

**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP**

APPLICATION NO. 2010-01 : HEARING DATE: May 5, 2010  
: :  
APPLICATION OF: Geraldine Moley : DECISION DATE: June 16, 2010  
: :  
: :  
PROPERTY: 503 Coates Lane : :  
: :  
Upper Merion Township :

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

The Applicant, Geraldine Moley, (hereinafter referred to as the "Applicant"), filed an application requesting a variance to Section 165-61 in order to locate an accessory structure within the required front yard setback area. The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on November 18, 2009 at the Upper Merion Township Building. All members of the Zoning Hearing Board, except Mark DePillis, Esq., were present as well as the Solicitor, Zoning Officer, and Court Reporter. Brad Murphy, the alternate for the board, sat in place of Mr. DePillis.

**FINDINGS OF FACT**

1. The Applicant is Geraldine Moley, 503 Coates Lane, King of Prussia, PA 19406.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 503 Coates Lane, King of Prussia, PA 19406.
4. The Applicant was not represented by an attorney.

5. The property is zoned "R-3" Residential.
6. The lot is approximately 13,800 sq. ft.
7. The Applicant is proposing to locate an accessory structure within the required front yard setback area.
8. The Applicant is requesting a variance to permit a garage in the front yard.
9. The garage is 12 ft. by 24 ft.
10. The garage has been in existence since December 23, 1974.
11. The garage is used to house a 1931 Chevrolet automobile.
12. The Applicant previously applied for relief and was denied, however, the current application is different from the previous application and the current application is asking for relief for only one (1) structure, rather than two (2) structures.
13. The protestant can not see the proposed structure from his house.
14. The proposed relief will not increase traffic.
15. The proposed relief is consistent with the character of the neighborhood.
16. The proposed relief will not add any additional noise.
17. The proposed relief has absolutely no impact whatsoever on any adjacent property owners.
18. The protestant did not offer any testimony showing how he is impacted from the relief other than saying that he was previously denied relief to have a structure in his front yard.
19. The location of the structure does not impair anyone's view.
20. The placement of the structure is the most logical location for the subject property.

21. The Applicant introduced fifteen (15) picture and marked them collectively as Exhibit “A-1” through “A-15”.
22. Several neighbors testified in favor of the project.
23. There is no water and no electric to the structure.
24. The neighbors that testified in favor of the project indicated that there is no harm suffered from having the garage in the front yard and that the structure does not bother anyone in the area.
25. Nicholas DeRosato, 150 Evergreen Lane, King of Prussia, PA 19406, entered his appearance against the application.

### **DISCUSSION AND CONCLUSIONS OF LAW**

The Applicant, Geraldine Moley, filed an application requesting a variance to Section 165-61 in order to locate an accessory structure within the required front yard setback area.

As a preliminary matter, 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).

In Hertzberg, the Supreme Court held that the Zoning Hearing Board must, at the beginning of its analysis of an appeal from the terms of a Zoning Ordinance, determine whether the requested relief is for a use variance or a dimensional variance. Id. If the Board determines

that the relief is for a use variance, then the Board should use the traditional five-part test, which is set forth in both the Municipalities Planning Code and case law. If the requested relief is for a dimensional variance, then the standard to be applied will be different. Id. While the Court in Hertzberg did not specifically identify a single standard for a dimensional variance, it noted that the requirements for a dimensional variance were something less than that of a use variance. Id.

In its opinion, the Court went on to opine that some of the factors that a Zoning Hearing Board should look at to determine whether to grant a dimensional variance should include, where applicable:

- (1) The economic detriment to Applicant if the variance was denied;
- (2) The financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements; and,
- (3) The characteristics of the surrounding neighborhood. Id.

While these factors are not exhaustive, the Court in Hertzberg and subsequent cases have referred to them specifically as findings a Zoning Hearing Board should make in its determination of whether to grant or deny a dimensional variance.

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).

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).

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:

1. 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.
2. 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.

3. That such unnecessary hardship has not been created by the Applicant.
4. 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.
5. 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.

The Applicant is asking for permission to have a garage in the front yard that has existed for over thirty-five (35) years. The next door neighbor, Mr. DeRosato, entered his appearance in opposition, but could not describe what impact it would have on his property other than to testify that he was previously denied relief to have a structure in his front yard. Mr. DeRosato's application was significantly different than the case at bar. The proposed relief for the subject property would have absolutely no impact on any adjacent property owners or on the neighborhood whatsoever. The structure has been in existence for a considerable time period with no complaints from the neighbors.

Through the use of testimony and exhibits, the Applicant sufficiently satisfied the standards as outlined above, therefore, the variance should be granted.

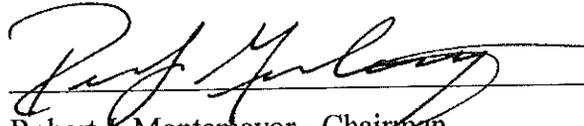
**ORDER OF THE UPPER MERION TOWNSHIP**

**ZONING HEARING BOARD**

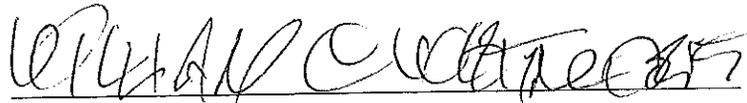
**IT IS HEREBY ORDERED AND DECREED** that the Board finds that the Applicant presented sufficient testimony to grant a variance to Section 165-61, in order to locate an accessory structure within the required front yard setback. This variance is conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on May 5, 2010.

Decision Dated: June 16, 2010

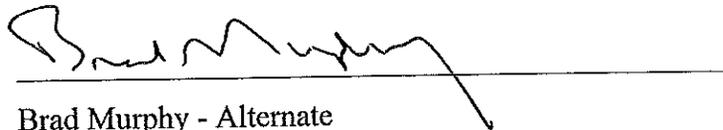
**UPPER MERION TOWNSHIP  
ZONING HEARING BOARD**



Robert J. Montemayor - Chairman



William C. Whitmore, Sr. - Secretary



Brad Murphy - Alternate

**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.