ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2012-017	:	**HEARING DATE:** September 19, 2012
APPLICATION OF:	:	
Brian Hankin and Laurel Dasher	:	
	:	**DECISION DATE:** October 3, 2012
PROPERTY:	:	
399 Old Fort Road	:	
King of Prussia, PA 19406	:	

OPINION AND ORDER OF THE UPPER MERION TOWNSHIP ZONING HEARING BOARD

The Applicant, Brian Hankin and Laurel Dasher (hereinafter referred to as the "Applicant"), filed an application requesting a variance to Section 165-23. The application was properly advertised, and public hearing was held before the Upper Merion Township Zoning Hearing Board on September 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 Applicant is Brian Hankin and Laurel Dasher, with a mailing address of 10 Arrow Drive, Gilbertsville, PA 19525.

2. The owner of the property is Bernard Zelenak, with a mailing address at 399 Old Fort Road, King of Prussia, PA 19406.

3. The property is located at 399 Old Fort Road, King of Prussia, PA 19406.

4. The Applicant was not represented by an attorney.

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

6. The lot is approximately 9,786 square feet.

7. The Applicant desires to construct an attached 2 car garage with a master bedroom above the garage space in his side yard.

8. In accordance with Section 165-23 of the Code, the required side yard setback for the property is 30 feet.

9. The Applicant seeks a variance from Section 165-23 because the proposed garage will encroach into the side yard by 20 feet.

10. The Applicant testified that the property is located on a corner lot with a 10 ft setback on the front and side property thus limiting a large portion of the property. Due to the nature of the split level design of the building and the corner lot access, this is the only location in which to build the proposed garage with second floor addition.

11. No neighbors testified against the application.

12. After considering the evidence and testimony at the hearing, the Board voted 4-0 to approve the application.

CONCLUSIONS OF LAW

1. The Applicant requests a variance pursuant to Section 165-23 of the Code to construct an attached 2 car garage with a master bedroom above the garage space in his side yard

2. In accordance with Section 165-23, "dimensional regulations for all single family detached dwellings and permitted uses: Side 30ft."

3. 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).

4. 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).

5. 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.
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> 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.

6. Here, the Applicant is requesting permission to construct an attached 2 car garage with a master bedroom above the garage space in his side yard, which will encroach into the required side yard setback.

7. Applicant testified that, while the proposed construction will encroach on the required side yard setback by 20 ft, that the property is located on a corner lot with a 10 ft setback on the front and side property thus limiting a large portion of the property. Due to the nature of the split level design of the building and the corner lot access, this is the only location in which to build the proposed garage with second floor addition.

8. 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 165-23. The variance is granted conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on October 3, 2012.

Decision Dated: October 3, 2012

UPPER MERION TOWNSHIP
ZONING HEARING BOARD

Robert J. Montemayor - Chairman

Brad Murphy – Vice Chairman

Lynne Z. Gold-Bikin - Secretary

William J. Clements

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.