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**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP**

<b>APPLICATION NO. 2012-028</b>	:	<b>HEARING DATE:</b> November 22, 2012
	:	December 5, 2012
<b>APPLICATION OF:</b>	:	
David E. March	:	
	:	
	:	<b>DECISION DATE:</b> December 5, 2012
<b>PROPERTY:</b>	:	
417 Bluebuff Road	:	
King of Prussia, PA 19406	:	

**OPINION AND ORDER OF THE UPPER MERION  
TOWNSHIP ZONING HEARING BOARD**

The Applicant, David E. March (hereinafter referred to as the "Applicant"), filed an application requesting a variance to Section 165-23. The application was properly advertised, and public hearings were held before the Upper Merion Township Zoning Hearing Board on November 22, 2012 and December 5, 2012 at the Upper Merion Township Building.

All members of the Zoning Hearing Board were present, except Member Lynne Gold-Biken, as well as the Solicitor, Zoning Officer, and Court Reporter.

**FINDINGS OF FACT**

1. The Applicant is David E. March, with a mailing address of 417 Bluebuff Road, King of Prussia, PA 19406.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 417 Bluebuff Road, King of Prussia, PA 19406.
4. The applicant was not represented by an attorney.
5. The subject property is located in the "R-2" zoning district.

6. The lot is approximately 7,700 square feet.
7. The property presently has an attached car port.
8. The Applicant desires to construct and erect a detached 2 car garage approximately 584 square feet in size.
9. The garage will be located in the front and side yard.
10. The garage will be used to house a truck and car with the rear portion being used for storage of equipment and tools.
11. The required side yard setback is 4 feet. The proposed structure will be located 2.5 feet from the side yard.
12. The Upper Merion Code requires accessory structures to be located within the rear quarter of the lot.
13. The use of the garage is residential only. There is no commercial use.
14. Monica Donnelly testified on behalf of the Application.
15. She resides at 413 Bluebuff Road, which is adjacent to the property.
16. The location of the proposed structure would be 22 feet from the side of her house.
17. The proposed structure will not alter the essential characteristics of the neighborhood and she is in favor of the application.
18. The Application was approved by a vote of 3-1. Members Montemayor, Murphy and Clements voted in favor of the Application. Member Tallman voted against the Application. Member Gold-Biken was not present at the November 22, 2012 hearing and; therefore, abstained from voting on December 5, 2012.

### CONCLUSIONS OF LAW

1. The Applicant requests a variance pursuant to Section 165-23 of the Code to construct a detached garage within the front and side yards.

2. In accordance with Section 165-23, the required side yard setback is 4 feet and accessory structures shall be located within the rear quarter of the lot.

3. 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).

4. 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).

5. 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.

6. Here, the Applicant is requesting permission to construct a detached garage within the front and side yards and the proposed structure will be located 2.5 feet from the side yard.

7. The Board found that the criteria for granting a variance were met and that the relief granted was the minimum variance that will afford the relief requested.

**ORDER OF THE UPPER MERION TOWNSHIP**

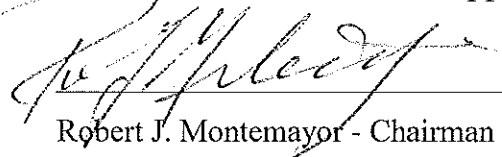
**ZONING HEARING BOARD**

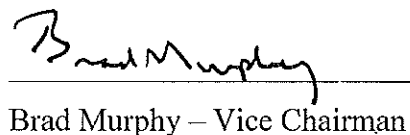
**IT IS HEREBY ORDERED AND DECREED** that the Board finds that the Applicant presented sufficient testimony to grant a variance to Section 165-23. The variance is granted conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearings on November 22, 2012 and December 5, 2012.

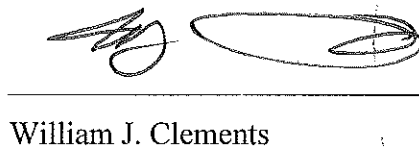
Decision Dated: December 5, 2012

**UPPER MERION TOWNSHIP  
ZONING HEARING BOARD**

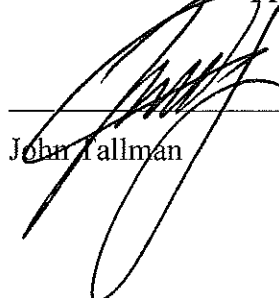
**Board Members in Favor of Application:**

  
Robert J. Montemayor - Chairman

  
Brad Murphy - Vice Chairman

  
William J. Clements

**Board Member Opposed to Application:**

  
John Tallman

**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.