

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

MONTGOMERY COUNTY, PA

APPLICATION OF HARPREET SALUJA

APPLICATION NO. 2022-14

PROPERTIES: 657, 665, and 671 S. GULPH ROAD

TAX PARCEL NOS. 58-00-17299-00-4; #58-00-17296-00-7; 58-00-17293-00-1

DECISION

The Zoning Hearing Board of Upper Merion Township ("ZHB") considered an application for variances to permit 3 additional dwelling units and parking in the front yard of properties to be consolidated. The applicant proved entitlement to the grant of relief, and the ZHB voted to conditionally grant the application.

Harpreet Saluja ("Landowner") is the equitable owner of three adjacent properties: 657 S. Gulph Road ("Parcel A") tax parcel no. 58-00-17299-00-4; 665 S. Gulph Road ("Parcel B"), tax parcel no. 58-00-17296-00-7; and 671 S. Gulph Road ("Parcel C"), tax parcel no. 58-00-17293-00-1) (collectively the "Property"). The Property comprises a total of 2.46 acres and is located in the NMU Neighborhood Mixed-Use ("NMU District") of Upper Merion Township ("Township").

Landowner will consolidate the three parcels and proposes to develop on Parcel A and Parcel B, a 3-story mixed-use building containing 5,500 sq. ft. of retail space on the first floor and 40 multi-family dwelling units on the second and third floors, with 68 parking spaces. Parcel C will contain 11 parking spaces and approximately 11,000 sq. ft. of passive recreation.

Section 165-122 of the Upper Merion Township Zoning Ordinance of 1942, as Amended (the "Zoning Ordinance"), provides that residential density shall not exceed 15

dwelling units per acre of lot size. Section 165-115(A) of the Zoning Ordinance provides that parking lots are not permitted in front yards. Landowner requires variances from the maximum residential density to permit 40 dwelling units and to allow off-street parking in the front yard.

On September 7, 2022, and September 21, 2022, the ZHB held advertised public hearings on Landowner's application. The following members of the ZHB were present at the hearings: Vivian Peikin, Esq., Acting Chairperson;¹ Mark S. DePillis, Esq., Secretary; M. Jonathan Garzillo, member; Hedda Schupak, member;² and Chiragi Raval, member. The ZHB was represented by Marc D. Jonas, Esq., and Zachary Sivertsen, Esq., of the law firm of Eastburn and Gray, P.C. The applicant was represented by Robert L. Brant of the law firm Robert L. Brant & Associates.

Neighboring property owner, Bruce Hall ("Objector"), appeared in opposition to the application and was granted party status.

The hearings were duly advertised, notice was given in accordance with the requirements of the zoning ordinance, and the proceedings were stenographically recorded. Since the application was contested, the ZHB issues this decision with findings of fact, conclusions of law, and reasons.

After careful consideration of the evidence presented, the ZHB makes the following findings of fact and conclusions of law.

¹ The Chairperson of the ZHB recused himself due to a financial interest in Landowner's proposed project.

² Ms. Schupak was not present at the September 21, 2022 hearing.

A. FINDINGS OF FACT

BACKGROUND

1. Landowner is the equitable owner of the Property. [Ex. ZHB-2; ZHB-6; ZHB-7; ZHB-8; N.T. 9/7/2022, pp. 16-17]
2. Parcel A is identified as tax parcel no. 58-00-17299-00-4; Parcel B is identified tax parcel no. 58-00-17296-00-7; and Parcel C is identified as tax parcel no. 58-00-17293-00-1. [Ex. ZHB-11]
3. The Property is located in the Township's NMU District. [Ex. ZHB-1]

ZHB HEARING

4. The ZHB marked the following exhibits:
 - a. ZHB-1 – application and addendum;
 - b. ZHB-2 – letters from the legal owners of the Property authorizing Landowner to represent them before the ZHB;
 - c. ZHB-3 – deed to 657 S. Gulph Rd dated March 31, 2004 between Lisa A. Lee and Eva L. Eyth (grantors) and James and Lisa Lee (grantees), recorded in deed book 5505, page 01061;
 - d. ZHB-4 – deed to 665 S. Gulph Rd. dated September 5, 2008 between John Tallman, Jr., and Brock Riffel (grantors) and 665 S. Gulph L.P. (grantee), recorded in deed book 5706, page 02865;
 - e. ZHB-5 – deed to 671 S. Gulph Rd. dated December 20, 2018 between Stanley Hart (grantor) and Jourey and Joelle Newell (grantees), recorded in deed book 6121, page 01722;

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- f. ZHB-6 – agreement of sale for 657 S. Gulph Rd., dated February 17, 2022 between James and Lisa Lee (sellers) and Hapreet Saluja (buyer);
- g. ZHB-7 – agreement of sale for 665 S. Gulph Rd., dated February 17, 2022 between 665 S. Gulph L.P. (seller) and Hapreet Saluja (buyer);
- h. ZHB-8 – agreement of sale for 671 S. Gulph Rd., dated February 17, 2022 between Jourey and Joelle Newell (sellers) and Hapreet Saluja (buyer);
- i. ZHB-9 – sketch plan entitled “Proposed Mixed-Use Development,” prepared by BL Companies, dated July 25, 2022;
- j. ZHB-10 – photographs of 657, 665, and 671 S. Gulph Road;
- k. ZHB-11 – Montgomery County Board of Assessment Appeals property records and tax map;
- l. ZHB-12 – Google Map – aerial view;
- m. ZHB-13 – legal notice and proof of publication;
- n. ZHB-14 – memorandum of law.

5. Danilo R. Salameda, P.E., was qualified and admitted as an expert in civil engineering and testified on behalf on the Landowner as follows:

- a. The Property is located along the south side of South Gulph Road. [N.T. 9/7/2022, p. 17]
- b. Parcel A and Parcel C are improved by single family dwellings. [N.T. 9/7/2022, p. 17]

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- c. Parcel B is improved by a single family dwelling which has been converted to office use. [N.T. 9/7/2022, p. 17]
- d. Weadley Road runs between Parcel B and Parcel C. [ZHB-9]
- e. Residential properties are located along Weadley Road to the rear of the Property. [N.T. 9/7/2022, p. 17]
- f. Commercial properties are located across from the Property on the north side of S. Gulph Road. [N.T. 9/7/2022, p. 17]
- g. Multi-family residential properties, including the Kingswoods Apartments and the Gulph Mills Apartments are located on the north side of S. Gulph Road directly opposite the Property. [N.T. 9/7/2022, pp. 17-18]
- h. Landowner proposes to develop the Property as mixed-use building with residential and retail uses. [N.T. 9/7/2022, p. 17]
- i. Landowner submitted a site plan for the Property, entitled "Proposed Mixed-Use Development" prepared by BL Companies, dated July 25, 2022. [ZHB-9]
- j. The mixed-use building and off-street parking will be developed on Parcel A and Parcel B. [ZHB-9; N.T. 9/7/2022, p. 25]
- k. A passive recreation area and additional off-street parking are proposed for Parcel C. [ZHB-9; N.T. 9/7/2022, p. 25]
- l. The zoning information chart on the site plan states that the proposed development will comply with all of the NMU District's zoning

- standards with the exception of maximum residential density, and front-yard parking. [ZHB-9; N.T. 9/7/2022, pp. 21-22]
- m. If Landowner's requested variances are granted, Landowner will obtain land development approval. [N.T. 9/7/2022, p. 22]
 - n. The Property is fronted by public roadways on three sides. [N.T. 9/7/2022, p. 19; ZHB-9]
 - o. The Property is long and narrow – approximately 450 feet long and 130 feet wide. [N.T. 9/7/2022, p. 19]
 - p. Parking is proposed on the far west side of Parcels A and B along South Gulph Road. This portion of the Property is considered front yard parking. [N.T. 9/7/2022, p. 20]
 - q. Parking is also proposed on Parcel C adjacent to Weadley Road. This is considered front yard parking. [N.T. 9/7/2022, p. 20]
 - r. The 2.47 acre Property is permitted to have 37 dwelling units. [N.T. 9/7/2022, pp. 24-25]
 - s. Landowner seeks to develop 40 dwelling units in order to construct a symmetrical building with certain sized units that are marketable. [N.T. 9/7/2022, pp. 30-32]
 - t. The Zoning Ordinance requires 1 off-street parking space per bedroom for a residential use and 4.5 off-street parking spaces per 1,000 square feet of retail space. [N.T. 9/7/2022, pp. 25]

- u. The proposed 40 dwelling units will contain 52 bedrooms, and, thus, 52 off-street parking spaces are required for the residential component of the mixed-use building. [N.T. 9/7/2022, p. 25]
 - v. In addition, the 5,500 square feet of retail space require 25 off-street parking spaces. [N.T. 9/7/2022, pp. 25-26]
 - w. The proposed parking lot on Parcel C will provide 11 off-street parking spaces. Those parking spaces will be reserved for employees of the retail space and overflow parking for visitors and residents. [N.T. 9/7/2022, pp. 26; 36]
 - x. The proposed development will provide adequate parking. [N.T. 9/7/2022, p. 26]
 - y. Landowner has not performed a traffic study. [N.T. 9/7/2022, p. 30]
 - z. The requested variances will not impair the appropriate use or development of adjacent properties. [N.T. 9/7/2022, p. 27]
 - aa. The proposed development will be consistent with the stated purpose of the NMU District. [N.T. 9/7/2022, pp. 24; 27]
 - bb. Landowner does not intent to include a left-hand turn lane into the Property from S. Gulph Road. [N.T. 9/7/2022, p. 34]
6. Landowner testified in support of the application, in pertinent part, as follows:
- a. Landowner seeks to construct a modern looking building that is designed for long-term tenancy. [N.T. 9/7/2022, pp. 39-40]

- b. Landowner intends to have young families, residents of the Township looking to downsize, and young professionals as residential tenants. [N.T. 9/7/2022, pp. 39-40]
 - c. Landowner intends to target neighborhood businesses, such as coffee shops, bakery shops, and yoga studios, as retail tenants. [N.T. 9/7/2022, p. 41]
 - d. The dwelling units will be for rent, not for sale. [N.T. 9/7/2022, p. 43]
7. Objector presented the testimony of David Ward, an AICP certified land planner. Mr. Ward testified as follows:
- a. Ward is the brother-in-law of Objector. [N.T. 9/7/2022, p. 47]
 - b. The proposed development may increase the volume of traffic along Weadley Road and South Gulph Road. [N.T. 9/7/2022, pp. 52; 57]
 - c. The proposed development may exceed the permitted maximum building coverage and maximum impervious surface. [N.T. 9/7/2022, pp. 54-56]
 - d. The proposed recreation area on Parcel C will be dangerous to access because it requires pedestrians to cross Weadley Road. [N.T. 9/7/2022, p. 56]
 - e. Ward testified that Parcel C cannot be consolidated with Parcels A and B because land development rights cannot be transferred across Weadley Road. [N.T. 9/7/2022, p. 59]
 - f. Ward opined that Landowner did not present evidence of a hardship. [N.T. 9/7/2022, p. 58]

- g. There is no transition buffer or screening proposed to be located between the development and Objector's property. [N.T. 9/7/2022, p. 62]
- h. Ward offered no reports or empirical data in support of his testimony.

8. Landowner offered Mr. Salameda as a rebuttal witness. Mr. Salameda testified on rebuttal as follows:

- a. The site plan demonstrates that the proposed development is compliant with maximum impervious coverage and maximum building coverage. [N.T. 9/7/2022, pp. 64-65]
- b. Landowner intends to consolidate Parcels A, B, and C. The total area of those parcels was used to calculate the density for the Property. [N.T. 9/7/2022, pp. 65-66]

9. Public comment on the application was offered by two individuals: Gretta Lamosa, who resides at 353 Old Weadley Road; and Journey Newell, who owns Parcel C.

10. Ms. Lamosa expressed personal concerns about increased traffic volume along Weadley Road and South Gulph Road and overcrowded schools in the Township. [N.T. 9/7/2022, pp. 69-72]

11. Mr. Newell spoke in support of the application. In Mr. Newell's opinion, the proposed mixed-use development will benefit the neighborhood and will fit better on the subject properties than the existing single-family homes. [N.T. 9/7/2022, pp. 73-75]

12. At the September 21, 2022 hearing, Objector offered the following public comment:

- a. Weadley Road is too small a road to handle the increased traffic associated with the proposed development. [N.T. 9/21/2022, p. 8]
- b. S. Gulph Road is a busy road and currently has issues with heavy traffic building up multiple times a day. [N.T. 9/21/2022, pp. 8-9]
- c. Pedestrians crossing Weadley Road will be dangerous, and will compound traffic issues. [N.T. 9/21/2022, p. 9]
- d. There is no place for residents of the proposed development to ride bikes or walk in the surrounding neighborhood. [N.T. 9/21/2022, p. 9]

13. The Objector did not present expert testimony in support of his concerns regarding the proposed development's impact of traffic.

14. The Objector's concerns regarding the proposed development's impact on traffic is an issue relevant to the land development approval process.

15. The Objector's concerns regarding buffers and screening on the Property is an issue relevant to the land development approval process.

16. Landowner submitted a memorandum of law providing legal authority establishing that the subject parcels may be consolidated despite the presence of Weadley Road. [ZHB-14]

B. DISCUSSION

A zoning hearing board may only 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;
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); Zoning Ordinance §§ 164-133 and 164-134; *Cope v. Zoning Hearing Bd. of S. Whitehall Twp.*, 578 A.2d 1002, 1005 (Pa. Cmwlth. 1990).

The variance standard is a “high hurdle[]” *Omnipoint Comms. Ent. L.P. v. Zoning Hearing Bd. Easttown Twp.*, 331 F.3d 386, n*11 (3d Cir. 2003). “[T]he reasons for granting the variance must be substantial, serious and compelling.” *Commonwealth v. Zoning Hearing Bd. Susquehanna Twp.*, 677 A.2d 853, 855 (Pa. Cmwlth. 1996). Variances are to be granted “sparingly and only under exceptional circumstances.” *Id.*; see also *Appeal of Lester M. Prange, Inc.*, 647 A.2d 279, 284 (Pa. Cmwlth. 1994); *Laurento v. Zoning Hearing Bd. of Borough of W. Chester*, 638 A.2d 437, 439 (Pa. Cmwlth. 1994). “[T]o establish unnecessary hardship, an applicant must show more than a mere economic or personal hardship.” *Pietropaolo v. Zoning Hearing Bd. of Lower Merion Twp.*, 979 A.2d 969, 980 (Pa. Cmwlth. 2009); see also *Singer v. Phila. Zoning Bd. of Adjustment*, 29 A.3d 144, 150 (Pa. Cmwlth. 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.”).

The evidence and testimony offered by Landowner established that an unnecessary hardship would result if the requested relief were not granted. The unique physical circumstance and condition of the Property which give rise to a legal hardship are the long and narrow shape of the Property, and the Property's 3 street frontages on S. Gulph Road and Weadley Road.

The oddly shaped lot dictated the design of the proposed building with retail space on the first floor and residential units on the second and third floors. The building was designed to include 40 dwelling units – 3 more than permitted on the 2.46 acre Property – in order to make the building symmetrical. According to the unchallenged testimony, a building with only 37 dwelling units would not be as viable as the proposed 40 unit building.

The Property's location along three street frontages restricts Landowner's ability to provide the required number of off-street parking spaces for a permitted use on the Property. In order to comply with the Zoning Ordinance's parking requirements, Landowner must locate off-street parking spaces in the front yard.

The requested variances will not be detrimental to the public welfare, and represent the minimum variances necessary for relief. There are existing multi-family residential buildings located directly across S. Gulph Road. The proposed development will not alter the character of the neighborhood.

CONCLUSIONS OF LAW

1. The ZHB has jurisdiction under section 909.1(a)(5) of the MPC, 53 P.S. §10909.1(a)(5), and Zoning Ordinance §165-251.A(5).
2. Landowner has standing to seek the requested zoning relief as the owner of the Property.
3. The ZHB is obligated to ensure compliance with the Zoning Ordinance.
4. Landowner requires a variance from section 165-122 of the Zoning Ordinance to construct 40 dwelling units on the 2.46 acre Property.
5. Landowner requires a variance from section 165-115(A) of the Zoning Ordinance to locate off-street parking spaces in the front yard of the Property.
6. 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.
7. Landowner demonstrated an unnecessary hardship entitled him to variances from Section 165-122 and Section 165-115(A) of the Zoning Ordinance
8. The requested relief represents the minimum variances that will afford relief for a reasonable use of the Property.
9. The requested variances will not be detrimental to the public welfare.

10. The imposed conditions, which Landowner accepted at the hearing, will address Objector's concerns.

At the conclusion of the September 21, 2022 hearing, the ZHB voted to grant the application. On September 22, 2022, the ZHB mailed the following notice of decision to Landowner:

This letter provides notice of the decision of the Upper Merion Township Zoning Hearing Board following the conclusion of the hearing on Wednesday, September 21, 2022.

The Zoning Hearing Board voted to grant the following relief from the Upper Merion Township Zoning Ordinance of 1942, as Amended:

1. *a variance from § 165-112 to allow a density of 16.2 dwelling units/acre (a total of 40 dwelling units) where a maximum of density of 15 dwelling units/acre (a total of 37 dwelling units) is permitted across the merged and consolidated parcels; and*
2. *a variance from § 165-115(A) to permit parking in the front yard, where off-street parking is not permitted in the front yard.*

This approval is conditioned upon the following:

1. *improvements to the property shall conform to the testimony and exhibits presented at the hearing and set forth in the application, including, but not limited to hearing exhibit ZHB-9 a plan entitled "Sketch Plan," prepared by BL Companies, dated July 25, 2022, which accompanies this letter;*
2. *the three (3) tax parcels shall be consolidated into a single property and tax parcel;*
3. *Upper Merion Township shall decide the use of the open space identified as "proposed passive recreation" on the sketch plan;*
4. *there shall be no more than two (2) retail spaces on the property. Any increase in the number of retail spaces shall require further relief from the Zoning Hearing Board;*
5. *there shall be no left turns into or out of any driveway on S. Gulph Road;*

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6. *the applicant shall submit a traffic impact study during the land development process and implement any improvements recommended by the study to the satisfaction of the Township and PennDOT; and*
7. *the applicant shall install adequate and effective landscape buffering along the property line shared with the Hall property (655 S. Gulph Rd., TP# 58-00-17302-00-1).*

Since this application was contested, the Zoning Hearing Board will issue a written decision with findings of fact, conclusions of law, and reasons.

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

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**



Vivian Peikin, Esq.
Acting Chairperson