

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2012-012 : **HEARING DATE:** June 20, 2012
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APPLICATION OF: :
Michael J. Fichera :
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:
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PROPERTY: : **DECISION DATE:** June 20, 2012
:
516 Valleywyck Drive :
King of Prussia, PA 19406 :

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

The applicant, Michael J. Fichera (hereinafter “Applicant”) filed an application requesting a variance from section 165-33 D. 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 June 20, 2010 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 Michael J. Fichera with a mailing address of 516 Valleywyck Drive, King of Prussia, Pa 19406.
2. The legal owner of the property is Michael J. Fischer and Maria Fichera, husband and wife.
3. At the hearing Maria Fichera joined in the application,
4. The property is located at 516 Valleywyck Drive, Upper Merion Township.
5. The applicant was not represented by an attorney,

6. The subject property is located in the R-2A zoning district.
7. The applicant request relief from section 165-33 D. of the Code relating to required rear yard setbacks.
8. The applicant proposed to expand the existing dwelling by adding a bedroom and expanding a half bath to a full bath to facilitate caring for his elderly father who recently suffered a stroke. The basement will be extended under the new bedroom and a new laundry room /sun room will be added.
9. The code provides for a rear yard set back of not less than thirty five (35) feet.
10. The extension will encroach into the setback by nineteen (19) feet.
11. The applicant testified that due to the size and dimensions of the lot there is no other suitable location for the proposed addition.
12. The applicant offered into evidence letters from three (3) neighbors in support of the project.
13. No neighbors testified against the application.
14. After considering the evidence and testimony at the hearing, the Board voted 5-0 to approve the application.

CONCLUSIONS OF LAW

1. The applicant is Michael J. Fichera with a mailing address of 516 Valleywyck Drive, King of Prussia, Pa 19406.
2. The legal owner of the property is Michael J. Fischer and Maria Fichera, husband and wife.
3. At the hearing Maria Fichera joined in the application,
4. The property is located at 516 Valleywyck Drive, Upper Merion Township.

5. The subject property is located in the R-2A zoning district.

6. The applicant proposed to expand the existing dwelling by adding a bedroom and expanding a half bath to a full bath to facilitate caring for his elderly father who recently suffered a stroke. The basement will be extended under the new bedroom and a new laundry room /sun room will be added.

7. In order to accomplish this request, the Applicant requires a variance to Section 165-33 D. of the Upper Merion Zoning Ordinance, to permit the expansion of the existing dwelling by adding a bedroom, the expansion of a half bath to a full bath the extension of the basement beneath the new bedroom, as well as the addition of a new laundry room/sun room. In accordance with Section 165-33 D., "there shall be a rear yard on each lot the depth of which shall be not 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."

8. 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).

9. 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).

10. 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.

11. 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 half bath to a full bath in order to facilitate caring for his elderly father who recently suffered a stroke. Additionally, Applicant seeks permission to extend the basement under the new bedroom and to add a new laundry room/sun room.

12. Applicant testified that, while the proposed extension will encroach into the setback by nineteen (19) feet, due to the size and dimensions of the lot there is no other suitable location for the proposed addition.

13. Applicant further demonstrated through his testimony that he would suffer unnecessary hardship if his request for a variance was denied due to the delicate health condition of his father.

14. Finally, Applicant offered into evidence letters from three (3) neighbors in support of the project to show that the proposed addition is not detrimental to the public welfare, nor will it alter the essential character of the neighborhood.

15. 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.

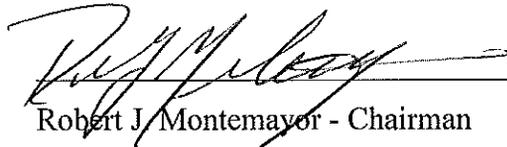
ORDER OF THE UPPER MERION TOWNSHIP

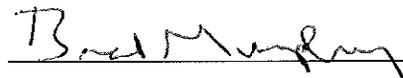
ZONING HEARING BOARD

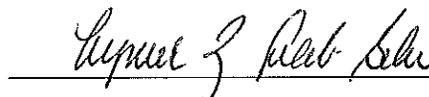
IT IS HEREBY ORDERED AND DECREED that the Board finds that the Applicant presented sufficient testimony to grant a variance to Section 165-33 D. This variance is granted conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on June 20, 2012.

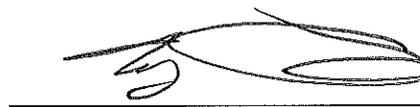
Decision Dated:

**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 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.