance to the addition or construct a second kitchen. [N.T., p. 28.]
5. Wesley Richardson offered the following testimony:
- a. He is Landowners' builder. [N.T., p. 15.]
  - b. Landowners could construct the addition to the rear of the home, but it would be expensive and impractical due to the home's current layout. [N.T., p. 17.]
  - c. Landowners can "easily" add a third parking space to the front yard of the Property. [N.T., pp. 17-18.]
  - d. The width of the existing driveway is approximately 2 car widths, or 14-16 feet. [N.T., p. 18.]
  - e. A third parking space would require an additional 8 by 10 foot area of blacktop. [N.T., p. 18.]
  - f. It would be "fairly easy" to expand the driveway to add a third parking space. [N.T., p. 19.]
  - g. The addition will measure 15 feet by 35 feet and will include a sitting area, bedroom, bathroom, and laundry area. [N.T., p. 25.]
6. Landowner, Jill Lowdermilk, offered the following testimony:

- a. She is the spouse of Landowner, Deborah Laspas. [N.T., p. 22.]
- b. Her mother-in-law will use the addition as a bedroom and living area. [N.T., pp. 22, 23.]
- c. The Property does not currently have a bedroom on the main floor. [N.T., pp. 22, 23.]
- d. Her mother-in-law is unable to use the stairs. [N.T., p. 23.]
- e. Landowners' plan is consistent with other homes in the neighborhood. [N.T., pp. 23, 24.]

7. Neighboring property owner Brian Moran, who resides at 523 Hansen Road, questioned whether Landowners intended to subdivide the Property or construct a separate residence. [N.T. pp. 20-21.]

**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); *Cope v. Zoning Hearing Bd. of S. Whitehall Twp.*, 578 A.2d 1002, 1005 (1990).

Variations should be granted sparingly, and the reasons for granting variations must be substantial, serious, and compelling. *Laurento v. Zoning Hearing Bd. of the Borough of West Chester*, 638 A.2d 437, 439 (Pa. Commw. Ct. 1994). A relaxed standard applies to applications

for dimensional, as opposed to use, variances, but an applicant must still demonstrate an unnecessary hardship caused by unique physical characteristics of the property. See *Singer v. Phila. Zoning Bd. of Adjustment*, 29 A.3d 144, 149 (Pa. Commw. Ct. 2011). To establish an unnecessary hardship, an applicant must prove that either:

(1) the physical characteristics of the property are such that it could not in any case be used for any permitted purpose or that it could only be arranged for such purposes at prohibitive expense, or (2) the characteristics of the property are such that the lot has either no value or only distress value for any purpose permitted by the ordinance.... The applicant must show that the hardship is unique or peculiar to the property as distinguished from a hardship arising from the impact of zoning regulations on the entire district.

*Worthington v. Zoning Hearing Bd. of New Britain Twp.*, 669 A.2d 497, 499 (Pa. Commw. Ct. 1996).

**1. Landowners failed to establish the requirements for a variance to permit 2 parking spaces where 3 parking spaces are required**

Pursuant to section 165-191.A(1)(a) of the Zoning Ordinance, Landowners must have two parking spaces, plus one additional space for each bedroom in excess of three bedrooms. Since the Property will have four bedrooms with the proposed addition, the Property must have three off-street parking spaces. Landowners failed to establish any of the requirements for a variance to permit two off-street parking spaces. Landowners and their builder readily conceded that they could add a third parking space to their existing driveway. [N.T., pp. 13-15; 17-19].

In *Worthington v. Zoning Hearing Bd. of New Britain Twp.*, 669 A.2d 497, 499 (Pa. Commw. Ct. 1996) the applicants applied for two variances from the zoning ordinance's minimum parking requirements. The applicants did not present any evidence before the zoning hearing board that the subject property had insufficient space to accommodate the required number of parking spaces. Instead, the applicants simply contended that the mandated number of parking spaces was unnecessary.

The zoning hearing board granted both variances. Neighboring property owners appealed to the trial court, claiming that applicants failed to establish a legal hardship. The trial court affirmed the zoning hearing board's decision, and the neighboring property owners

appealed to the Commonwealth Court. The Commonwealth Court held that applicants' evidence was insufficient to establish an "unnecessary hardship" to justify the grant of variances from the parking requirements, and reversed the trial court's decision.

Similar to the applicants in *Worthington*, Landowners did not introduce any evidence before the ZHB to demonstrate that the Property has insufficient space to accommodate a third parking space. To the contrary, Landowners conceded that they could expand their existing driveway to add a third parking space. Accordingly, Landowners failed to establish an "unnecessary hardship," or any of the requirements for a variance.

**C. CONCLUSIONS OF LAW**

1. The ZHB has jurisdiction under section 909.1(a)(5) of the Pennsylvania Municipalities Planning Code, 53 P.S. §10909.1(a)(5), and Zoning Ordinance §165-251.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. The ZHB may only grant a variance if 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.

5. Landowners failed to demonstrate an unnecessary hardship regarding the minimum parking requirement due to the unique physical circumstances or conditions peculiar to the Property.

6. Landowners failed to demonstrate that the property cannot be developed in conformity with the zoning ordinance and that the variance from the minimum parking requirement is necessary to enable the reasonable use of the property.

7. Landowners failed to demonstrate that the alleged unnecessary hardship regarding the minimum parking requirement was not created by the applicant.

8. Landowners failed to demonstrate that the variance from the minimum parking requirement would not be detrimental to the public welfare.

9. Landowners failed to demonstrate that the requested variance from the minimum parking requirement was the minimum necessary to afford relief.

At the conclusion of the June 5, 2019 public hearing, the ZHB voted unanimously to grant the variance from the aggregate side yard requirement, but to deny the variance from the minimum parking requirement. On June 6, 2019, ZHB mailed the following notice of decision:

*This letter is notice of the decision of the Upper Merion Township Zoning Hearing Board following the conclusion of the hearing on June 6, 2019.*

*The Zoning Hearing Board voted to grant in part and deny in part the requested zoning relief related to your 596.5 square foot first floor residential addition with a bedroom, sitting area, and laundry room.*

*The ZHB voted to grant a variance from section 165-23 Area, width and yard regulations to allow an aggregate side yard of 20.4 feet where an aggregate side yard of 25 feet is required.*

*The ZHB voted to deny a variance from section 165-191.A(1)(a) to permit 2 parking spaces where 3 parking spaces are required for a 4-bedroom dwelling.*

*The variance granted is subject to the following conditions and strict conformance with the testimony and exhibits presented at the hearing:*

- 1. no kitchen or other cooking facility shall be installed within the proposed addition; and*
- 2. no independent exterior access shall be created that would allow the proposed addition to function as a separate and distinct dwelling unit. This shall not prohibit a rear yard access at the back of the addition.*

*All of the improvements are shown on exhibit ZHB-3, titled "Zoning Hearing Board Application Plan", sheet no. 1 of 1, prepared*



by Joseph M. Estock, dated April 11, 2019. A copy of this plan accompanies this letter.

Because this application was denied in part, the ZHB will issue a decision with findings of fact, conclusions of law and reasons.

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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**



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John Tallman, Chairman