

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

**APPLICATION OF CHARLES ANDERSON**

**NO. 2015-12**

**PROPERTY: 492 GROVE LANE**

**OPINION AND ORDER**

In this zoning application, the owner of a property located in the R-2 Residential District requests dimensional variances to allow an existing shed to remain in the required rear and side yards.

Charles Anderson ("Landowner") constructed a shed without obtaining the required permits or zoning relief. Landowner requests dimensional variances from section 165-23 (Area, width and yard regulations) of the Upper Merion Township Zoning Ordinance of 1942, as amended ("Zoning Ordinance") to permit the shed to remain in the required rear and side yards. Specifically, Landowner requests dimensional variances to permit the shed to remain on the rear lot line and 2' from the side lot line

The Zoning Hearing Board ("ZHB") of Upper Merion Township ("Township") held an advertised hearing on August 19, 2015, on Landowner's application, no. 2015-12. The hearing was stenographically recorded. All members of the ZHB were present at the hearing: Lynne Gold-Bikin, Esq., Chairwoman; John M. Tallman, Jr., Vice Chairman; Mark DePillis, Esq., Secretary; and Maria Mengel, Member. The ZHB was represented by Marc D. Jonas, Esq., of the law firm of Eastburn and Gray, P.C., solicitor for the ZHB. The applicant was unrepresented.

After careful consideration, 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 parcel of land located at 492 Grove Lane, Upper Merion Township, Pennsylvania (“Property”), identified as parcel no. 58-00-08581-00-1. [Ex. ZHB-1; Ex. ZHB-2.]
2. The Property is located in the Township’s R-2 Residential District. (“R-2 District”). [Ex. ZHB-1.]
3. The Property is 11,000 square feet. [Ex. ZHB-3.]
4. Landowner resides in a single-family home on the Property. [Ex. ZHB-1.]
5. Landowner constructed a 12’ x 8’ shed in the required rear and side yards, without obtaining a permit or the necessary zoning relief. [Ex. ZHB-1; Ex. ZHB-3; Ex. ZHB-4.]
6. Zoning Ordinance section 165-23 requires accessory structures to be located 5’ from the rear yard, and 4’ from the side yard. Zoning Ordinance § 165-23.A. Accessory uses must be located within the rear quarter of the lot. Zoning Ordinance § 165-23.A n.1.
7. Landowner requests dimensional variances from section 165-23 to permit the shed to encroach into the required rear and side yards. Specifically, Landowner seeks relief to permit the shed to remain in its current location—on the rear yard property line, and only 2’ from the side yard. [Ex. ZHB-1.]

### **ZHB Hearing**

8. The ZHB entered the following exhibits:
  - a. ZHB-1—Zoning Hearing Board Application
  - b. ZHB-2—deed for the Property
  - c. ZHB-3—enlarged portion of tax map, with hand drawn depiction of shed
  - d. ZHB-4—two photographs of shed
  - e. ZHB-5—legal notice
  - f. ZHB-6—proof of publication
9. Landowner testified on his own behalf, and presented no other witnesses.
10. The limited testimony was as follows:
  - a. Landowner claimed that, at the time of construction, he was unaware of the required setbacks applicable to the shed. [N.T. p. 5.]
  - b. The Property has “very steep slope in the back”. [*Id.*] Most of the rear portion of the Property is “unusable” due to the slope. [*Id.*]
  - c. Landowner constructed the shed in its present location because the ground is level at that location. [*Id.*]
  - d. The shed can be moved. [N.T. p. 6.]
  - e. To comply with the Zoning Ordinance, Landowner would need to remove 6-8’ of the hillside and install a retaining wall. [N.T. pp. 6-8.]

- f. The shed is bordered on the rear property line by a fence owned by Landowner's neighbor. [N.T. p. 7.]
  - g. The shed could be moved to a location 2' from the rear lot line and 4' from the side lot line "rather easily". [N.T. p. 25.] Landowner stated that relocating the shed to that location "would not clear that much out of the hillside." [*Id.*]
11. Three objecting property owners testified in opposition to the application:
- a. Michael Kelly is the owner of the property 4 houses south of the Property, known as 501 W. Church Road. Mr. Kelly contended that the shed, placed in what he termed "open space", impedes the flow of stormwater, ultimately impacting his property which is downhill from the Property. [N.T. pp. 9-10.]
  - b. Bobby Richardson is the owner of the property immediately behind the Property, 439 W. Church Road. [N.T. p. 12.] Mr. Richardson is the owner of the fence abutting the shed. [N.T. p. 15.] Mr. Richardson has a shed on his property. [*Id.*] Mr. Richardson is also concerned with stormwater. [N.T. p. 13.] Mr. Richardson is experiencing (1) water runoff from the roof of the shed and onto his property; and (2) groundwater runoff. [N.T. p. 13.] Mr. Richardson was asked:

**ZHB SECRETARY DePILLIS:** ...what if he moved the shed two feet from your property line? Would that be better?

...

**MR. RICHARDSON:** You know, that's fine with me... I was just concerned about the water...

[N.T. pp. 16-17.]

- c. Brian Avila is the owner of the property next to Mr. Richardson's property, 441 W. Church Road. [N.T. p. 17.] The corner of the shed abuts Mr. Avila's property. [N.T. p. 20.] Mr. Avila was concerned with stormwater and has experienced increased flooding in his basement and increased water on his yard during a storm 2 months prior to the hearing. [N.T. pp. 18-21.]
12. Landowner agreed to a condition that, should the ZHB grant his dimensional variance requests, he would agree to relocate the shed to a setback of 2' from the rear yard and 4' from the side yard. [N.T. p. 25.]

## **B. DISCUSSION**

### **VARIANCES**

A zoning hearing board may only grant a variance in Pennsylvania when:

- 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;
- 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 (Pa. Commw. Ct. 1990); see also Zoning Ordinance § 165-251.B(2) (setting forth elements necessary for variance).

The reasons for granting variances must be substantial and compelling. *Laurento v. Zoning Hearing Bd. of the Borough of West Chester*, 638 A.2d 437, 439 (Pa.Cmwlt. 1994). A relaxed standard applies to applications for dimensional, as opposed to use, variances. See *Singer v. Philadelphia Zoning Bd. of Adjustment*, 29 A.3d 144, 149 (Pa. Cmwlt. 2011). “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.” *Id.* at 150. Put another way, an applicant must demonstrate more than its “mere desire to increase profitability.” *Id.* at 149.

In granting a variance, the ZHB “may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the [MPC] and the [Z]oning [O]rdinance.” 53 P.S. § 10910.2(b).

Landowner demonstrated that unique physical conditions exist on the Property, and that the requested variances, with mitigating conditions, are necessary to permit reasonable use of the Property.

**1. Unique physical conditions of the Property cause an unnecessary hardship justifying variances to permit the shed to remain in the required rear and side yards.**

Landowner demonstrated that unique physical conditions of the Property cause an unnecessary hardship justifying two dimensional variances to permit the shed to

remain in the required rear and side yards. The Property is 11,000 square feet. [Ex. ZHB-3.]

A shed is permitted in the rear quarter of the required yard, provided it is 5' from the rear lot line and 4' from the side lot line. Zoning Ordinance § 165-23.A. Landowner testified that the rear of the Property contains a "very steep slope". [N.T. p. 5.] Most of the rear yard is "unusable" because of that slope. [*Id.*] Landowner constructed the shed in its present location because the ground is level in that location. [*Id.*]

To comply with the Zoning Ordinance, Landowner would need to remove 6-8' of the hillside and install a retaining wall. [N.T. pp. 6-7.] Landowner testified that he could, however, relocate the shed "relatively easily" to a location 2' from the rear lot line and 4' from the side lot line. [N.T. p. 25.]

Given the dimensional restraints of the Property, the ZHB concludes that Landowner demonstrated that unique physical conditions of the Property itself create an unnecessary hardship.

The ZHB also concludes that, given Landowner's testimony, a condition requiring Landowner to relocate the shed to a location 2' from the rear lot line and 4' from the side lot line is reasonable and necessary.

## **2. The unnecessary hardship was not created by the Landowner.**

The unnecessary hardship was not created by the Landowner. To the contrary, the hardship is created because the rear yard of the Property consists almost entirely of a "very steep slope". [N.T. p. 5.]

**3. The requested variances will not be detrimental to the public welfare.**

Landowner demonstrated that the requested variances would not be detrimental to the public welfare. The Property is located in a residential neighborhood. Testimony from neighboring property owners demonstrated that other properties in the neighborhood contain sheds. [N.T. p. 15.]

Although objecting property owners expressed concerns over stormwater, only Mr. Richardson connected increased stormwater runoff on his property to the shed. Mr. Richardson testified that, given the shed's location, stormwater would run off the shed's roof and onto his property. [N.T. p. 13.] Mr. Richardson agreed that relocation of the shed 2' from his property line would address the stormwater issue. [N.T. pp. 16-17.]

The ZHB concludes that Landowner has demonstrated that, with his agreement to relocate the shed, the requested variances will not be detrimental to the public welfare.

**4. The requested variances represent the minimum variance that will afford relief.**

Landowner demonstrated that the requested variances represent the minimum variance that will afford relief. By agreeing to relocate the shed, Landowner is (1) bringing the shed into compliance with the required 4' side yard setback; and (2) is remedying the water runoff experienced by Mr. Richardson by setting the shed off of the rear property line. The ZHB concludes that Landowner's request, as conditioned, represents the minimum variance that will 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 section 165-251.A(5).

2. Landowner has standing to seek the requested variances as the legal owner of the Property.

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

4. The ZHB may grant a variance provided that an applicant demonstrates that: (a) an unnecessary hardship will result if the variance is denied due to the unique physical circumstances or conditions peculiar to the property; (b) because of the physical conditions, the property cannot be developed in conformity with the zoning ordinance, prohibiting the reasonable use of the property; (c) such unnecessary hardship has not been created by the applicant; (d) the variance, if authorized, will not be detrimental to the public welfare; and (e) the variance, if authorized, will represent the minimum variance that will afford relief. Zoning Ordinance §165-251.B(2).

5. Landowner demonstrated the existence of unique physical circumstances or conditions peculiar to the Property.

6. Landowner demonstrated that an unnecessary hardship will result if the requested variances were denied.

7. On the facts presented, Landowner demonstrated that the dimensional variances are necessary to permit a reasonable use of the Property.

8. Landowner demonstrated that the alleged hardship was not created by the Landowner.

9. Landowner demonstrated that the requested variances represented the minimum necessary to afford relief.

10. Accordingly, Landowner demonstrated its entitlement to the requested variances.

At its August 19, 2015 hearing, the ZHB entered the following order:

### **ORDER**

The Zoning Hearing Board voted to grant variances pursuant to section 165-23 of the Upper Merion Township Zoning Ordinance of 1942, as amended, to permit an existing shed in the required side yard and rear yard, conditioned as follows:

- The existing shed shall be relocated to the following setbacks:
  - 2' from the rear yard
  - 4' from the side yard

Since this application was contested, the Zoning Hearing Board will issue an opinion with findings of fact and conclusions of law.

This decision is subject to a 30-day appeal period beginning on the date of entry (mailing) of this notice of decision.

The applicant is directed to section 165-257 "Expiration of Special Exceptions or Variances" and applicable statutory provisions governing the expiration of special exceptions and variances.

Written notice of the ZHB's decision was mailed to Landowner on August 20, 2015.

**ZONING HEARING BOARD OF  
UPPER MERION TOWNSHIP**

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Lynne Gold-Bikin, Esquire  
Chairwoman

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John M. Tallman  
Vice Chairman

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Mark DePillis, Esquire  
Secretary

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Maria Mengel  
Member

**Date of Mailing:**