

**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP**

**APPLICATION NO.** 2010-11 : **HEARING DATE:** July 7, 2010  
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**APPLICATION OF:** Frank P. Ermilio, Jr. : **DECISION DATE:** July 21, 2010  
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**PROPERTY:** 121 Ivy Lane :  
:  
Upper Merion Township :

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

The Applicant, Frank P. Ermilio, Jr., (hereinafter referred to as the “Applicant”), filed an application requesting a variance to Section 165-97 in order to convert a portion of the existing office building into a residential apartment. The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on July 7, 2010 at the Upper Merion Township Building. All members of the Zoning Hearing Board, except William C. Whitmore, Sr., were present as well as the Solicitor, Zoning Officer, and Court Reporter. Brad Murphy, the alternate for the board, sat in place of Mr. Whitmore.

**FINDINGS OF FACT**

1. The Applicant is Frank P. Ermilio, Jr., 1608 Walnut Street, Suite 401, Philadelphia, PA 19103.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 121 Ivy Lane, King of Prussia, PA 19406, Upper Merion Township and is further identified as Tax Parcel #58-00-11194-00-7 (“Property”).

4. The Applicant was not represented by an attorney.
5. The following were marked as exhibits:
  - A-1: 3 photographs of the Property;
  - A-2: Philadelphia Business Journal Article: “King of Prussia plans expansive improvement zone”
  - A-3: Plan titled “Existing Plans and Notice; Proposed Floor Plan; Elevations”
6. The Property is zoned “C-O” Commercial/Office.
7. The Property is served by public water and public sewer.
8. The Property is improved with a 1 ½ story residential structure with full basement that is used for office space for the Applicant’s title company, Olde City Abstract. See Exhibits A-1; A-3.
9. The Property is also improved with a six (6) car parking lot.
10. The Applicant testified that the neighborhood consists of residential houses built in the 1950’s.
11. The neighborhood has slowly changed over the years and the zoning has changed to “C-O” Commercial/Office.
12. The Applicant testified that the neighborhood is a mixed use neighborhood with residential uses and commercial uses in the houses. Some houses are residential with a home office.
13. The Applicant is proposing a portion of the first floor to continue to be used as an office with one employee and a portion of the first floor and the second floor to be used as a residential apartment.
14. Exhibit A-3 shows the existing and proposed improvements to the house. The second floor has 2 bedrooms and a bath. The physical layout of the second floor has not

changed since the Applicant purchased the Property and no changes are proposed as part of the application. The basement will also remain the same.

15. The improvements required for the first floor are minimal and include downsizing the office space and adding a kitchen. There will be one kitchen in the entire house once the improvements are completed.
16. There will be separate entrances for the office space and the residential area.
17. The office use is from 9 a.m. to 5 p.m. Monday through Friday. The Applicant testified that it is rare to have 5 or 6 cars in the parking lot during office hours. Only 1 full-time employee works at the Property and the Applicant is at the location one or two times a week.
18. The Applicant testified the proposed mixed use of the Property would improve the safety and welfare of the neighborhood since there would be someone at the Property on nights and weekends. Activity and a presence at the Property will improve the welfare of the street.
19. There were no residents who testified in favor of the project.
20. There were no residents who testified against the project.

## **DISCUSSION AND CONCLUSIONS OF LAW**

The Applicant, Frank P. Ermilio, Jr., filed an application requesting a variance to Section 165-97 in order to convert a portion of the existing office building into a residential apartment.

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.

Through the use of testimony and exhibits, the Applicant has met its burden to prove entitlement to a variance to allow a portion of the existing office to be used as a residential apartment. The requested variance is the minimum to afford relief and, due to the unique nature of the neighborhood, the proposed use will not adversely affect the public health, safety and welfare.

**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 165-97 in order to convert a portion of the existing office building into a residential apartment. This variance is conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on July 7, 2010.

Decision Dated: July 21, 2010

**UPPER MERION TOWNSHIP  
ZONING HEARING BOARD**

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Robert J. Montemayor - Chairman

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Mark S. DePillis, Esq. – Vice Chairman

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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.