

**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP**

APPLICATION NO. 2012-010 : HEARING DATE: June 20, 2012  
: :  
APPLICATION OF: :  
Gerald and Diane Denick :  
: :  
: DECISION DATE: June 20, 2012  
PROPERTY: :  
735 Champlain Drive :  
King of Prussia, PA 19406 :

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

The applicants ,Gerald and Diane Denick , husband and wife, (hereinafter referred to as the "Applicant ") filed an application requesting a variance to sections 165-33 (C) and (D) of the Upper Merion Zoning Code (the "Code") or, in the alternative, a special exception in accordance with section 165-199 (B) (3) of the Code. The application was properly advertised and a public and a public hearing was held before the Upper Merion Township Zoning Hearing Board on June 20, 2012 June 20, 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 applicants are Gerald and Dian Denick with a mailing address of 735 Champlain Drive, King Of Prussia, Pennsylvania 19406..
2. The applicants are the legal owners of the subject property.
3. The property is located at 735 Champlain Drive, Upper Merion Township.
4. The applicants were represented by Frank Bartle, esquire.

5. The subject property is located in the R2-A zoning district.
6. The lot size of the property is approximately 12,516 square feet.
7. The dwelling on the property is a single family two (2) story colonial type home with a one (1) story attached garage and a deck and an accessory shed.
8. The lot has an unusual configuration in that it has only two (2) side yards.
9. Gerald Denick along with his wife have been residing in the property for six (6) years.
10. Mr. Denick has recently been diagnosed with multiple sclerosis.
11. In order to accommodate this progressive disease, he would like to construct a new bedroom on the first floor and a one (1) story two (2) car garage which will allow sheltered access to the house.

---

12. If constructed the garage will encroach approximately nine (9) feet into the side yard set back.

13. This is the minimum encroachment necessary to construct the garage.

14. The garage is needed in order to allow Mr. Denick sheltered access to the house.

15. Marie Altieri offered testimony. She is an interior designer who designed the addition. She testified that the only location on the lot for the placement of the garage was the proposed site.

16. Josh Gordon testified in favor of the application. He is a neighbor who resides at 733 Champlain Drive, King of Prussia, PA 19406.

17. Mark Picariello and Mary Ann Picariello asked questions and had comments regarding the drainage on the site. They live in a property adjacent to that owned by the applicant.

18. Janet Fissel testified in favor of the application. She is a neighbor who resides at 718 Champlain Drive.

19. The applicant agreed to accept as a condition of approval that the garage would not be designed, constructed or used for any purpose other than a garage to house cars and as storage space. It specifically would not be used as living quarters.

#### CONCLUSIONS OF LAW

1. The applicants are Gerald and Dian Denick with a mailing address of 735 Champlain Drive, King Of Prussia, Pennsylvania 19406.
  2. The applicants are the legal owners of the subject property.
  3. The property is located at 735 Champlain Drive, Upper Merion Township.
  4. The subject property is located in the R2-A zoning district.
- 
5. The lot size of the property is approximately 12,516 square feet.
  6. The lot has an unusual configuration in that it has only two (2) side yards.
  7. The Applicants have proposed to construct a new bedroom on the first floor and a one (1) story (2) car garage which will allow for sheltered access to the home in order to accommodate Applicant's physical limitations and impairments as he suffers from Multiple Sclerosis.

#### **I. Request for Variance to Section 165-33 (C) and (D)**

8. In order to accomplish this request, the Applicants require a variance to Sections 165-33 (C) and (D) of the Upper Merion Zoning Code to permit the construction of a new bedroom and a one (1) story (2) car garage. In accordance with Section 165-33 (C), "on any lot, a one-story attached addition to a building may be erected and maintained and may encroach into one of the required side yard setbacks a distance of not more than five feet, provided that in any

case no side yard shall be less than 10 feet.” Additionally, in accordance with Section 165-33 (D), “there shall be a rear yard on each lot the depth of which shall not be less than 35 feet, except that an accessory use structure may be erected within the rear yard not closer to the rear property line than eight feet.”

9. The applicable standards for determining whether to grant a dimensional variance differ from those of a use variance. The standard 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).

10. 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).

11. 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.

12. Here, the Applicant is requesting permission to build an expansion of the existing dwelling by adding a bedroom, as well as the expansion of a one (1) story (2) car garage to permit sheltered access to the home to facilitate caring for Applicant who has recently been diagnosed with Multiple Sclerosis.

13. Applicants testified that, due to the unusual configuration of the land, as it only has two side yards, the proposed expansion will encroach approximately nine (9) feet into the side yard set back.

14. Interior designer, Marie Altieri, also offered testimony to the effect that the proposed location of the expansion is the only possible location on the lot for the placement of the garage.

15. Applicants further demonstrated through testimony that denial of their request would result in unnecessary hardship to Applicant, Gerald Denick, due to the physical limitations and impairments caused by his disease.

16. Applicants further testified that the dimensions of the proposed construction represent the minimum encroachment necessary to construct the garage.

---

17. Two (2) neighbors of the Applicants testified in support of granting the relief requested by Applicants.

18. Ultimately, the Board found that the criteria for granting a variance were met and that the relief requested was the minimum variance that will afford the relief requested.

## **II. Request for Special Exception in accordance with Sections 165-199(B)(3)**

19. In the alternative, in order to accomplish this request, Applicants request a special exception in accordance with Section 165-199(B)(3) of the Upper Merion Zoning Code to permit the construction of a new bedroom and a one (1) story (2) car garage. In accordance with Section 165-199(B)(3), "Nonconforming structures being used for a conforming use may continue and may be extended or altered if the extension or alteration does not increase the nonconformity of the building or structure with respect to the height, setback, yard or coverage requirements of the district in which it is located. Notwithstanding the above, any single-family

dwelling which exists as a nonconforming structure may be altered, extended or added to in a manner which does not meet height, setback, yard or coverage requirements when authorized as a special exception.”

20. An applicant for a special exception has the burden of proving that it has met the criteria for a special exception contained in the ordinance. Shamah v. Hellam Township Zoning Hearing Board, 167 Pa. Cmwlth. 610, 648 A.2d 1299 (1994).

21. The applicant must prove not only that the proposed use is of a type permitted by special exception, but also that the proposed use complies with the other applicable requirements of the ordinance which expressly govern such a grant. Id.

22. Pursuant to Section 165-250B(1) of the Upper Merion Zoning Code, the Board is required to consider the following criteria that is outlined in Section 165-250B of the Zoning Code.

---

- a. The Applicant shall establish, by credible evidence, that the special exception complies with the statement of community development objectives as stated in Article I of this Chapter and with the declaration of legislative intent that may appear at the beginning of the applicable district under which approval is sought.
- b. The Applicant shall establish, by credible evidence, compliance with all conditions on the special exception enumerated in the section which gives the Applicant the right to seek a special exception.
- c. The Applicant shall establish, by credible evidence, that the proposed special exception will not adversely affect neighboring land uses in any

way and will not impose upon its neighbors in any way but rather shall blend with them in a harmonious manner.

- d. The Applicant shall establish, by credible evidence, that the proposed special exception shall be properly serviced by all existing public service systems. The peak traffic generated by the subject of the approval shall be accommodated in a safe and efficient manner, or improvements shall be made in order to effect the same. Similar responsibility shall be assumed with respect to other public service systems, including, but not limited to, police protection, fire protection, utilities, parks and recreation.
- e. The Applicant shall establish, by credible evidence, that the proposed special exception shall be in and of itself properly designed with regard to internal circulation, parking, buffering and all other elements of proper design.
- f. The Applicant shall provide the Board with sufficient plans, studies or other data to demonstrate compliance with all applicable regulations.
- g. The Board shall impose such conditions as are necessary to ensure compliance with the purpose and intent of this chapter, which conditions may include plantings and buffers, harmonious design of buildings and the elimination of noxious, offensive or hazardous elements.

23. At the hearing, Mark Picariello and Mary Ann Picariello asked questions and had comments regarding the drainage on the site. They live in a property adjacent to that owned by the applicant.

24. Ultimately the Board denied Applicants' request for special exception pursuant to Section 165-199(B)(3).

---

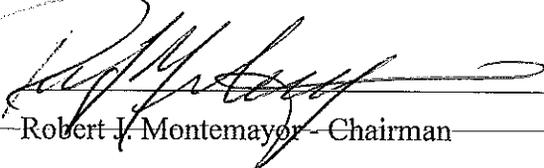
**ORDER OF THE UPPER MERION TOWNSHIP**

**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 165-33 C and D. This variance is granted conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on June 20, 2012. Applicants' request for special exception to Section 165-199 (B)(3) is denied.

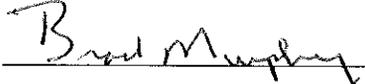
Decision Dated:

**UPPER MERION TOWNSHIP  
ZONING HEARING BOARD**



---

Robert J. Montemayor - Chairman



---

Brad Murphy - Vice Chairman



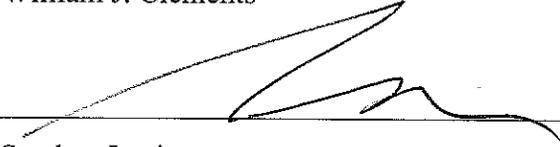
---

Lynne Z. Gold-Bikin - Secretary



---

William J. Clements



---

Stephen Levine

**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