

**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP**

**MONTGOMERY COUNTY, PENNSYLVANIA**

**APPLICATION OF HENDERSON KOP, LLC**

**APPLICATION NO. 2016-21**

**PROPERTY: 243 SOUTH HENDERSON ROAD**

**OPINION AND ORDER**

This application concerns a request for variances to permit redevelopment of a developed property by construction of two buildings exceeding the required maximum front yard setback and without the required minimum residential buffer. The application was denied, based on a failure of proof—the absence of substantial evidence demonstrating compliance with the requirements for the grant of variances.

Henderson KOP, LLC (“Landowner”) is the equitable owner of a property located in the GC General Commercial District in Upper Merion Township, Montgomery County. Landowner filed an application seeking variances from section 165-106 *Dimensional requirements* of the Upper Merion Township Zoning Ordinance of 1942, as amended (“Zoning Ordinance”), to permit construction of a 6,783 square foot National Tire and Battery “auto service building” and a 2,173 square foot restaurant with drive-through, in violation of the required maximum front yard setback and without the minimum residential buffer.

Section 165-106 *Dimensional requirements* requires a maximum front yard setback (essentially a build-to line) of 25 feet and a minimum residential buffer of 35 feet. The front yard setbacks proposed by Landowner are approximately 80 feet for the National Tire and Battery building and 131.6 feet for the restaurant building. The

minimum residential buffer proposed by Landowner is 10.4 feet on the southern property line and 15 feet on the northern property line.

On January 18, 2017, the Zoning Hearing Board of Upper Merion Township ("ZHB") 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. Marc D. Jonas, Esquire, of Eastburn and Gray, P.C. represented the ZHB as its solicitor. Landowner was represented by Denise R. Yarnoff, Esquire, of Riley Riper Hollin & Colagreco.

The hearing was duly advertised, notice was given in accordance with the requirements of the Zoning Ordinance, and the proceedings were stenographically recorded. 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 equitable owner of the property located at 243 South Henderson Road, Upper Merion Township, Pennsylvania, identified as tax parcel number 58-00-10108-004 (the "Property"). [Ex. A-1; Ex. A-2; Ex. A-3; Ex. A-4.]

2. The Property is located in the Township's GC General Commercial District. [Ex. A-1.]

3. The Property comprises 1.96 acres. [Ex. A-7; N.T. p. 20.]

4. The Property is a developed property with four existing buildings. [Ex. A-6; N.T. p. 21.]

5. Landowner proposes to demolish the existing buildings and construct a 6,783 square foot National Tire and Battery “auto service building” and a 2,173 square foot restaurant with drive-through on the Property. [N.T. pp. 23-24.]

**ZHB HEARING**

6. Landowner entered the following exhibits:
- a. A-1—ZHB application
  - b. A-2—deed dated June 16, 1997, between John J. DelCollo, Sr. (grantor) and DelCollo Realty Partnership, L.P. (grantee), recorded with the Montgomery County Recorder of Deeds at deed book 5189, page no. 1113
  - c. A-3—redacted agreement of sale dated January 6, 2016, between DelCollo Realty Partnership (seller) and Wright Partners (buyer)
  - d. A-4—assignment agreement dated July 26, 2016, between Wright Partners (assignor) and Henderson KOP, LLC (assignee)
  - e. A-5—aerial photograph of Property
  - f. A-6—plan titled “ALTA/NSPS Land Title Survey”, prepared by Control Point Associates, Inc., dated January 23, 2014, last revised August 10, 2016
  - g. A-7—plan titled “Sketch Plan”, prepared by Bohler Engineering, dated August 16, 2016, last revised November 21, 2016
  - h. A-8—CV of Matt Chartrand, P.E., Bohler Engineering
  - i. A-9—CV of Peter Spisszak, AICP, Traffic Planning and Design Inc.

7. Landowner presented three witnesses:
- a. William Rountree, P.E., was identified as Landowner's "authorized representative" and Director of Development for Wright Partners,<sup>1</sup> the developer (the "Developer");
  - b. Matt Chartrand, P.E., Bohler Engineering, expert in civil engineering; and
  - c. Peter Spisszak, AICP, Traffic Planning and Design Inc., expert in planning.
8. Landowner's offered evidence was as follows:
- a. The Property is surrounded by residentially zoned property to the south, west, and for a portion of its northern property line. [N.T. pp. 21-20.]
  - b. The Property is 238 feet wide by 375 feet deep. [N.T. p. 21.]
  - c. The 4 existing buildings on the Property are all used in connection with an existing business on the Property, described by the Developer, through its agent Mr. Rountree, as follows:

**MR. GARZILLO, VICE-CHAIR:** ... is the property currently actively in use?

**MR. ROUNTREE:** It is. There is a contractor. I believe they do gutters and things like that. There's multiple buildings on site. Those buildings are used to store equipment. There's vehicles stored on site. I believe one building serves as an office.

[N.T. pp. 17, 21.]

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<sup>1</sup> Landowner is a single-purpose entity of Wright Partners.

d. Landowner's engineer testified that the location of the proposed buildings, and the variances requested, are necessitated by Landowner's personal choice of new uses and particular site design. [N.T. pp. 26-27.]

e. When asked whether the Property could be developed in strict conformity with the provisions of the Zoning Ordinance, Landowner's engineer testified:

**MR. CHARTRAND:** ... With these uses, the traffic flow, as I mentioned, the way that we need to configure the parking and everything else surrounding it, these variances would be necessary in order to develop the site as proposed.

[N.T. p. 32 (emphasis added).]

g. Landowner's planner testified that the proposed use would result in an increase in traffic:

**MR. SPISSZAK:** ...what we found is you're looking at anywhere between 70 new vehicles in the a.m., peak hour, and 141 new vehicles on Saturday afternoon—Saturday peak hour...

[N.T. p. 44.]

h. The proposed use of the Property would require traffic improvements, subject to PennDOT approval. [N.T. pp. 41-42.]

i. Landowner had not spoken with any of the neighboring property owners regarding the application. [N.T. p. 48.]

j. When asked by the ZHB Chairman whether a single use development was economically viable on the Property, the

testimony of the Developer's witness that two uses, as proposed, were necessary for the reasonable use of the property was not supported by substantial, credible evidence.<sup>2</sup> To the contrary, the Developer's witness was only able to testify that "the [handful of] tenants [whom the Developer] works with" could "not make this work independently". [N.T. pp. 49-15.]

9. Landowner's need for the variances was driven by a proposal for 2 detached buildings and the inclusion of a quick serve restaurant with a drive-through.

10. Landowner's evidence did not include alternative site designs with efforts to minimize or eliminate the need for dimensional variances.

11. No evidence was offered that the variances sought were needed for the reasonable use of the Property, particularly given the developed state of the Property.

12. No evidence was presented to demonstrate that the Property cannot be reasonably used, as zoned, or as already developed.

## **B. DISCUSSION**

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;

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<sup>2</sup> The Developer's witness, Mr. Rountree, testified that he is a licensed professional engineer, but that he was not testifying in his capacity as an engineer. [N.T. p. 13.] Mr. Rountree was not offered as an expert.

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 South Whitehall Twp.*, 578 A.2d 1002, 1005 (1990).

Variances should be granted sparingly, and the reasons for granting variances 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). Although a somewhat relaxed standard applies to applications for dimensional, as opposed to use, variances, an applicant must still demonstrate an unnecessary hardship caused by unique physical characteristics of the property. See *Singer v. Philadelphia Zoning Bd. of Adjustment*, 29 A.3d 144, 149 (Pa. Commw. Ct. 2011). Additionally, “[i]t is well-settled that in order to establish unnecessary hardship for a dimensional variance an applicant must demonstrate something more than a mere desire to develop a property as it wishes or that it will be financially burdened if the variance is not granted.” *Id.* at 150.

Commonwealth Court rejects requests for dimensional variances where proof of hardship is lacking. *Lamar Advantage GP Co. v. Zoning Hearing Bd. of Adjustment of the City of Pittsburgh*, 997 A.2d 423, 445 (Pa. Commw. Ct. 2010).

1. **Landowner failed to demonstrate any unique physical conditions of the Property that have caused an unnecessary hardship justifying the requested variances from the Zoning Ordinance's residential buffer and maximum front yard setback requirements.**

Landowner's proposal is to redevelop an already developed site. Landowner did not prove that unique physical conditions exist on the Property to prohibit its reasonable use unless the requested variances were granted. The Property is 238' feet wide by 375 feet deep, and forms a conventionally shaped and sized rectangle<sup>3</sup> with four existing buildings used for a contractor's business.

This application and the evidence offered by Landowner present the classic personal articulation of a hardship, which is legally insufficient for the grant of variances. *Nettleton v. Zoning Board of Adjustment of City of Pittsburgh*, 828 A.2d 1033, 1040 (Pa. 2003), citing *Larsen v. Zoning Bd. of Adjustment of City of Pittsburgh*, 672 A.2d 286, 288 (1996); *Singer*, 29 A.3d at 149-150. Unnecessary hardship, caused by unique physical circumstances of the property, is required for the grant of a variance. *Nettleton*, 828 A.2d at 1040.

For example, in *Singer v. Philadelphia Bd. of Adjustment*, 29 A.3d 144 (Pa. Commw. Ct. 2011), an applicant sought dimensional variances to permit a mixed use development with apartments, a hotel, restaurants, retail space, and other

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<sup>3</sup> The ZHB did not find credible Landowner's engineer's assertion that the Property was "narrow and long" for purposes of establishing unnecessary hardship. Nor did the ZHB find credible the engineer's assertion that the grade of the Property necessitated the variances. Although Landowner's engineer testified that the buildings and associated improvements would need to be cut into the grade at the rear of the Property, the relief requested was (1) to permit the buildings to be set *farther back* on the Property (and into the grade) than permitted, and (2) closer to the northern and southern property lines than permitted. Based on the evidence presented to the ZHB, neither the size and shape of the Property, nor the grade of the Property, causes an unnecessary hardship justifying the variances requested.



miscellaneous uses. The zoning board of adjustment granted the requested variances, and the trial court affirmed on appeal by objectors. In its analysis on appeal, Commonwealth Court clarified the standards applicable to dimensional variances:

...Although a lesser quantum of proof is required to establish unnecessary hardship for a dimensional variance, our Court has interpreted the holding in *Hertzberg* as follows:

Ever since our Supreme Court decided *Hertzberg*, we have seen a pattern of cases arguing that a variance must be granted from a dimensional requirement that prevents or financially burdens a property owner's ability to employ his property *exactly as he wishes*, so long as the use itself is permitted. *Hertzberg* stands for nothing of the kind. *Hertzberg* articulated the principle that unreasonable economic burden may be considered in determining the presence of unnecessary hardship. It may also have somewhat relaxed the *degree* of hardship that will justify a dimensional variance. However, it did not alter the principle that *a substantial burden must attend all dimensionally compliant uses of the property, not just the particular use the owner chooses*. This well-established principle, unchanged by *Hertzberg*, bears emphasizing[.]

*Yeager v. Zoning Hearing Board of the City of Allentown*, 779 A.2d 595, 598 (Pa.Cmwlt.2001) (emphasis in original; emphasis added). In accord, this Court has consistently held that an applicant is not entitled to a dimensional variance under the relaxed standard set forth in *Hertzberg* where no hardship is shown or where the hardship alleged amounts to an applicant's mere desire to increase profitability. *Lamar Advantage GP Company v. Zoning Hearing Board of Adjustment of the City of Pittsburgh*, 997 A.2d 423 (Pa.Cmwlt.2010).

In reversing, Commonwealth Court concluded that the applicant had not demonstrated unique physical circumstances of the property causing an unnecessary hardship, and instead had only asserted that the property could not be developed *as proposed*:

Here, Applicant did not present evidence or testimony demonstrating that the allegedly unique physical characteristics of the property limit Applicant's ability to develop the property in conformity with the Ordinance. Rather, Applicant asserts that the property cannot be developed *as proposed*, in a manner that will *maximize* the development potential of the property, without the dimensional variances it seeks. However, it is well-settled that in order to establish unnecessary hardship for a dimensional variance an applicant must demonstrate something more than a mere desire to develop a property as it wishes or that it will be financially burdened if the variance is not granted. *Yeager; Lamar Advantage GP Company*.

...

For these reasons, we conclude that the Board erred in determining that Applicant met its burden to demonstrate unnecessary hardship for each of the dimensional variances granted.

*Id.* at 149-50.

Similarly, in *Yeager v. Zoning Hearing Board of the City of Allentown*, 779 A.2d 595 (Pa. Commw. Ct. 2001), Commonwealth Court held that an applicant had failed to demonstrate entitlement to a dimensional variance where personal preference, not unnecessary hardship caused by unique physical circumstances of the property, drove the need for the requested dimensional variances:

A variance, whether labeled dimensional or use, is appropriate "only where the *property*, not the person, is subject to hardship." *Szmigiel v. Kranker*, 6 Pa.Cmwlth. 632, 298 A.2d 629, 631 (1972) (emphasis in original). In the present case, Daniels' property is well suited to the purpose for which it is zoned and actually used, a car dealership, which is in no way burdened by the dimensional

requirements of the ordinance. Daniels has proven nothing more than that adherence to the ordinance imposes a burden on his personal desire to sell vehicles for Land Rover.

779 A.2d at 598. Commonwealth Court recently summarized its long line of decisions requiring unnecessary hardship caused by unique physical conditions of the property, as opposed to personal preference for a specific type of use in *Dunn v. Middletown Township Zoning Hearing Bd.*, 143 A.3d 494 (Pa. Commw. Ct. 2016). There, the applicant sought dimensional variances to permit subdivision of a property into 2 lots, both violating the zoning ordinance's minimum lot width requirements. Commonwealth Court reversed the trial court's order affirming the zoning hearing board decision granting the requested variances:

...the ZHB made no determination that Applicant proved the requisite unnecessary hardship, nor did it find any alleged hardship was not self-inflicted. To that end, Applicant will need the two lot width variances because it intends to create two new undersized lots where none currently exist. As such, Applicant will be creating the undersized lot hardship it seeks to remedy. Further, while Applicant asserts the property is irregularly shaped because it is twice as wide as it is deep, the ZHB made no finding that this purported irregular shape necessitated variance relief. And, in any event, the property as it currently exists is over 200 feet wide, which is substantially greater than the minimum lot width required under the zoning ordinance. Moreover, it is beyond dispute that no variance is needed for Applicant to make reasonable use of the property for *one* single-family home (indeed, a single-family home currently exists on the property). Rather, Applicant seeks variance relief in order to subdivide the property and construct *two* single-family homes in an effort to maximize profitability. This is not sufficient to constitute unnecessary hardship. *Tri-County; Cardamone*.

Indeed, where no hardship is shown, or where the asserted hardship amounts to a landowner's mere desire to increase

profitability, the unnecessary hardship criterion required to obtain a variance is not satisfied even under the relaxed standard set forth by the Supreme Court in *Hertzberg*. See, e.g., *Soc'y Hill Civic Ass'n v. Phila. Zoning Bd. of Adjustment*, 42 A.3d 1178 (Pa. Cmwlth. 2012) (rejecting applicants' request for dimensional variance from zoning code's loading space requirement where need for variance was triggered by applicants' desire to expand use of property to maximize profitability); *Singer v. Zoning Bd. of Adjustment of City of Phila.*, 29 A.3d 144 (Pa. Cmwlth. 2011) (rejecting applicant's request for dimensional variances from zoning code's parking, floor area ratio and loading dock requirements where asserted hardship amounted to applicant's desire to maximize development potential of property); *Lamar Advantage GP Co. v. Zoning Hearing Bd. of Adjustment of City of Pittsburgh*, 997 A.2d 423 (Pa. Cmwlth. 2010) (rejecting applicant's request for dimensional variance for proposed sign where only asserted hardship involved alleged benefit to community and increase in income); *Twp. of Northampton v. Zoning Hearing Bd. of Northampton Twp.*, 969 A.2d 24 (Pa. Cmwlth. 2009) (rejecting applicant's request for variance from ordinance's off-street parking requirements where no evidence of hardship presented even under relaxed *Hertzberg* standard and evidence revealed applicant could use property in a manner consistent with ordinance requirements); *In re Boyer*, 960 A.2d 179 (Pa. Cmwlth. 2008) (rejecting applicant's requests for dimensional variances from ordinance's steep slope and setback requirements in order to construct in-ground pool where no evidence of hardship presented even under relaxed *Hertzberg* standard); *Se. Chester County Refuse Auth. v. Zoning Hearing Bd. of London Grove Twp.*, 898 A.2d 680 (Pa. Cmwlth. 2006) (rejecting request for dimensional variance where evidence indicated applicant could continue to operate at a profit without variance relief; no hardship shown); *One Meridian Partners, LLP v. Zoning Board of Adjustment of City of Phila.*, 867 A.2d 706 (Pa. Cmwlth. 2005) (rejecting request for dimensional variance from floor area ratio and height requirements where asserted hardship was essentially financial in nature); *Yeager v. Zoning Hearing Board of City of Allentown*, 779 A.2d 595 (Pa. Cmwlth. 2001) (rejecting applicant's request for dimensional variances from ordinance's setback and clear sight triangle requirements where only hardship amounted to applicant's

desire to construct a building for its new car dealership that complied with specifications required by vehicle manufacturer).

...

For all the foregoing reasons, we reverse the trial court's order that affirmed the ZHB's decision and order granting Applicant's three variance requests.

*Id.* at 505-09.

The lack of credible and substantial proof in this application can be seen by comparing *Taliaferro v. Darby Twp. Zoning Hearing Bd.*, 873 A.2d 807 (Pa. Commw. Ct. 2005), in which Commonwealth Court held that an applicant *had demonstrated* the requisite unnecessary hardship to justify a variance to permit a commercial, affirming the grant of dimensional variances to permit a commercial self-storage facility in a residential zoning district. Commonwealth Court described the extensive expert testimony in support of the application:

The Board's findings are supported by the testimony of Applicant's expert witnesses. Applicant presented the testimony of Kenneth Peter Barrow, Jr., a real estate appraiser (Applicant's Appraiser). Applicant's appraiser testified he was familiar with the Subject Property and the surrounding community based on his involvement in a 1991 attempt to develop the Subject Property for residential use. Based on the Subject Property's location on a major highway, the high degree of nearby commercial development, and the values and age of neighboring properties, Applicant's Appraiser opined residential use of the Subject Property was impractical. In support, he testified that he performed a real estate feasibility study for the Subject Property that contemplated construction and financing costs for two possible residential developments. Applicant's Appraiser determined implementation of either residential plan would result in a net loss to Applicant. As a result, he opined the Subject Property could only be conformed for residential use at a prohibitive expense to

Applicant. The Board accepted this testimony as credible. In addition, Applicant presented testimony by Dave Damon, P.E. (Applicant's Engineer). Applicant's Engineer opined the costs associated with residential development would be prohibitive. He also testified the Subject Property's unusual grades, concerns about the adequacy of utilities and unreasonable development costs rendered the Subject Property impractical for residential use. The Board accepted Applicant's Engineer's testimony as credible. Although Objectors presented expert testimony that Applicant could develop the Subject Property for residential use, the Board rejected this testimony on the grounds Objectors' experts lacked familiarity with the surrounding area and their opinions were speculative. The Board's decision to reject the testimony of Objectors' experts on credibility grounds is a matter within the Board's sole province. *Manayunk Neighborhood Council; Berman*. Because the Board's determination that Applicant established the existence of unnecessary hardship is supported by substantial evidence, we will not disturb it. *Macioce*.

*Id.* at 812-13.

Landowner's application is controlled by these well-established precedents. Landowner did not prove that unique physical conditions exist on the Property to prohibit its reasonable use. Moreover, although Landowner attempted to introduce evidence regarding the financial necessity of redevelopment with two buildings: (1) financial considerations are not determinative, as clarified by the case law above; (2) Landowner's testimony was limited<sup>4</sup> to the testimony of the Developer's witness that "the tenants [whom Landowner] works with" could "not make this work independently"; and (3) the Property is already used productively.

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<sup>4</sup> Unlike the applicant in *Taliaferro, supra*, Landowner failed to present supporting expert testimony. No real estate appraiser testified, no real estate feasibility study was offered, nor was data presented regarding construction and financing costs of the redevelopment.

Landowner's desire to develop the Property with two buildings for specific uses creates the need for the variances and is totally insufficient under the law.

**2. Landowner failed to demonstrate that the hardship alleged is not self-created.**

Landowner was required to demonstrate that the hardship alleged was not self-created. 53 P.S. § 10910.2(a); *Hohl v. Caernarvon Twp. Zoning Hearing Bd.*, 736 A.2d 57, 59 (Pa. Commw. Ct. 1999). Landowner's engineer testified that the relief being requested is necessitated by the specific uses desired:

**MR. CHARTRAND:** ...To a large degree what ends up setting the building locations for us is the quick serve restaurant, and the need to be able to access and get circulation all the way around that building for the drive-through configuration and the, you know, traffic flow around it.

...with the re-definition of that driveway, we need to have a certain throw distance to that driveway that would allow for vehicles to be able to stack in that location. So that's what we've shown here, which then sets the driveway behind it, internal access driveway, which then drives the location of the building.

So moving across the site to the north, you know, from an alignment standpoint to the parking that's shown there, and also from a visibility standpoint, to make sure that, you know, one is not further blocking the other. So that's what those buildings are really based off of.

[N.T. pp. 26-27.] Based on the testimony of its own witness, Landowner failed to demonstrate that the hardship alleged was not self-created.

**3. Landowner failed to prove the requested variance is the minimum needed to afford relief.**

Landowner was required to provide evidence that the variances requested represent the minimum amount necessary to afford relief. 53 P.S. § 10910.2(a); *Hohl*,

736 A.2d at 59. Landowner failed to prove that the requested variances are the minimum necessary to afford relief. To the contrary, testimony revealed that the Property and its 4 existing buildings are being productively utilized in connection with a contractor's business. Landowner failed to demonstrate any attempt to minimize the relief requested. To the contrary, Landowner's engineer testified that the variances requested were only necessary because of the specific uses desired:

**MR. CHARTRAND:** ... With these uses, the traffic flow, as I mentioned, the way that we need to configure the parking and everything else surrounding it, these variances would be necessary in order to develop the site as proposed.

[N.T. p. 32 (emphasis added).] Landowner failed to prove that the requested variance represents the minimum amount necessary to afford relief.

**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 §165-215.A(5).
2. Landowner has standing to seek the requested variances as the equitable owner of the Property.
3. The ZHB is obligated to ensure compliance with the Zoning Ordinance.
4. Zoning Ordinance § 165-106 *Dimensional requirements* requires a maximum front yard setback of 25 feet and a minimum residential buffer of 35 feet in the GC General Commercial District.
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. Landowner failed to demonstrate any unnecessary hardship entitling Landowner to variances from section 165-106 *Dimensional requirements* to permit redevelopment of the Property in violation of the required maximum front yard setback and without the minimum residential buffer.
7. Landowner failed to demonstrate that the variances are necessary to permit a reasonable use of an already developed Property.
8. Landowner failed to demonstrate that the variances are the minimum necessary to afford relief.
9. Landowner failed to demonstrate that the alleged hardship was not self-created.
10. Landowner failed to sufficiently demonstrate its entitlement to the requested variances.

At its February 16, 2017 public meeting, the ZHB voted to deny the application, which was followed by the mailing of this notice of decision:

**DECISION**


AND NOW, this 16th day of February, 2017, the Zoning Hearing Board of Upper Merion Township DENIES the request for variances from section 165-106 *Dimensional requirements* to permit redevelopment of the property with less than the minimum required residential buffer and more than the maximum front yard setback.

The decision with findings of facts, conclusions of law, and reasons will follow.

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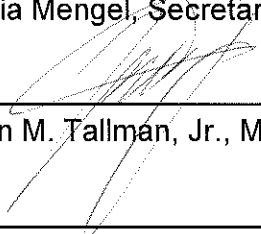
This decision may be appealed to the Court of Common Pleas of Montgomery County within 30 days of the date of mailing.

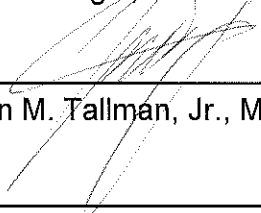
**ZONING HEARING BOARD OF  
UPPER MERION TOWNSHIP**

  
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Mark S. DePillis, Esquire, Chairman

  
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M Jonathan Garzillo, Vice Chairman

  
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Maria Mengel, Secretary

  
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John M. Tallman, Jr., Member

  
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Lynne Z. Gold-Bikin, Esquire, Member

Date of Mailing: