

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

**APPLICATION OF UPPER MERION TOWNSHIP**

**NO. 2013-31**

**PROPERTY: 431 WEST VALLEY FORGE ROAD  
KING OF PRUSSIA, PA 19406**

**OPINION AND ORDER**

This zoning application involves a municipality's request for a parking space variance to permit the conversion of an existing private recreational/health club into a public recreational community center.

On December 4, 2013, the Zoning Hearing Board ("ZHB") of Upper Merion Township held a public hearing with regard to Application No. 2012-31 of Upper Merion Township ("Landowner"). The members of the ZHB present were William J. Clements, Esquire, Chairman; Lynne Gold-Bikin, Esquire, Vice-Chair; Brad Murphy, Secretary; John M. Tallman, Jr., Member; and Mark DePillis, Esquire, Member. The ZHB was represented by Marc D. Jonas, Esquire, of the law firm of Eastburn and Gray, P.C., solicitor for the ZHB. Landowner was represented by Joseph M. McGrory, Esquire, of the law firm of Hamburg, Rubin, Mullin, Maxwell & Lupin, P.C.

Landowner sought a variance from section 165-191 of the Upper Merion Township Zoning Ordinance of 1942, as amended ("Ordinance") to permit 191 parking spaces for the proposed community center and existing swim center, less than the 454 parking spaces required by the Ordinance.

The ZHB admitted the following exhibits into the record:

**ZHB exhibits**

- A-1        ZHB application
- A-2        *Curriculum vitae* of Robert Loeper, AICP
- A-3        deed dated January 19, 2012, between BLC Real Estate, LLC (grantor) and Upper Merion Township (grantee), recorded in deed book 5827, page 1344; and, deed dated May 28, 2009, between Sabertooth, LLC (grantor) and Upper Merion Township (grantee), recorded in deed book 5739, page 2452
- A-4        site layout plan prepared by Meliora Design dated October 29, 2013
- A-5        community center parking analysis
- A-6        *Curriculum vitae* of Marc B. Henderson, P.E.

The zoning hearing was duly advertised, notice thereof was given in accordance with the requirements of the Ordinance, and the proceedings were stenographically recorded. After careful consideration, the ZHB makes the following findings of fact and conclusions of law:

**A.    FINDINGS OF FACT**

**BACKGROUND**

1.    Landowner is the owner of 2 parcels of land comprising 431 West Valley Forge Road, King of Prussia, Pennsylvania ("Property"). [N.T. 10; Exhibit A-3]
2.    The Property is approximately 18 acres in area and is zoned R-2A. [N.T. 10; Exhibit A-4]

3. Improvements on the Property include a large building, most recently used as a private recreational facility, a swim center with several swimming pools, a bath house, pavilions, retail space, associated parking, and driveways. [N.T. 10-11; Exhibit A-4]

4. Landowner proposes the conversion of the private recreational facility into a public community center, to include a fitness center, an aerobic center, classrooms, a large multi-purpose room, and a senior citizen center. Five thousand square feet of the existing recreational facility will be demolished and replaced by nine thousand square feet of new area for the proposed public community center. The swim center, bath house, pavilions, and retail space will remain on the Property [N.T. 11-12]

5. Landowner's application requests zoning relief to permit 191 parking spaces for the proposed community center and swim center uses on the Property rather than the 454 parking spaces required by the Ordinance.

#### **ZHB HEARING**

6. Landowner offered the testimony of Robert Loeper, AICP, planner for Upper Merion Township ("Township"); Marc B. Henderson, P.E., project engineer; and Daniel Russell, Township Director of Parks and Recreation.

7. The testimony was as follows:

- the uses at the Property require 454 parking spaces per the Ordinance. Landowner is proposing 191 parking spaces [N.T. 12-13];
- the various uses proposed for the community center have different parking requirements per the Ordinance [N.T. 14];

- per the Ordinance, the office use requires 20 parking spaces, the fitness center use requires 160 parking spaces, the senior center use requires 88 parking spaces, and the swim center use requires 186 parking spaces [N.T. 14-15];
- the Institute of Traffic Engineers recommends 191 parking spaces for the various uses proposed for the community center: 50 parking spaces for weekday swim center use, and 74 parking spaces for weekend swim center use, for a total of 229 recommended parking spaces for swim center weekday use, or 241 recommended parking spaces for swim center weekend use [N.T. 15-16; Exhibit A-5];
- the swim center is open only during the summer months [N.T. 16];
- the recreation programs are held off-site during the summer months, so the peak demand for parking at the swim center will not coincide with the peak parking demand for the community center [N.T. 17, 55];
- the senior center closes at 3 PM on weekdays and is not open on weekends. Thus, the senior center will not be open during peak parking demands for the other uses at the Property [N.T. 17];
- the proposed number of parking spaces is sufficient for normal usage. However, special events may require additional parking, such as off-site parking [N.T. 18];
- the parking study examines the peak demand for each individual use compared to the hours of operation for each individual use [N.T. 20];



- Currently, there are 114 parking spaces located around the recreation center; Landowner proposes an additional 77 parking spaces for a total of 191 parking spaces [N.T. 43, 47-48];
- no additional parking areas can be added to the site due to steep slopes and floodplain on the Property [N.T. 48];
- the Parks and Recreation Department does not run any programs on weekends and in the evenings during the summertime [N.T. 56];
- scheduled programs at the community center will be staggered to ensure sufficient parking [N.T. 58]; and
- Landowner and the Upper Merion School District have an agreement that Landowner may use the school district's parking areas for some of Landowner's activities [N.T. 59].

8. Two neighboring property owners spoke in opposition to the application. Their concerns included:

- over-flow parking on the neighboring streets
- traffic
- safety issues.

[N.T. 65-83]

## **B. DISCUSSION**

### **VARIANCES**

It is well settled in Pennsylvania that a zoning hearing board may grant a variance only 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 South Whitehall Township*, 134 Pa.Cmwlth. 236, 578 A.2d 1002 (1990).

**Landowner demonstrated that unique physical conditions of the Property have caused an unnecessary hardship prohibiting reasonable use of the Property.**

Landowner seeks a variance from the number of parking spaces required for the uses at the Property. Landowner identified unique physical conditions constraining the reasonable use of the Property. The Property contains steep slopes, and a portion of the Property is in the floodplain. [N.T. 48] Landowner presented testimony that due to the physical constraints of the Property, only an additional 77 parking spaces, rather than 340 parking spaces required by the Ordinance, can be added to the existing parking at the Property:

Mr. McGrory: Is there any way that you can add any more parking to this facility?

Mr. Henderson: We have expanded into every area that has been disturbed previously by previous development, and every other spot

left on the parcel is either steep slopes or floodplain within the natural areas that have been set aside as open space.

...

Mr. McGrory: If this Board were to say five more parking [spaces], is there any way that you could do that?

Mr. Henderson: Not in my opinion, no. [N.T. 48-49]

While construction of a parking garage over the existing parking area is possible, it is cost-prohibitive. [N.T. 52-53]

Where the evidence demonstrates that the only way of strictly complying with the parking requirement of the Ordinance is through construction of a building at a very high cost rendering it economically infeasible, unnecessary hardship for justifying a dimensional variance is shown. See *Mitchell v. Zoning Hearing Board of the Borough of Mount Penn*, 838 A.2d 819, 829 (Pa.Cmwlth. 2003); *Halberstadt v. Borough of Nazareth*, 687 A.2d 371 (Pa. 1997).

The testimony demonstrated that the various uses at the Property have different peak parking demands. The swim center is open only during the summer months. [N.T. 16] The recreation programs are held off-site during the summer months. Thus the peak demand for parking at the swim center will not coincide with the peak parking demand for the community center. [N.T. 17, 55] Additionally, the senior center closes at 3 PM on weekdays and is not open on weekends. Therefore, the senior center will not be open during peak parking demands for the other uses at the Property [N.T. 17].

Landowner has complete control over the program schedule of the proposed community center. Landowner agreed to stagger program dates and times to ensure sufficient parking for the uses at the Property.

Landowner addressed the concerns of the neighboring property owners by agreeing that to the extent permitted by law, Landowner would prohibit overflow parking from the community center on the public streets in the neighborhood surrounding the property.

Landowner demonstrated that the Property cannot be reasonably developed in strict conformity with the Ordinance given the Property's unique characteristics, and, therefore, a parking variance is warranted.

**C. CONCLUSIONS OF LAW**

1. The ZHB has jurisdiction under section 909.1(a)(4) of the Pennsylvania Municipalities Planning Code, 53 P.S. §10909.1(a)(4), and Ordinance section 165-251.A(5).

2. Landowner has standing as the owner of the Property.

3. The ZHB is obligated to ensure compliance with the technical requirements of the 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; and (c) the variance, if authorized, will represent the minimum variance that will afford relief. Ordinance §165-251.B(2).

5. Landowner provided substantial competent evidence satisfying the requirements for a variance to permit 191 parking spaces for the proposed community center and associated uses rather than 454 parking spaces required by the Ordinance.

6. The unique physical conditions of the Property create an unnecessary hardship.

7. The variance requested will not be detrimental to the public welfare.

8. The variance requested is the minimum that will afford relief.

9. The ZHB has the power to impose reasonable conditions based on the evidence presented at the hearing.

At the conclusion of its December 4, 2013 hearing, the ZHB entered the following order:

#### **ORDER**

AND NOW, this 4<sup>th</sup> day of December, 2013, the application of Upper Merion Township is **GRANTED** to allow a variance from section 165-191 permitting the construction of not less than 191 parking spaces. The variance is granted subject to the condition that to the extent permitted by law, the Township shall prohibit parking on the public streets in the neighborhood surrounding the property.

An opinion with findings of facts, conclusions of law, and reasons will follow.

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.


On December 9, 2013, the notice of decision was amended as follows:

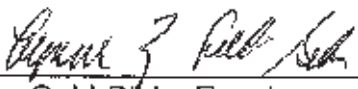
The Zoning Hearing Board granted a variance from section 165-191 to permit the construction of not less than 191 parking spaces. The variance

is granted subject to the condition that to the extent permitted by law, the Township shall prohibit overflow parking from the community recreation center on the public streets in the neighborhood surrounding the property.

Written notice of the ZHB's decision was mailed to Landowner on December 5, 2013, and the amended decision was mailed to Landowner on December 9, 2013.


**ZONING HEARING BOARD OF  
UPPER MERION TOWNSHIP**

  
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William J. Clements, Esquire  
Chairman

  
\_\_\_\_\_  
Lynne Gold-Bikin, Esquire  
Vice-Chair

\_\_\_\_\_  
Brad Murphy  
Secretary

  
\_\_\_\_\_  
John M. Tallman, Jr.  
Member

  
\_\_\_\_\_  
Mark DePillis, Esquire  
Member

**Date of Mailing:**