

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2012-16 : HEARING DATE: September 5, 2012
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APPLICATION OF: :
Pasquale Cardone :
:
:
DECISION DATE: September 5, 2012
PROPERTY: :
281 Sweetbriar Circle :
King of Prussia, PA 19406 :

OPINION AND ORDER OF THE UPPER MERION TOWNSHIP ZONING HEARING BOARD

The applicant, Pasquale Cardone , husband and wife, (hereinafter referred to as the "Applicant ") filed an application requesting a variance to sections 165-79 of the Upper Merion Zoning Code (the "Code") . The application was properly advertised and a public hearing was held before the Upper Merion Township Zoning Hearing Board on September 5, 2012 at the Upper Merion Township Building. All members of the Zoning Hearing Board were present, except for Dr. Steven Levine , as well as the solicitor, Zoning Officer and Court Reporter.

FINDINGS OF FACT

1. The applicant is Pasquale Cardone with a mailing address of 281 Sweetbriar Drive, King of Prussia, Pennsylvania 19406..
2. The applicant is the legal owner of the subject property.
3. The property is located at 281 Sweetbriar Drive, Upper Merion Township.
4. The applicant was not represented by counsel.
5. The subject property is located in the U-R Unit Residential zoning district.
6. The lot size of the property is approximately 9400 square feet.

7. The dwelling on the property is a single family two (2) story colonial type home.
8. The house does not have a garage. The applicant testified for the need to build an attached garage to park his vehicle,
9. The applicant testified that the garage is necessary because street parking is problematical.
10. The existing zoning requires a side yard setback of 15 feet.
11. The narrowness of the lot would preclude the building of the garage without zoning relief.
12. If constructed the garage will encroach approximately 12 feet into the setback.
13. This is the minimum encroachment necessary to construct the garage.
14. The applicant introduced pictures into evidence showing the proposed construction.
15. The proposed construction would be compatible with the rest of the neighborhood
16. No neighbors testified either for or against the application.

CONCLUSIONS OF LAW

1. In order to accomplish this request, the Applicant requires a variance to Section 165-79 of the Code. In accordance with Section 165-79(A) "[t]he heights of buildings and other structures erected, altered or enlarged in this district and the area, width, yard and building coverage requirements therefor shall be as specified on or in connection with the development plan, provided that no building or other structure shall exceed a maximum height of 35 feet."
2. The existing zoning requires a side yard setback of 15 feet.
3. If constructed the garage will encroach approximately 12 feet into the setback.

4. The standard to determine whether to grant a dimensional variance as outlined by the Pennsylvania Supreme Court is that the Applicant must show that unnecessary hardship will result if a variance is denied and that the proposed use will not be contrary to public interest. Hertzberg v. Zoning Bd. of Pittsburgh, 554 Pa. 249, 721 A.2d 43 (1998); citing, Allegheny West Civic Council, Inc. v. Zoning Bd. of Adjustment of the City of Pittsburgh, 547 Pa. 163, 167, 689 A.2d 225, 227 (1997).
5. Although the language of Hertzberg is expansive, the current trend is to apply the relaxed standard for dimensional variances only to the consideration of whether unnecessary hardship results from unique physical characteristics or conditions of the land. The Friendship Preservation Group, Inc. v. Zoning Hearing Board of Adjustment of the City of Pittsburgh, 808 A.2d 327 (Pa. Cmwlth. 2002); Cardamone v. Whitpain Township Zoning Hearing Board, 771 A.2d 103 (Pa. Cmwlth. 2001).
6. The reasons for granting a variance must be substantial, serious and compelling. POA Company v. Findlay Township Zoning Hearing Board, 551 Pa. 689, 713 A.2d 70 (1998); Evans v. Zoning Hearing Board of the Borough of Spring City, 732 A.2d 686 (Pa. Cmwlth. 1999); Sotereanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Cmwlth. 1998). Moreover, variances to zoning codes should be granted sparingly and only under exceptional circumstances; a variance should not be granted simply because such a grant would permit the owner to obtain greater profit from or use of the property. Commonwealth v. Zoning Hearing Board of Susquehanna, 677 A.2d 853 (Pa. Cmwlth. 1996).
7. In order to grant a variance, the Board must make the findings set forth in § 910.2 of the Municipalities Planning Code, 53 P.S. § 10910.2, where relevant. The law established by

the Pennsylvania courts further establishes these standards, stated in full herein. See, Alpine Inc. v. Abington Township Zoning Hearing Board, 654 A.2d 186 (Pa. Cmwlth. 1995); Appeal of Lester M. Prang, Inc., 169 Pa. Cmwlth. 626, 647 A.2d 279 (1994). The findings that the Board must make, where relevant, in granting a variance as set forth in the Municipalities Planning Code are as follows:

- a. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- b. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- c. That such unnecessary hardship has not been created by the Applicant.
- d. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or

development of adjacent property, nor be detrimental to the public welfare.

- e. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

- 8. Here, the Applicant is requesting permission to construct an attached garage in his side yard. The required side yard setback is 15 feet. The Applicant testified that the current dwelling on the property does not have a garage. The Applicant testified for the need to build an attached garage to park his vehicle, which is necessary because street parking is problematic. The narrowness of the lot would preclude the building of the garage without zoning relief. If constructed, the garage will encroach approximately 12 feet into the setback. This is the minimum encroachment necessary to construct the garage. The proposed construction would be compatible with the rest of the neighborhood.

Accordingly, the Board approved the Applicant's request for a variance to Section 165-

79.

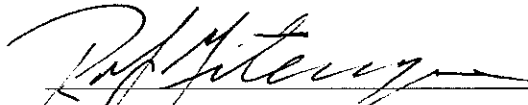
ORDER OF THE UPPER MERION TOWNSHIP

ZONING HEARING BOARD

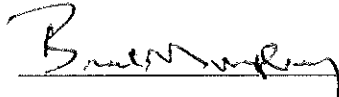
IT IS HEREBY ORDERED AND DECREED that the Board finds that the Applicant presented sufficient testimony to grant a variance to Section 165-79. This variance is granted conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on September 5, 2012. Applicants' request for a variance to Section 165-79 is granted.

Decision Dated: September 5, 2012

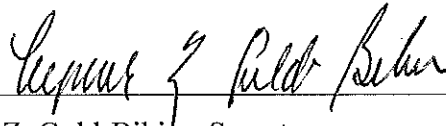
**UPPER MERION TOWNSHIP
ZONING HEARING BOARD**



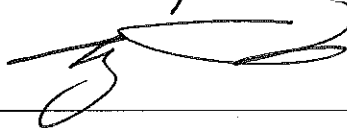
Robert J. Montemayer - Chairman



Brad Murphy - Vice Chairman



Lynne Z. Gold-Bikin - Secretary



William J. Clements

NOTE TO APPLICANT:

There is a thirty (30) day period after the date of a decision for an aggrieved person to file an appeal in the Court of Common Pleas of Montgomery County to contest an approval or denial by the Zoning Hearing Board. If the Applicant has been granted Zoning Hearing Board approval, the Applicant may take action on said approval during the thirty (30) day appeal period; however, the Applicant will do so at his or her own risk. If the Applicant has received Zoning Hearing Board approval, the Applicant must secure all applicable permits from Upper Merion Township within one (1) year of the date of the approval or the decision granting approval.