

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2012-014 : **HEARING DATE:** July 19, 2012
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APPLICATION OF: :
John J. and Lisa P. Egan :
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:
:
DECISION DATE: June 19, 2012
PROPERTY: :
505 Forrest Road :
King of Prussia, PA 19406 :

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

The Applicants, John J. Egan and Lisa P. Egan (hereinafter referred to as the “Applicant), filed an application requesting a variance to Section 165-29.C of the Upper Merion Zoning Code (the ”Code”). The application was properly advertised and a public hearing was held on July 19, 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 John J. Egan and Lisa P. Egan with a mailing address of r505 Forest Road, King of Prussia, Pa 19406.
2. The legal owners of the property are John J. Egan and Lisa P. Egan.
3. The property is located at 505 Forest Road Upper Merion Township.
4. The applicant was not represented by an attorney.
5. The subject property is a corner lot located in the R-1 Residential District.
6. The lot size is approximately 25,203 square feet on which is located a single family framed split level residence with an attached garage.

7. The applicant sought relief from section 165-29 C of the Code in order to erect and construct a one and a half story, detached two car garage.

8. Section 165-29 C. requires a 40 foot side yard setback for corner lots.

9. Applicants requested relief from that set back requirement to construct the detached garage within 25 feet of the side yard line.

10. John J. Egan testified on behalf of the applicant.

11. He proposed to turn the existing garage into living quarters, construct the detached garage and install a basket ball court on the premises.

12. He offered as an Exhibit a Plan prepared by AGG Architecture showing the proposed siting of the garage on the lot.

13. He testified that the proposed location of the garage within the set back was for convenience and aesthetic purposes. In response to questions from the Board, he admitted that there were other locations on the property where the garage could be erected in compliance with the Code but that he preferred the location indicated in the submitted plan.

14. Arthur Gerardi testified on behalf of the applicant. He is employed by the architectural firm that drafted the site plan.

15. He testified that there were other parts of the property on which the garage could be located but that there were grades on those locations that would make the project more difficult and less aesthetically pleasing.

16. Jay B. Grafton is a neighbor who resides at 510 Brookwood Road in Upper Merion, Pennsylvania.

17. He was represented by Frank Voutsakis, Esquire who requested and was granted party status.

18. Wayne W. Grafton was offered and accepted as an expert witness. He is the president of The Grafton Association, a Land Use and Planning firm located in Unionville, Pennsylvania. Among other positions he was a senior planner for the Montgomery County Planning Commission.

19. He offered as an exhibit an alternate site plan indicating two other locations on the property where the proposed structure could be sited and meet all code set back requirements.

20. He testified that the grade of the property was not an issue at these alternate sites.

21. He offered as his expert opinion that there was no compelling reason and no “legal hardship” resulting from physical circumstances unique to the property that would require the structure to be located on the site proposed by the applicant.

22. The applicant admitted that there were other locations on which the garage could be sited but that he preferred the proposed site for aesthetic and convenience factors.

23. There are no unique physical circumstances peculiar to the subject property that would inflict an unnecessary hardship on the applicant to locate the proposed structure on a portion of the property that would not require variance from the code.

24. The Board voted 5-0 to deny the requested relief.

CONCLUSIONS OF LAW

1. The Applicants are John J. Egan and Lisa P. Egan with a mailing address of r505 Forest Road, King of Prussia, Pa 19406.

2. The legal owners of the property are John J. Egan and Lisa P. Egan.

3. The property is located at 505 Forest Road Upper Merion Township.

4. The applicant was not represented by an attorney.

5. The subject property is a corner lot located in the R-1 Residential District.

6. Applicant proposed to turn the existing garage into living quarters, construct the detached garage and install a basketball court on the premises.

7. In order to accomplish this, the applicants sought relief from section 165-29 C of the Upper Merion Zoning Code, to permit the expansion of the existing dwelling by erecting and constructing a one and a half story, detached two car garage. In accordance with Section 165-29 C., "Upper Merion Township requires that all R-1 zoned residential districts shall comply with the following area, width and yard requirements:

(C). Side yards.

(1) On each interior lot there shall be two side yards having an aggregate width of not less than 40 feet, neither side yard having a width of less than 15 feet.

(2) On each corner lot there shall be two side yards, the side yard abutting the street having a width of not less than 40 feet and the side yard not abutting the street have a width of not less than 15 feet.

(3) On 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 10 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. 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. Cmwlt. 1999); Sotereanos, Inc. v. Zoning Board of Adjustment of the City of Pittsburgh, 711 A.2d 549 (Pa. Cmwlt. 1998).

10. 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. Cmwlt. 1996).

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 erecting and constructing a one and a half story, detached two car garage and constructing a basketball court on the property.

13. The applicant testified that he desired to construct the detached garage within 25 feet of the side yard line.

14. In response to questioning by the Board, applicant admitted there were other viable locations for the placement of the proposed expansions.

15. Arthur Gerardi of AGG Architecture presented on behalf of applicant and testified that there were other parts of the property on which the garage could be located but that there were grades on those locations that would make the project more difficult and less aesthetically pleasing.

16. Further, Jay B. Grafton, the adjoining landowner of applicant, testified to the effect that there was no compelling reason and no “legal hardship” resulting from physical

circumstances unique to the property that would require the structure to be located on the site proposed by the applicant and proposed two other alternatives for placement of the proposed expansion.

17. As a result of the foregoing, the Board found that there are no unique physical circumstances peculiar to the subject property that would inflict an unnecessary hardship on the applicant to locate the proposed structure on a portion of the property that would not require variance from the code.

18. The Board ultimately voted 5-0 to deny Applicants' requested relief.

ORDER OF THE UPPER MERION TOWNSHIP
ZONING HEARING BOARD

IT IS HEREBY ORDERED AND DECREED that the Board finds that the Applicants did not present sufficient testimony to grant a variance to Section 165-29(c) of the Upper Merion Zoning Code (the “Code) to expand the existing dwelling by erecting and constructing to erect and construct a one and a half story, detached two car garage and a basketball court. Accordingly, the Board denied your request for a variance to Section 165-29(c) of the Code.

Decision Dated: July 30, 2012

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.