



ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2009-15 : **HEARING DATE:** July 1, 2009
 :
APPLICATION OF: Shawn and Natasha : **DECISION DATE:** August 5, 2009
 Coyle :
 :
PROPERTY: 345 King of Prussia Rd. :
 :
 Upper Merion Township :

OPINION AND ORDER OF THE UPPER MERION TOWNSHIP ZONING HEARING BOARD

The Applicant, Shawn Coyle and Natasha Barton, (hereinafter referred to as the "Applicant"), filed an application requesting a variance to Section 165-28 in order to construct an accessory structure 25 ft. in height, whereas the code allows a maximum of 14 ft. in height. The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on July 1, 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 Shawn Coyle and Natasha Barton, 345 King of Prussia Road, Wayne, PA 19087.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 345 King of Prussia, Road, Wayne, PA 19087, Upper Merion Township.

4. The Applicant was not represented by an attorney.
5. The property is zoned "R-1 " Residential.
6. The lot is approximately .47 acres.
7. The Applicant is requesting a variance to build a detached garage that is taller than the maximum height permitted for accessory structures.
8. At the time of the hearing, the Applicant agreed to reduce the height variance request from 25 ft. tall to only 22 ft. tall because the additional 3 ft. was not needed for the Applicant's proposed use of the structure.
9. The existing house has been recognized by Upper Merion Township as having some historic value based on its age, style and size of the home.
10. The proposed barnlike garage best highlights the architectural and historical features of the main dwelling.
11. The Applicant can build a structure 35 ft. tall if it is attached to the house, however, the Applicant wants the structure to be detached because the existing walls of the main dwelling are 200 year old stone walls that the Applicant is attempting to preserve. By preserving the stone walls, the Applicant is limited to 14 ft. in height for an accessory building.
12. There is an existing well on the site located close to the corner of the house that would make it difficult to connect the garage to the house.
13. The Applicant agreed to the following conditions:
 - a. The garage building will have no living quarters.
 - b. There will be no plumbing in the structure other than for a mudroom.
 - c. The garage will never be converted to a commercial use.

- d. There will be no air conditioning in the garage structure.
 - e. There will be no kitchen in the proposed structure.
 - f. The access to the loft above the garage must be an interior access and never an exterior access.
14. The Applicant is proposing a loft above the garage so the Applicant can perform a woodworking hobby from his house.
15. There were no residents who testified in favor of the project.
16. There were no residents who testified against the project.

DISCUSSION AND CONCLUSIONS OF LAW

The Applicant, Shawn Coyle and Natasha Barton, (hereinafter referred to as the “Applicant”), filed an application requesting a variance to Section 165-28 in order to construct an accessory structure 25 ft. in height, whereas the code allows a maximum of 14 ft. in height.

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 proposing a 22 ft. high accessory detached garage. The Applicant currently has an existing single family dwelling that has some historic value because it is over 200 years old. If the Applicant attached the garage to the house, then the garage structure could be 35 ft. high. The Applicant has elected not to attach the garage to the house, therefore, the maximum height permitted under the Code is only 14 ft. for an accessory structure. The Applicant is proposing that the garage be detached simply because they want to preserve the over 200 year old stone façade of the main dwelling. The Applicant would also find it difficult to attach the garage because of the location of the existing well. By preserving the architectural features of the house, the Applicant must detach the garage and, in turn, ask for a variance. The variance requested is dimensional in nature, therefore, the standards of the Hertzberg case are applicable to the case at bar. The Applicant, through the use of testimony and the materials

submitted with the application, have sufficiently satisfied the standards of the Hertzberg case, therefore, the variance should be granted.

ORDER OF THE UPPER MERION TOWNSHIP

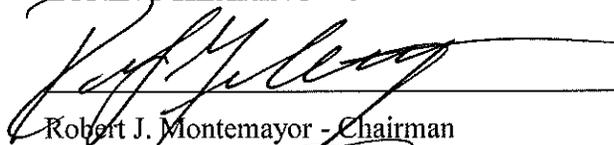
ZONING HEARING BOARD

IT IS HEREBY ORDERED AND DECREED that the Board finds that the Applicant presented sufficient testimony to grant a variance to Section 165-28 in order to construct an accessory structure 22 ft. in height, whereas the code allows a maximum of 14 ft. in height. This variance is conditioned upon the following:

1. The Applicant's compliance with the testimony of the Applicant at the public hearing on July 1, 2009.
2. The garage and the loft above the garage will never be used for living quarters.
3. The accessory structure will have no plumbing other than a mudroom and sink.
4. The accessory structure will never be used as a commercial use.
5. The accessory structure will have no air conditioning.
6. The accessory structure will never have a kitchen.
7. The accessory structure must take access to the second story loft through the interior of the premises and never have exterior access to the loft.

Decision Dated: August 5, 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.