

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

APPLICATION OF EDWARD AND CLAIRE SILCOX

NO. 2014-04

**PROPERTY: 256 EAST VALLEY FORGE ROAD
KING OF PRUSSIA, PA 19406**

OPINION AND ORDER

This zoning application involves residential landowners' request for a variance to permit the construction of a carport within 10 inches of the side property line. The zoning ordinance requires a side yard setback of 3 feet.

On May 7, 2014, the Zoning Hearing Board ("ZHB") of Upper Merion Township ("Township") held a public hearing with regard to application no. 2014-04 of Edward and Claire Silcox ("Landowner"). The members of the ZHB present were Lynne Gold-Bikin, Esq., Chairwoman; Maria Mengel, Acting Secretary; Judith A. Vicchio, Member; and, John M. Tallman, Jr., 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 not represented by counsel.

Landowner sought a variance from the Upper Merion Township Zoning Ordinance of 1942 ("Ordinance"), specifically, section 165-206.C(3), to permit construction of a carport less than 3 feet from the side lot line.

The ZHB admitted the following exhibits into the record:

Landowner exhibits

- A-1 color photograph of the side property line
- A-2 color photograph of the side property line

The zoning hearing was 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 256 East Valley Forge Road, King of Prussia, Pennsylvania ("Property"). [N.T. 6-8]
2. The Property is approximately 10,600 square feet in area and is zoned R-2 Residential District. [N.T. 5]
3. Improvements on the Property include a single-family dwelling with an attached garage that was converted into a laundry room. [N.T. 14-16]
4. Landowner proposes the construction of 23' by 10' carport to be located within 10 inches of the side property line. [N.T. 13; Exhibits A-1, A-2]
5. Section 165-206.C(3) of the Ordinance provides that a *porte cochere* may be erected over a driveway in a required side yard, provided that such structure is at least 3 feet from the side lot line.
6. Landowner's application requests a variance to permit construction of a carport over an existing driveway in a required side yard within 10 inches from the side lot line.

ZHB HEARING

7. Landowner Claire Silcox testified, and offered the testimony of Jason Cimino, a builder, in support of the application.

8. The testimony was as follows:

- the proposed carport is needed for personal reasons, to provide access to the dwelling for Landowner's elderly husband and daughter without being exposed to inclement weather [N.T. 7];
- Landowner's abutting neighbor supports the variance request [N.T. 8];
- Landowner originally believed that the driveway over which the carport would be constructed was 2 feet from the side property line, but a survey of the Property determined that the driveway is located 10 inches from the side property line [N.T. 10];
- the size of the proposed carport is 23' by 10' [N.T. 13];
- the closest part of the carport structure is 10 inches from the side property line [N.T. 15]; and
- the existing garage was converted into a laundry and storage room 10 years ago [N.T. 16].

9. No one spoke in opposition to the application.

INSUFFICIENCY OF THE EVIDENCE

10. Landowner failed to offer proof that the Property suffers an unnecessary hardship that would justify the ZHB's grant of the requested variance.

11. Landowner failed to offer proof that the variance is necessary to permit a reasonable use of the Property. To the contrary, the Property is being reasonably used as a single-family dwelling with attached garage converted into a laundry and storage room.

12. Landowner failed to offer proof that the requested variance was the minimum variance that would afford relief.

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.Cmwlth. 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.Cmwlt. 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.

The Commonwealth Court consistently rejects requests for dimensional variances where proof of hardship is lacking. *Lamar Advantage GP Company v. Zoning Hearing Board of Adjustment of the City of Pittsburgh*, 997 A.2d 423, 445 (Pa.Cmwlt. 2010).

- 1. Landowner failed to demonstrate unique physical conditions of the Property that have caused an unnecessary hardship prohibiting reasonable use of the Property.**

Landowner failed to demonstrate any unique physical conditions constraining the reasonable use of the Property. Landowner is making reasonable use of the Property as a single-family dwelling with attached garage that was converted by Landowner into a laundry and storage room for the convenience of Landowner.

Landowner failed to articulate a legal, as opposed to a personal hardship, for the construction of a carport within the required side yard setback. Landowner's reason for encroaching into the side yard setback is based solely on personal preference/convenience and aesthetics. Landowner testified:

I'm asking for a carport because of the situation in my life now, even as before. My husband is eighty and he's not getting around too good. And my daughter, who is here, came to live with us with her two dogs.

But to take her back and forth to the doctors or where she has to go, she got wet with all the rain we had because we have to walk

down the side of the garage – which he has pictures of – and get in the car from the driveway. And by that time, by the time you get the umbrella, the walker or the wheelchair, we are both wet.

[N.T. 7]

Landowner's builder confirmed Landowner's desire for personal convenience, and also discussed the concern of aesthetics:

They converted half the garage, to a laundry room because they can't walk down the steps to carry loads of laundry baskets. So that was converted years ago. Ten years ago that was converted to a laundry room. So the garage is basically storage and a laundry room. You can't park a car in it. [N.T. 16]

If you go like a half mile down the road there is a carport, and it has two posts and it has the roof coming off the house. We were referring to the actual structure of – you know what I mean, the look of the structure that is similar to a carport way down the road will have the exact same look. It's going to follow the flow of the house...We are going to follow the roof line. [N.T. 11-12]

Landowner failed to provide any substantial and competent evidence as to why the carport needed to be constructed 10 inches from the side property line rather than 3 feet from the side property line as permitted by the Ordinance. An examination of Landowner's plan suggested that a carport could be extended in front of the existing garage, thereby achieving Landowner's goals, without requiring zoning relief.

Landowner did not prove that unique physical conditions exist on the Property to prohibit its reasonable use, or that any hardship exists. Landowner's reasons for the location of the carport in the side yard setback are based on personal preference, convenience, and aesthetics; and not unique physical conditions of the Property.

This application and the evidence offered by Landowner present the classic personal articulation of a hardship, which is legally insufficient for the grant of a variance. *Nettleton v. Zoning Board of Adjustment of City of Pittsburgh*, 574 Pa. 45, 828

A.2d 1033, 1040 (2003) citing *Larsen v. Zoning Board of Adjustment of City of Pittsburgh*, 543 Pa. 415, 672 A.2d 286, 288 (1996). Unnecessary hardship, caused by unique physical circumstance of the property, is required for the grant of a variance. *Id.* See *Yeager v. Zoning Hearing Board of the City of Allentown*, 779 A.2d 595 (Pa.Cmwlth. 2001) wherein the court held:

A variance, whether labeled dimensional or use, is appropriate "only where the *property*, not the person, is subject to hardship." *Szmigiel v. Kranker*, 6 Pa.Cmwlth. 632, 298 A.2d 629, 631 (1972) (emphasis in original). In the present case, Daniels' property is well suited to the purpose for which it is zoned and actually used, a car dealership, which is in no way burdened by the dimensional requirements of the ordinance. Daniels has proven nothing more than that adherence to the ordinance imposes a burden on his personal desire to sell vehicles for Land Rover.

Yeager at 598.

The requirement that a hardship attend the property and not the person was emphasized by the Commonwealth Court in a case where the reasons for the variance were perhaps more compelling and in the public interest, a marked contrast to the purely personal justification advanced in the application before the ZHB. In *Township of East Caln v. Zoning Hearing Board of East Caln*, 915 A.2d 1249 (Pa.Cmwlth. 2007), the zoning hearing board granted a telecommunications company a dimensional variance to replace an existing 103-foot tower with a 123-foot tower. *Id.* at 1251. The trial court affirmed the zoning hearing board, finding unnecessary hardship based solely upon the life-safety issue posed by the coverage area gap in the telecommunications company's wireless service. *Id.* at 1252.

In reversing the trial court, the Commonwealth Court stated:

Such health and safety issues are important concerns, and the Township may wish to amend its ordinance in order to address them. However, the well-established law does not permit the grant

of a variance on the basis that it is in the public interest. A variance may be granted only upon proof that a substantial burden attends all dimensionally compliant uses of the applicant's property, which is simply not the case here. Among other uses permitted by the ordinance, the property can continue to be used to house the existing one hundred and three foot telecommunications tower as well as the self-storage facility. While Cingular evaluated alternative sites and concluded no other sufficed, this does not establish a hardship that attends the *property*, as distinguished from its *owner*.

East Caln at 1254.

As in *Yeager* and *East Caln*, Landowner did not prove that unique physical conditions exist on the Property to prohibit its reasonable use. Rather, Landowner's personal preferences based on aesthetics and convenience drive the need for the variance and are totally insufficient under the law.

2. Landowner failed to prove the requested variance is the minimum needed to afford relief.

Landowner was required to provide evidence that the variance requested represents the minimum amount necessary to afford relief. *Hohl v. Caernarvon Township Zoning Hearing Board*, 736 A.2d 57 (Pa.Cmwlt. 1999).

Landowner failed to provide any evidence that the variance requested represents the minimum amount necessary to afford relief. The record is devoid of any evidence demonstrating the necessity of the carport to be located 10 inches rather than 3 feet from the side property line. As noted above, based on Landowner's plan, Lanowner may be able to construct a carport directly in front of the existing garage, without requiring zoning relief.

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 failed to provide substantial competent evidence satisfying the requirements for a variance to permit construction of a carport within the side yard setback of the Property.

6. Landowner failed to demonstrate any unnecessary hardship entitling Landowner to a variance from section 165-206.C(3) of the Ordinance.

7. Landowner failed to demonstrate that the variance is necessary to permit a reasonable use of the Property.

8. Landowner failed to demonstrate that the requested variance represents the minimum necessary to afford relief.

At the conclusion of its May 7, 2014 hearing, the ZHB entered the following order:

ORDER

AND NOW, this 7th day of May, 2014, on the application of Edward and Claire Silcox, the Zoning Hearing Board DENIES a variance from section 165-206.C(3) for a side yard encroachment to construct a carport.

An opinion with findings of fact, conclusions of law, and reasons will follow.

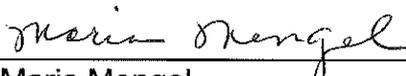
This decision is subject to a 30-day appeal period beginning on the date of entry (mailing) of this notice of decision.

Written notice of the ZHB's decision was mailed to Landowner on May 8, 2014.

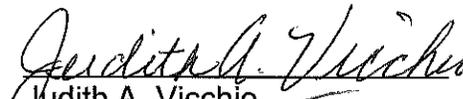
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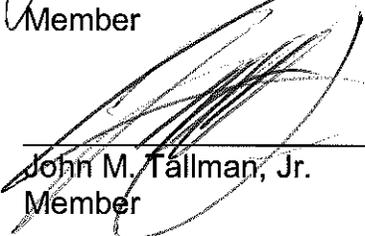
Lynne Gold Bikin, Esquire
Chairwoman



Maria Mengel
Acting Secretary



Judith A. Vicchio
Member



John M. Tallman, Jr.
Member

Date of Mailing: