

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2012-001 : **HEARING DATE:** February 15, 2012
APPLICATION OF: : **DECISION DATE:** February 15, 2012
Mr. Huy Khieu and Mrs. Quyen Vu :
:
:
PROPERTY: :
563 General Knox Road :
Upper Merion Township :

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

The Applicant, Mr. Huy Khieu and Mrs. Quyen Vu (hereinafter collectively referred to as the "Applicant"), filed an application requesting a variance to Section 165-33(C)(3). The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on February 15, 2012 at the Upper Merion Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor, Zoning Officer, and Court Reporter.

FINDINGS OF FACT

1. The Applicant is Mr. Huy Khieu and Mrs. Quyen Vu, with a mailing address at 563 General Knox Road, King of Prussia, Upper Merion Township.
2. The legal owner of the subject property is Mr. Huy Khieu and Mrs. Quyen Vu.
3. The property is located at 563 General Knox Road, King of Prussia, Upper Merion Township.
4. The Applicant was not represented by an attorney.

5. The subject property is located in the "R-2A " zoning district.
6. The lot is approximately .46 acres.
7. The subject property is a single family residence.
8. The Applicant desires to build a shed to store pool equipment and supplies on the side yard of the lot.
9. The aforementioned shed is proposed to be built less than seven feet of the side lot line of the property.
10. There were no residents who testified in favor of the project.
11. There were no residents who testified against the project.

CONCLUSIONS OF LAW

1. The Applicant is Mr. Huy Khieu and Mrs. Quyen Vu, with a mailing address at 563 General Knox Road, King of Prussia, Upper Merion Township.
2. The legal owner of the subject property is Mr. Huy Khieu and Mrs. Quyen Vu.
3. The property is located at 563 General Knox Road, King of Prussia, Upper Merion Township.
4. The Applicant was not represented by an attorney.
5. The subject property is located in the "R-2A " zoning district.
6. The lot is approximately .46 acres.
7. The subject property is a single family residence.
8. The Applicant desires to build a shed to store pool equipment and supplies on the side yard of the lot.
9. The aforementioned shed is proposed to be built less than seven feet of the side lot line of the property.

10. In order to accomplish this request, the Applicant requires a variance to Section 165-33(C)(3) of the Upper Merion Zoning Code. In accordance with Section 165-33(C)(3), “[o]n any lot, in any side yard not abutting a street, an accessory structure may be erected and maintained within the rear quarter of the lot if not closer to the side lot line than seven feet.”
11. 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).
12. 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).
13. 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).

14. 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.

15. Here, the Applicant is requesting permission to build a shed to store pooling supplies and equipment on the side yard of the property. The aforementioned shed is proposed to be built less than seven feet of the side lot line of the property. In order to accomplish this request, the Applicant must request a variance to Section 165-33(C)(3) of the Upper Merion Zoning Code. Based upon the testimony of the Applicant, the Board found that the Applicant did not meet the aforementioned criteria to warrant granting of the variance because no unnecessary hardship results from the unique physical characteristics or conditions of the land. The Applicant testified that there are other locations on the property upon which the Applicant may build the proposed shed that would be in compliance with the Upper Merion Zoning Code. Accordingly, the Board finds as a matter of fact that other locations exist upon which the Applicant could build the proposed shed and; therefore, denied the Applicant's request for a variance to Section 165-33(C)(3).

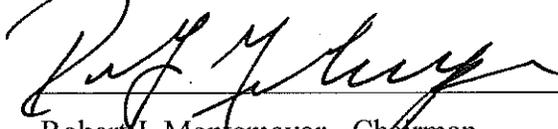
ORDER OF THE UPPER MERION TOWNSHIP

ZONING HEARING BOARD

IT IS HEREBY ORDERED AND DECREED that the Board finds that the Applicant did not present sufficient testimony to grant a variance to Section 165-33(C)(3) to build a shed less than seven feet to the side lot line of the property. Accordingly, the Board denied your request for a variance to Section 165-33(C)(3).

Decision Dated:

**UPPER MERION TOWNSHIP
ZONING HEARING BOARD**



Robert J. Montemayor - Chairman



Brad Murphy – Vice Chairman



Lynne Z. Gold-Bikin - Secretary

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.