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**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP**

APPLICATION NO. 2009-26 : HEARING DATE: October 7, 2009  
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APPLICATION OF: R. Scott Cochrane : DECISION DATE: November 18, 2009  
: :  
: :  
PROPERTY: 141 Hughes Road : :  
: :  
Upper Merion Township :

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

The Applicant, R. Scott Cochrane, (hereinafter referred to as the "Applicant"), filed an application requesting a variance to Section 165-22 in order to construct a second kitchen in the existing dwelling ("Zoning Application"). The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on October 7, 2009 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 R. Scott Cochrane, 632 Fawn Circle, King of Prussia, PA 19406.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 141 Hughes Road, King of Prussia, PA 19406, Upper Merion Township, further identified as Tax Parcel # 58-00-11074-001 ("Property").
4. The Applicant was not represented by an attorney.
5. The Property is zoned "R1-A " Residential.

6. The lot is approximately 1.09 acres.
7. The Property is served by public water and private on-lot septic.
8. The Property contains a single family residential dwelling with a separate in-law suite located on the lower level of the home and a shared driveway with 145 Hughes Road.
9. The Applicant testified that he purchased the Property in 2004 and there was an existing in-law suite on the lower level of the dwelling complete with full bath, kitchen, living area, separate electric and a separate entrance. See Exhibits 1, 2, 3 and 6 attached to the Zoning Application.
10. The Zoning Application indicates that the "in-law suite" was used in the past but not properly zoned." See Zoning Application, Attachment A.
11. The Applicant testified that he is presently renovating the house and, in order to fix a water problem in the basement, he had to almost completely gut the basement area.
12. The Applicant is requesting that he be permitted to restore the original kitchen with the original miniaturized electric stove with exterior vent fan, refrigerator, sink and cabinets.
13. The Applicant testified that there will be no visible exterior changes.
14. The Applicant testified that most of the basement walls are being left untouched and the changes to the original layout are minor and include: adding a closet to the bedroom; widening the coat closet outside of the bathroom; moving the utility door to make it larger and easier to access; redirecting the stairs from the first floor so the bottom landing enters into the utility room instead of into the bedroom; adding a window to the kitchen area. See Zoning Application, Attachment A and Picture 4, Exhibit 5.

15. The Applicant testified that the house is presently vacant and he wants his family to live there and his parents to live in the in-law suite.
16. The Applicant testified that he did not know when the in-law suite was constructed but thought that the house was built in the 1950's.
17. Neighbor Gina McNeil of 145 Hughes Road testified in opposition to the requested relief and explained that her concern is that the Applicant's family will not move into the home and that it will be sold and used as a multi-family dwelling.
18. Neighbor Joe Backe of 133 Hughes Road testified in opposition to the requested relief. Mr. Backe testified that he grew up at 137 Hughes Road and was in the Property and that the basement was a pool room at that time. Mr. Backe testified that when the prior owner divorced her husband, she constructed the illegal apartment in the basement.
19. Neighbor Harry Arena of 129 Hughes Road testified in opposition to the requested relief due to his concern about a multi-unit dwelling in the neighborhood and college students living at the Property.
20. Neighbor Henry Backe of 137 Hughes Road testified that his son, Joe Backe, spent a lot of time at the Property when he was growing up and that there were no kitchen facilities in the lower level of the home at that time.
21. There were no residents who testified in favor of the project.

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

The Applicant, R. Scott Cochrane, (hereinafter referred to as the "Applicant"), filed an application requesting a variance to Section 165-22 in order to construct a second kitchen in the

existing dwelling. Section 162-22 .A., Use Regulations, allows for a single-family detached dwelling in the R1-A zoning district. Single-family detached dwelling is defined as follows:

DWELLING, SINGLE-FAMILY DETACHED – A building designed for and occupied exclusively as a residence for only one (1) family and having no party wall in common with an adjacent building. Where a private garage is structurally attached to such building, it shall be considered as a part thereof. In the event that an existing "single-family detached dwelling" is expanded to include additional rooms, including an additional kitchen, whether located in such addition or not, such dwelling shall be considered to be a two-family dwelling as defined herein.  
[Amended 2-13-1967 by Ord. No. 67-198]

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's request for a variance to permit the additional kitchen is a use variance since a single-family detached dwelling is permitted in R1-A zoning district and the Applicant is

requesting that the property be permitted to be used as a two-family dwelling. The Applicant has not presented any unique physical circumstances or conditions inherent in the Property that render it practically valueless. There is simply no hardship inherent in the Property that would necessitate the need for a variance in order to utilize the Property. In fact, the Property has a single-family detached dwelling and can be used for such. Wilson v. Plumstead Township Zoning Hearing Board, 894 A.2d 845, 853-54 (Pa.Cmwlth.2006). The Applicant has presented no testimony or evidence pursuant to the requirements of 53 P.S. § 10910.2 as to the need for a use variance and, therefore, the Applicant' request is denied.

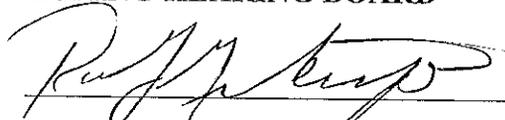
**ORDER OF THE UPPER MERION TOWNSHIP**

**ZONING HEARING BOARD**

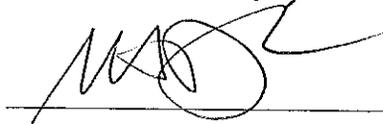
**IT IS HEREBY ORDERED AND DECREED** that the Board finds that the Applicant did not present sufficient testimony and/or evidence to grant the requested variance, therefore the application is denied.

Decision Dated: November 18, 2009

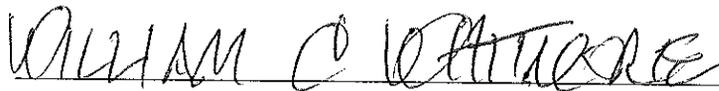
**UPPER MERION TOWNSHIP  
ZONING HEARING BOARD**



Robert J. Montemayor - Chairman



Mark S. DePillis, Esq. - Vice Chairman



William C. Whitmore, Sr. - Secretary

**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.