

**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

APPLICATION OF FRANCIS E. SCHULTZ, JR.

NO. 2012-026

**PROPERTY: 707 FLINT HILL ROAD
KING OF PRUSSIA, PA 19406**

OPINION AND ORDER

This zoning application involves an industrial landowner's request for variances to permit removal of a dilapidated, vacant, dimensionally nonconforming dwelling and allow the construction of an office/warehouse building on a property located in the LI Limited Industrial District.

On April 3 and 17, 2013, the Zoning Hearing Board ("ZHB") of Upper Merion Township ("Township") held public hearings with regard to application No. 2012-026 of Francis E. Schultz, Jr. ("Landowner"). The members of the ZHB present were William J. Clements, Esq., Chairman; Lynne Gold-Bikin, Esq., Vice-Chair; Brad Murphy, Secretary; John M. Tallman, Jr., Member; and Mark DePillis, Esq., Member. The ZHB was represented by Marc D. Jonas, Esq., of the law firm of Eastburn and Gray, P.C., solicitor for the ZHB. Landowner was represented by Gregory Heleniak, Esquire.

Landowner sought dimensional variances from section 165-146.A and B.1; a front yard parking variance from section 165-148; a buffer variance from section 165-149; a loading space variance from section 165-194.A; a parking area screening variance from section 165-217.A; and a building and parking area variance from section 165-146.E of the Upper Merion Township Zoning Ordinance of 1942, as amended ("Ordinance") to permit an office/warehouse building in the LI zoning district.

The ZHB admitted the following exhibits into the record:

Landowner exhibits

- A-1 boundary and topographic survey plan prepared by Joseph M. Estock, P.E., dated September 20, 2011
- A-2 colorized plan
- A-3 nine photographs of the property
- A-4 plan
- A-5 plan entitled "Landscape Plan", prepared by Orsatti & Associates, Inc., dated April 10, 2013, revised April 11, 2013

Objector exhibits

- P-1 photograph
- P-2 letter

The zoning hearings were duly advertised, notice thereof was given in accordance with the requirements of the Ordinance, and the proceedings were stenographically recorded. After careful consideration, the ZHB makes the following findings of fact and conclusions of law:

A. FINDINGS OF FACT

BACKGROUND

1. Landowner is the owner of the parcel of land located at 707 Flint Hill Road, King of Prussia, Pennsylvania ("Property"). [N.T. 29]
2. The Property is approximately 15,275 square feet in area and is zoned LI Limited Industrial District. The Matsunk Creek runs through the Property, and

approximately 1/3 of the Property is located in the FEMA floodplain. An emergency spillage detention basin encompasses approximately 80% of the building area of the Property, leaving a building envelope of approximately 1,000 square feet. [N.T. 12-15; Exhibit A-4]

3. Improvements on the Property include a 2 ½ story dilapidated vacant dwelling. The dwelling is nonconforming as to front and side yard setbacks. [N.T. 11, 15; Exhibits A-1, A-3]

4. Landowner proposes the demolition of the existing dwelling and the construction of a 2,000 square foot office/warehouse building, with 6 parking spaces. [N.T. 15-16; Exhibit A-4]

5. Sections 165-146.A and B.1 of the Ordinance require a minimum front yard setback of 40 feet and a 40 foot aggregate side yard setback, with minimum side yards of 15 feet.

6. Landowner's application requests dimensional variances to permit a front yard setback of 26.5 feet and 1 side yard setback of 7.5 feet.

7. Section 165-148 of the Ordinance does not permit parking in the front yard and within 50 feet of a residential district. Section 165-194 requires a front yard buffer.

8. Landowner seeks a variance to permit parking in the front yard and within 50 feet from the R-3 Residential District, and to eliminate the required front yard buffer.

9. Section 165-194.A of the Ordinance requires 1 off-street loading space.

10. Landowner requests a variance to eliminate the 1 off-street loading space.

11. Section 165-217.1.A of the Ordinance requires screening of the parking area.

12. Landowner requests a variance to eliminate the screening of the parking area.

13. Section 165-146.E of the Ordinance does not permit a building to be located within 150 feet of a residential district and does not permit parking to be located within 50 feet of a residential district.

14. Landowner seeks variances to permit a building located within 150 from the R-3 Residential District and parking located within 50 feet from the R-3 Residential District.

ZHB HEARING

15. Landowner testified and offered the testimony of Joseph M. Estock, P.E., in support of the application.

16. The testimony was as follows:

- the Property is small in terms of area, about a third of an acre [N.T. 11];
- the Property has an existing vacant dwelling in deplorable condition [N.T. 11];
- the Matsunk Creek traverses the Property [N.T. 12];
- approximately 1/3 of the Property is within the FEMA floodplain [N.T. 12];
- an emergency spillage detention basin is located on the Property [N.T. 12];
- the emergency spillage detention basin takes up approximately 80% of the buildable area of the Property [N.T. 13-14; Exhibit A-2];
- the Property's building envelope is approximately 1,000 square feet [N.T. 15];

- the existing dwelling is nonconforming as to front and side yard setbacks [N.T. 15];
- the proposal is to demolish the existing dwelling and to construct a 2000 square foot, 2- story office/warehouse building [N.T. 15-16];
- six parking spaces are proposed [N.T 16];
- the Property is zoned LI Limited Industrial; the zoning across the street from the Property is R-3 Residential [N.T. 18];
- the creek and the floodplain necessitate encroachment into the front and side yard setbacks and the placement of parking in the front yard [N.T. 20-25];
- screening of the parking area in the front yard would block the sight lines of vehicles exiting the Property onto Flint Hill Road [N.T. 26];
- the proposed building square footage was kept to a minimum to avoid the need for additional variances [N.T. 28];
- the Property is uniquely configured [N.T. 29];
- Landowner will provide landscaping in the front yard [N.T. 34; Exhibit A-5];
- only 4 parking spaces are required by the Ordinance [N.T. 37]; and
- Landowner will limit signage on the Property to building signage as permitted by the Ordinance [N.T. 44].

17. Three neighboring property owners spoke in favor of the application. [N.T. 44-

47]

18. Three neighboring property owners spoke in opposition to the application.

Their concerns were:

- traffic
- stormwater management
- buffering
- aesthetics
- residential character of the neighborhood.

[N.T. 48-63]

B. DISCUSSION

VARIANCES

It is well settled in Pennsylvania that a zoning hearing board may grant a variance where:

1. an unnecessary hardship will result if the variance is denied, due to the unique physical circumstances or conditions peculiar to the property;
2. because of the physical conditions, the property cannot be developed in conformity with the zoning ordinance and, therefore, a variance is necessary to enable the reasonable use of the property;
3. the unnecessary hardship was not created by the applicant;
4. the variance will not be detrimental to the public welfare;
and
5. the variance sought will represent the minimum variance that will afford relief.

53 P.S. § 10910.2(a); *Cope v. Zoning Hearing Bd. of South Whitehall Township*, 134 Pa.Cmwth. 236, 578 A.2d 1002 (1990).

Variations should be granted sparingly, and the reasons for granting variations must be substantial and compelling. *Laurento v. Zoning Hearing Board of the Borough of West Chester*, 628 A.2d 437 (Pa.Cmwlth. 1994). To prove unnecessary hardship, a landowner must demonstrate that either the physical characteristics of the property are such that it could not in any case be used for any permitted purpose, or that the characteristics of the property are such that the lot has either no value or only distress value for any purpose permitted by the ordinance. *Laurento* at 439.

Landowner demonstrated unique physical conditions of the Property that have caused an unnecessary hardship prohibiting reasonable development of the Property, thereby entitling Landowner to variances to construct an office/warehouse building in the LI Limited Industrial District.

Landowner demonstrated unique physical conditions constraining the reasonable use of the Property. The Matsunk Creek runs through the Property, and a substantial portion of the Property is located with the FEMA floodplain. [N.T. 12; Exhibit A-2] The Property also contains an emergency spillage detention basin. [N.T. 12] The emergency spillage detention basin takes up approximately 80% of the buildable area of the Property [N.T. 13-14; Exhibit A-2]

These unique physical conditions of the Property reduce the size of the building envelope to approximately 1,000 square feet. [N.T. 15; Exhibit A-2] In order to reasonably develop the Property, dimensional, buffer, screening, and parking variances are required. Landowner's professional engineer testified:

I don't think there is any question. When you plot the building setback lines, there is really no allowable area to provide a spot for a reasonable size building inside the building setback lines. And because of that, also the parking too. [N.T. 28]

Landowner also provided evidence that the variances requested represent the minimum amount necessary to afford relief:

So we understand we have somewhat of a laundry list of relief to do this, but it was just our intent to provide the smallest LI building that we could, which is only forty foot by twenty-five feet in that LI District and keep it as far away from the constraints of the site, which is the floodplain, and still make some reasonable use of the property. The building is similar size to like the existing building, really, but it would be the LI use that is the underlying zoning district. [N.T. 26-27]

...

We made the building pretty much as small as we can to minimize the variance. [N.T. 28]

Thus, Landowner demonstrated that the Property cannot be reasonably developed in strict conformity with the Ordinance given the Property's unique characteristics, and, therefore, variances are warranted to permit the construction of an office/warehouse building in the LI zoning district.

C. CONCLUSIONS OF LAW

1. The ZHB has jurisdiction under section 909.1(a)(4) of the Pennsylvania Municipalities Planning Code, 53 P.S. §10909.1(a)(4), and Ordinance section 165-251.A(5).
2. Landowner has standing as the owner of the Property.
3. The ZHB is obligated to ensure compliance with the technical requirements of the Ordinance.
4. The ZHB may grant a variance provided that an applicant demonstrates that: (a) an unnecessary hardship will result if the variance is denied due to the unique

physical circumstances or conditions peculiar to the property; (b) because of the physical conditions, the property cannot be developed in conformity with the zoning ordinance, prohibiting the reasonable use of the property; and (c) the variance, if authorized, will represent the minimum variance that will afford relief. Ordinance §165-251.B(2).

5. Landowner provided substantial competent evidence satisfying the requirements for variances to permit construction of a dimensionally non-compliant office/warehouse building on the Property.

6. The ZHB has the power to impose reasonable conditions based on the evidence presented at the hearing.

At the conclusion of its April 17, 2013 hearing, the ZHB entered the following order:

ORDER

AND NOW, this 17th day of April, 2013, on the application of Francis E. Schultz, Jr., the following relief is GRANTED:

1. A variance from section 165-146.A to encroach into the required front yard setback;
2. A variance from section 165-146.B.1 to encroach into the required side yard setback;
3. A variance from section 165-148 to allow parking in the front yard and to allow parking within fifty feet of a residential district;
4. A variance from section 165-149 to eliminate the front yard buffer requirements;
5. A variance from section 165-194.A to eliminate the off-street loading space;
6. A variance from section 165-217.1.A to eliminate the required screening for the parking area; and

7. A variance from section 165-146.E to allow a building within a 150 feet of a residential zoning district and allow a parking area within 50 feet of a residential district.

The approval is conditioned upon the planting of shrubs and trees described on Exhibit A-5, the plan entitled "Landscape Plan", prepared by Orsatti & Associates, Inc., dated April 10, 2013, revised April 11, 2013. In addition to preserving the trees shown on the landscape plan, the applicant/owner shall plant the described parking lot landscaping, street trees, buffer landscaping, and building plantings.

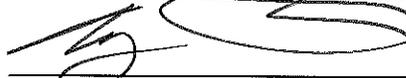
Since this application was contested, the Zoning Hearing Board will issue an opinion with findings of fact and conclusions of law.

This decision is subject to a 30-day appeal period beginning on the date of entry (mailing) of this notice of decision.

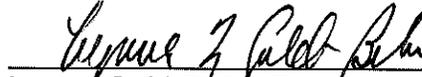
The applicant is directed to section 165-257 "Expiration of Special Exceptions or Variances" and applicable statutory provisions governing the expiration of special exceptions and variances.

Written notice of the ZHB's decision was mailed to Landowner on April 18, 2013.

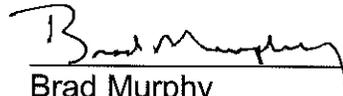
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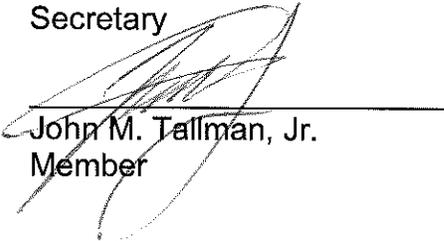
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Vice-Chair



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Member

Mark DePillis, Esquire
Member

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