

Date of Mailing:

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA

APPLICATION OF JOHN R. SAMAR

NO. 2017-18

PROPERTY: 116 Ivy Lane

DECISION

This application concerns an appeal of an enforcement notice for operation of a two-unit "Airbnb" rooming house within a nonconforming single-family detached dwelling in the C-O Commercial Office District. In the alternative, the applicant requests a special exception or use variance to permit conversion of the single-family detached dwelling into a two-family detached dwelling. The applicant is in the residential construction business with knowledge of and experience with municipal permitting requirements. Despite this knowledge and experience, the applicant, without any permits and in disregard of a permit for an addition expressly limited to an existing single-family dwelling, converted the nonconforming single-family detached dwelling into two dwelling units.

Based on the evidence presented, the Upper Merion Township Zoning Hearing Board denies all relief requested.

John R. Samar ("Landowner") is the owner of the property located at 116 Ivy Lane, Upper Merion Township, Montgomery County, Pennsylvania (the "Property"). The Property contains an existing single-family detached dwelling. The dwelling is a nonconforming use in the C-O Commercial Office District, where residential use is not permitted. Although Landowner is a contractor well-versed in local permitting

requirements, he installed a second kitchen in the dwelling without a permit and began renting the dwellings as a two-unit Airbnb rooming house.

On May 24, 2017, the township building official issued an enforcement notice on the basis that Landowner's use of the Property was in violation of the Upper Merion Township Zoning Ordinance of 1942, as Amended ("Zoning Ordinance"). More specifically, the enforcement notice stated that Landowner was operating the Property in violation of section 165-96 *Regulations to apply* and section 165-97 *Use regulations*:

The existing single family dwelling is being used as a multiple dwelling "Air BnB" (rooming house) not permitted in C-O Commercial Office Zoning District.

On June 23, 2017, Landowner filed an appeal¹ from the enforcement notice. In the alternative, Landowner requested a special exception from section 165-212 *Conversion of dwellings* to permit conversion of the existing single-family detached dwelling into a two-family detached dwelling, or a use variance from section 165-97 *Use regulations* to permit a two-family detached dwelling.

On September 6, 2017, the Zoning Hearing Board ("ZHB") of Upper Merion Township ("Township") held a public hearing on Landowner's application. All ZHB members were present at the hearing: Mark S. DePillis, Esquire, Chairman, M Jonathan Garzillo, Vice-Chairman, Maria Mengel, Secretary, John M. Tallman, Jr., Member, and Lynne Z. Gold-Bikin, Esquire, Member. Michael E. Peters, Esquire, of Eastburn and Gray, P.C. represented the ZHB. John F. Walko, Esquire of Hamburg, Rubin, Mullin, Maxwell &

¹ On the application form, Landowner waived the requirements of Section 908 of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10908, including the requirement that the hearing on his application commence within 60 days of the application.

Lupin, PC, represented the Township in its defense of the enforcement notice. Landowner was unrepresented.

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. Landowner is the legal owner of the Property. [ZHB-2.]
2. The Property is located in the C-O Commercial Office District. [ZHB-1.]
3. The Property contains a lawful nonconforming single-family detached dwelling. [ZHB-1.] Residential use is not permitted in the C-O Commercial Office District. Zoning Ordinance § 165-97.
4. Without obtaining Township approval or permits, Landowner converted the nonconforming single-family detached dwelling into a 2-family Airbnb rooming house by adding a kitchen and converting the house into two units.
5. On May 24, 2017, the Township issued the enforcement notice.
6. On June 23, 2017, Landowner filed an appeal from the enforcement notice.
7. Landowner requested a special exception pursuant to Ordinance § 165-212

Conversion of dwellings. Zoning Ordinance § 165-212 provides:

A single-family detached dwelling existing on the effective date of this chapter may be converted into and used as a two-family or multifamily dwelling when authorized as a special exception provided that:

- A. The plans for the conversion of said dwelling shall be submitted to the Zoning Hearing Board.

- B. Such plans shall provide adequate and suitable parking or storage space, at a safe distance from the public highway, for not less than one automobile per family.
- C. Such dwelling shall be subject to the height, area, width and yard regulations effective in the district wherein such dwelling is situated, except that there shall be a lot area of not less than the product of the minimum lot area prescribed in the district regulations and the number of families for the use of which such dwelling is to be converted.
- D. There shall be no external alteration of the building except as may be necessary for reasons of safety, and fire escapes and outside stairways shall, where practicable, be located to the rear of the building.
- E. The Zoning Hearing Board shall specify the maximum number of families permitted to occupy such dwelling and may prescribe such further conditions and restrictions with respect to the conversion and use of such dwelling and to the use of the lot as the Board may consider appropriate.

Zoning Ordinance § 165-212.

8. Landowner requested no dimensional variance relief for the conversion even though the Property does not meet the dimensional standards for a two-family conversion.

9. In the further alternative, Landowner requested a use variance from Zoning Ordinance § 165-97 *Use regulations* to permit a two-family detached dwelling.

10. A "rooming house" is a separate use under the Zoning Ordinance, defined as: "[a] dwelling in which sleeping accommodations are provided for rent to fewer than 10 persons whether or not the serving of meals is included." Zoning Ordinances § 165-5.

11. Landowner did not request relief to operate a rooming house on the Property.

ZHB HEARING

12. The ZHB marked the following exhibits:

- a. ZHB-1 — ZHB application
- b. ZHB-2 — deed dated September 22, 2005, between Michael A. Korkus, Jane A. Korkus, Carl E. Boettcher and Kathryn Boettcher (grantors) and John R. Samar (grantee), recorded with the Recorder of Deeds for Montgomery County at deed book 05574, page 0608
- c. ZHB-3 — enforcement notice dated May 24, 2017, from Brian Sakal, Building Official, Upper Merion Township, to John R. Samar
- d. ZHB-4 — site plan titled 116 Ivy Lane
- e. ZHB-5 — Board of Assessment, Montgomery County, property information and tax map
- f. ZHB-6 — legal notice
- g. ZHB-7 — proof of posting
- h. ZHB-8 — proof of publication
- i. ZHB-9 — letter dated August 9, 2017, from Landowner to M. Zadroga, Chief Building Official.

13. The Township offered the following exhibits:

- a. T-1 — use and occupancy permit, Upper Merion Township, for: “Bedroom/Bathroom Addition to Existing Dwelling”, dated September 9, 2015
 - b. T-2 — building permit, Upper Merion Township, dated March 6, 2013
 - c. T-3 — Zoning Ordinance § 165-97 *Use regulations*.
14. Landowner offered only one exhibit:
 - a. A-1 — outline of written testimony
15. Landowner testified on his own behalf. Landowner presented no other witnesses.
16. The Township presented the testimony of Brian Sakal, Building Official.
17. Landowner testified as follows:
 - a. Landowner desires to use the Property for an “Airbnb rental property”. [N.T. p. 11.]
 - b. Although Landowner originally asserted that the Property was zoned “R-3”, Landowner ultimately acknowledged that the zoning of the Property was C-O Commercial Office District. [N.T. pp. 13-14.]
 - c. The single-family detached dwelling on the Property is a lawful nonconforming use. [N.T. p. 14.]
 - d. Landowner installed a second kitchen in the building without obtaining Township approval. [N.T. p. 16.]
 - e. The building contains two dwelling units, each with a kitchen. [N.T. p. 17.]

- f. Landowner is "marketing" the Property on the Airbnb website with two dwelling units. [N.T. pp. 17-18.] One unit has two bedrooms; the other has three bedrooms. [N.T. p. 17.]
- g. When asked whether he disputed the enforcement notice, Landowner testified:

MR. WALKO [TOWNSHIP SOLICITOR]: So you would agree with me now that the current use of the property is not a single-family residential use?

MR. SAMAR: No, I'm not in dispute of any of this. I'm petitioning to get permission to use it. I acknowledge my mistake of operating it the way I did, and I'm here to correct that.

[N.T. p. 19.]

- h. Similarly, in response to questioning from the ZHB:

MS. GOLD-BIKIN [ZHB MEMBER]: I'm a little confused. At the bottom [of exhibit T-2 (building permit)] it says permit contingent upon single-family use only; dwelling cannot be converted to multi-family dwelling or commercial use without approval.

MR. SAMAR: And I'm asking for approval.

MS. GOLD-BIKIN: But you've already done it.

MR. SAMAR: I apologize for that. My intent when I bought the property over 10 years ago in '05 was to relocate there—I have a small construction business, I do design work—and move into the upper floor.

...

MS. GOLD-BIKIN: Well, when you realized that...your plans had changed, did you go back for another permit?

MR. SAMAR: No, I didn't. I was probably foolishly—I know that my neighbor across the street petitioned the Board in 2010 to use his unit for a resident upstairs and his business downstairs. And the Board approved it.

...

MS. GOLD-BIKIN: So when did you put the second kitchen in?

MR. SAMAR: Well, around 18 months ago.

...

MS. GOLD-BIKIN: Oh, 18 months ago. But it didn't occur to you to come back for the second permit in light of what it says on your contingency?

MR. SAMAR: No. And for that I apologize.

[N.T. pp. 22-23.]

- i. Mr. Samar is in the construction business, and is familiar with local permitting requirements:

MR. TALLMAN [ZHB MEMBER]: John, I see here on the building permit that your name is the owner and then there's a contractor, Nova Design and Construction Company. Both have the same address and phone numbers.

MR. SAMAR: That's my company. That's my business.

MR. TALLMAN: Okay. So what do you do for a living?

MR. SAMAR: I do custom design/construction for residential owners. I design and build.

MR. TALLMAN: As a normal part of your business do you require permits to construct and make sure that you meet with zoning ordinances and things of that nature?

MR. SAMAR: I do.

...

I mean I fully acknowledge that I was wrong the way I proceeded. I was at some point going to correct it, and I didn't. And I apologize.

[N.T. pp. 23-24.]

18. The Township offered the following testimony in defense of the enforcement notice:

- a. On March 6, 2013, Landowner received a building permit to permit an addition to the single-family detached dwelling. [Ex. T-2.] The building permit contained the following condition:

*SINGLE FAMILY USE ONLY—DWELLING
CANNOT BE CONVERTED TO MULTIFAMILY
DWELLING OR COMMERCIAL USE WITHOUT
APPROVAL.*

[Ex. T-2; N.T. p. 15.]

- b. On September 9, 2015, the Township issued a use and occupancy permit, for the addition, which contained the following condition:

SINGLE FAMILY RESIDENTIAL USE ONLY.

[Ex. T-1; N.T. pp. 14-15.]

- c. Landowner does not utilize “leases” for rental of the Property, but instead uses “Airbnb Agreements” for less than 30 days at time. [N.T. p. 18.]
- d. Landowner does not reside on the Property during the rental periods. [N.T. pp. 18-19.]
- e. Mr. Sakal, Building Official, offered the following testimony:
 - i. Mr. Sakal has been a Township employee for 21 years, 16 years in code enforcement. [N.T. p. 26.]
 - ii. Mr. Sakal would classify an “Airbnb” use as a “rooming house”. [N.T. p. 28.]
 - iii. A rooming house is not permitted in the C-O Commercial Office District. [N.T. p. 28.]

19. Mr. Saleem Hasan, 112 Ivy Lane, spoke in opposition to the application. Mr. Hasan is the owner of the property immediately adjacent to the Property, on which Mr. Hasan operates his manufacturing business. Mr. Hasan expressed concern regarding the operation of an Airbnb rooming house in close proximity to his business. [N.T. pp. 44-45.]

B. Discussion

1. Appeal of enforcement notice

Section 909.1(a)(3) of the Pennsylvania Municipalities Planning Code (“MPC”) grants jurisdiction to the ZHB to consider:

Appeals from the determination of the zoning officer, including, but not limited to, the granting or denial of any

permit, or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.

53 P.S. §10909.1(a)(3); *see also* Zoning Ordinance §165-251.A(3). The sole issue before the ZHB in an appeal from a zoning enforcement notice is whether there was a zoning ordinance violation. *Hartner v. Zoning Hearing Bd. of Upper St. Clair Twp.*, 840 A.2d 1068, 1070 (Pa. Commw. Ct. 2004).

“[B]ecause [a township’s zoning officer] is charged with the administration and execution of the [ordinance], his interpretation is entitled to deference and should not be disregarded unless shown to be clearly erroneous.” *Kohl v. New Sewickley Twp. Zoning Hearing Bd.*, 108 A.3d 961, 968-69 (Pa. Commw. Ct. 2015) (quoting *McIntyre v. Bd. of Supervisors of Shohola Twp.*, 614 A.2d 335, 337 (Pa. Commw. Ct. 1992)).

The enforcement notice stated that Landowner was in violation of the Zoning Ordinance by virtue of his operation of an “Airbnb” rooming house. The enforcement notice specifically identified Landowner’s installation of a second kitchen in the building as a violation of the Zoning Ordinance and directed removal of the kitchen within 30 days.

A “rooming house” is defined under the Zoning Ordinance as:

A dwelling in which sleeping accommodations are provided for rent to fewer than 10 persons whether or not the serving of meals is included.

Zoning Ordinance §165-5. Landowner admitted that he installed the kitchen in violation of the Zoning Ordinance. Landowner knew that in order to add a dwelling unit to the building he needed to obtain zoning relief. Instead, Landowner installed a second kitchen on the Property without obtaining any Township approval.

After installing the second kitchen, Landowner began marketing the units on the Airbnb website, one with three bedrooms and the second with two bedrooms, for sleeping accommodations on a short term basis. Landowner does not serve meals to those renting the units.

Based on the evidence presented, including specifically Landowner's own admissions, Landowner was using the Property in violation of the Zoning Ordinance. The ZHB denies Landowner's appeal from the enforcement notice.

2. Application for special exception to permit conversion of a single-family detached dwelling into a two-family detached dwelling.

"A special exception is a conditionally permitted use, allowed by the legislature if specifically listed standards are met." *In re Brickstone Realty Corp.*, 789 A.2d 333, 340 (Pa. Commw. Ct. 2001) (citing *Bray v. Zoning Board of Adjustment*, 410 A.2d 909 (Pa. Commw. Ct. 1980)); *see also* Zoning Ordinance § 165-251.B(2). A special exception is thus not an "exception" to the zoning ordinance, but a use permitted conditionally, the application for which is to be granted or denied by the zoning hearing board pursuant to express standards and criteria. *Id.* (citing *Shamah v. Hellam Township Zoning Hearing Board*, 648 A.2d 1299 (Pa. Commw. Ct. 1994)). Where a particular use is permitted in a zone by special exception, "it is presumed that the local legislature has already considered that such use satisfies local concerns for the general health, safety, and welfare and that such use comports with the intent of the zoning ordinance." *Id.*

In demonstrating entitlement to a special exception, an applicant:

... has both the duty to present evidence and the burden of persuading the [B]oard that the proposed use satisfies the objective requirements of the ordinance.... Once the applicant

meets these burdens, a presumption arises that the use is consistent with the health, safety and general welfare of the community. The burden then normally shifts to the objectors of the application to present evidence and persuade the Board that the proposed use will have a generally detrimental effect.

MarkWest Liberty Midstream & Res., LLC v. Cecil Twp. Zoning Hearing Bd., 102 A.3d 549, 553 (Pa. Commw. Ct. 2014) (quoting *Greaton Props. v. Lower Merion Twp.*, 796 A.2d 1038, 1045–46 (Pa. Commw. Ct. 2002)). In order to demonstrate that a proposed use will have the requisite detrimental effect, an objecting property owner must demonstrate that there is a “high degree of probability” that the detrimental effect alleged is not normally generated by the type of use proposed. *Mehring v. Zoning Hearing Board of Manchester Twp.*, 762 A.2d 1137, 1141 (Pa. Commw. Ct. 2000); *In re Brickstone Realty Corp.*, 789 A.2d 333, 342 (Pa. Commw. Ct. 2001).

Landowner requested a special exception pursuant to Zoning Ordinance § 165-212 *Conversion of dwellings* to permit conversion of the existing single-family detached dwelling into a two-family detached dwelling. Section 165-212 *Conversion of dwellings* permits conversion of a single-family detached dwelling to a two-family detached dwelling if the following objective criteria are met:

- A. The plans for the conversion of said dwelling shall be submitted to the Zoning Hearing Board.
- B. Such plans shall provide adequate and suitable parking or storage space, at a safe distance from the public highway, for not less than one automobile per family.
- C. Such dwelling shall be subject to the height, area, width and yard regulations effective in the district wherein such dwelling is situated, except that there shall be a lot area of not less than the product of the

minimum lot area prescribed in the district regulations and the number of families for the use of which such dwelling is to be converted.

- D. There shall be no external alteration of the building except as may be necessary for reasons of safety, and fire escapes and outside stairways shall, where practicable, be located to the rear of the building.
- E. The Zoning Hearing Board shall specify the maximum number of families permitted to occupy such dwelling and may prescribe such further conditions and restrictions with respect to the conversion and use of such dwelling and to the use of the lot as the Board may consider appropriate.

Zoning Ordinance § 165-212.

Landowner failed to demonstrate compliance with the objective criteria and prerequisites for conversion of the existing single-family detached dwelling.

First, the lot area is not twice the size of the minimum lot area in the C-O Commercial Office District. The minimum required lot area in the C-O Commercial Office District is 20,000 square feet. Zoning Ordinance §165-99.² Landowner proposes two dwelling units, requiring a minimum lot width of 40,000 square feet. Zoning Ordinance §165-212. The Property is undersized at 10,748 square feet.

² Lot area in the C-O Commercial Office District is determined by the specific use proposed. Zoning Ordinance §§ 165-97; 165-99. Because residential use is not permitted in the C-O Commercial Office District, no minimum lot area is specified for residential use. Even using the smallest minimum lot area of 20,000 square feet, the Property is undersized. Zoning Ordinance § 165-99.

Second, Landowner failed to submit any “plans for the conversion of said dwelling” to the ZHB. In fact, Landowner presented no plans to the ZHB demonstrating how the dwelling was proposed to be divided into two dwelling units.

Finally, Landowner failed to submit plans to the ZHB demonstrating “adequate and suitable parking or storage areas at a safe distance from the public highway, for not less than one automobile per family”.

Landowner sought no variance relief from the special exception standards. Landowner failed to meet the objective criteria for grant of a special exception.³

3. Use variance to permit a two-family detached dwelling in the C-O Commercial Office District.

It is well settled in Pennsylvania that a zoning hearing board may 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.

³ Because Landowner failed to meet the objective criteria for the requested special exception, the ZHB does not analyze the application under the general special exception criteria of section 165-251 *Powers*.

53 P.S. § 10910.2(a); *Cope v. Zoning Hearing Bd. of South Whitehall Twp.*, 578 A.2d 1002, 1005 (1990).

Variations should be granted sparingly, and the reasons for granting variations must be substantial and compelling. *Laurento v. Zoning Hearing Bd. of the Borough of West Chester*, 638 A.2d 437, 439 (Pa. Cmwlth. 1994). "The burden on a landowner seeking a variance is a heavy one, and the reasons for granting the variance must be substantial, serious and compelling." *Bawa Muhaiyaddeen Fellowship v. Philadelphia Zoning Bd. of Adjustment*, 19 A.3d 36, 39-40 (Pa. Commw. Ct. 2011) (citing *Valley View Civic Assoc. v. Zoning Bd. of Adjustment*, 462 A.2d 637 (Pa. 1983)).

Landowner failed to prove that there was any unique physical circumstance or condition peculiar to the Property, or that the requested variance was necessary for the reasonable use of the Property.

a. Landowner failed to demonstrate an unnecessary hardship justifying a use variance to permit use of the Property as a two-family detached dwelling.

An applicant for a use variance has the burden of proving that "(1) the proposed use is not contrary to the public interest, and (2) the property involved is subjected to an unnecessary hardship unique or peculiar to the property itself." *Zaruta v. Zoning Hearing Bd. of City of Wilkes-Barre*, 543 A.2d 1282, 1284 (Pa. Commw. Ct. 1988). Unnecessary hardship can be demonstrated by:

...either (1) showing that the physical characteristics of the property are such that it could not be used for a permitted use or that the physical characteristics were such that it could only be arranged for such purpose at a prohibitive expense, or (2) by proving that the characteristics of the area were such

that the lots had either no value or only a distress value for any purpose permitted by the zoning ordinance.

Id. (citing *Appeal of Nardozza*, 405 A.2d 1020 (Pa. Commw. Ct. 1979)). While the Supreme Court has emphasized that a property owner need not demonstrate that his or her property is valueless unless the variance is granted, "mere economic hardship will not of itself justify a variance." See *Marshall v. City of Philadelphia*, 97 A.3d 323, 330 (Pa. 2014).

Landowner did not prove that an unnecessary hardship exists on the Property to justify use of the Property for a two-family detached dwelling. Far from demonstrating that the Property could not be used for a permitted use, or that engaging in a permitted use on the Property would be prohibitively expensive, Landowner's testimony established that the Property contains a single-family detached dwelling, a nonconforming use in the C-O Commercial Office District.

Landowner similarly did not prove that the Property had no value, or only distress value, or any circumstances warranting the grant of a use variance.

Landowner's request for a use variance is driven by his desire to ratify his illegal conversion of a single-family detached dwelling into a two-family detached dwelling and to double the number of dwelling units for rent on the Property. Landowner's desire to increase profitability by converting the single-family detached dwelling into a two-family detached dwelling is legally insufficient to entitle Landowner to the requested use variance.

The ZHB finds that Landowner failed to carry his heavy burden of demonstrating unnecessary hardship for the grant of a use variance.

b. Landowner failed to prove that the requested use variance is the minimum needed to afford relief.

Landowner was required to provide evidence that the use variance requested represented the minimum necessary to afford relief. 53 P.S. § 10910.2(a); *Hohl v. Caernarvon Twp. Zoning Hearing Bd.*, 736 A.2d 57, 59 (Pa.Cmwlth. 1999). Landowner failed to offer any proof that the requested use variance was the minimum necessary to afford relief. To the contrary, the Property can be used as a nonconforming single-family detached dwelling. Landowner merely wants to increase the number of dwelling units on a Property that is already nonconforming under the Zoning Ordinance.

c. The alleged unnecessary hardship was self-created.

Landowner was similarly required to demonstrate that the alleged unnecessary hardship was not self-created. *See id.* Landowner failed to articulate any hardship associated with the Property. Instead, he simply wanted the ability to offer two dwelling units for rent on the Property. Landowner, an experienced residential contractor, knew that adding a dwelling unit would require zoning relief and a permit, but installed a kitchen and created a second dwelling unit without obtaining relief. It was only after the Township discovered the second dwelling unit, which was being marketed on Airbnb, that Landowner took any action to obtain the required zoning relief. To the extent Landowner is required to remove the second kitchen, he was fully aware that installation of the second kitchen was improper under the Zoning Ordinance. Landowner created his own hardship.

C. Conclusions of Law

1. Landowner has standing to file an appeal from the enforcement notice and to request the special exception and use variance.
2. The ZHB has jurisdiction under section 909.1(a)(3), 909.1(a)(5), and 909.1(a)(6) of the Pennsylvania Municipalities Planning Code, 53 P.S. §§10909.1(a)(3), 10909.1(a)(5), and 10909.1(a)(6), and Zoning Ordinance §§165-251.A(3), 165-251.A(5), and 165-251.A(6).
3. The ZHB is obligated to ensure compliance with the Zoning Ordinance.
4. Residential use is not permitted in the C-O Commercial Office District. Zoning Ordinance § 165-97.
5. The existing single-family detached dwelling is a lawful nonconforming use.
6. Section 165-212 *Conversion of dwellings* permits conversion of an existing single-family detached dwelling into a two-family detached dwelling by special exception, subject to certain criteria.
7. 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.

8. The Township demonstrated that Landowner was operating the property in violation of the Zoning Ordinance as an Airbnb rooming house.
9. Landowner failed to demonstrate that its proposed conversion of the single-family detached dwelling into a two-family detached dwelling meets the requirements for a special exception under section 165-212 *Conversion of dwellings*.
10. The use variance is not necessary to permit a reasonable use of the Property.
11. The alleged hardship, a purely personal articulation of hardship, was created by Landowner.
12. Landowner failed to demonstrate that the requested use variance represented the minimum necessary to afford relief.
13. Landowner failed to demonstrate its entitlement to the requested use variance to permit a two-family detached dwelling on the Property.

At its September 6, 2017 hearing, the ZHB entered the following order:

ORDER

AND NOW this 6th day of September 2017, the Upper Merion Township Zoning Hearing Board DENIES all relief requested by John R. Samar: (1) the appeal of the enforcement notice dated May 24, 2017; (2) a special exception pursuant to section 165-212 Conversion of dwellings to permit conversion of the existing single-family detached dwelling into a two-

family detached dwelling; and (3) a use variance from section 165-96 Regulations to apply to permit a two-family detached dwelling in the C-O Commercial Office District where the use is not permitted.


Because this application was denied, a decision with findings of fact, conclusions of law, and reasons will follow.

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



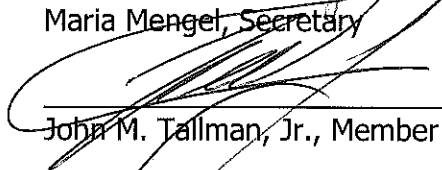
Mark S. DePillis, Esquire, Chairman



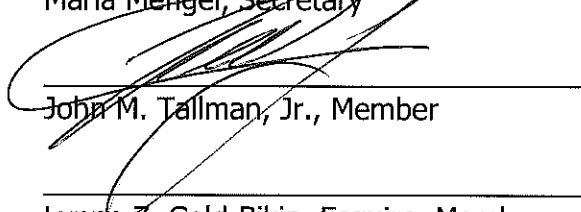
M Jonathan Garzillo, Vice Chairman



Maria Mengel, Secretary



John M. Tallman, Jr., Member



Lynne Z. Gold-Bikin, Esquire, Member