

**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP**

**MONTGOMERY COUNTY, PENNSYLVANIA**

**APPLICATION OF GEORGE PAPPAS**

**APPLICATION NO. 2016-08**

**PROPERTY: 1013 CROTON ROAD**

**OPINION AND ORDER**

This zoning application concerns a request for a dimensional variance for an existing shed, placed on the property without a permit.

George Pappas ("Landowner") is the owner of a residential property located in the R-1A Single-Family Residential District in Upper Merion Township, Montgomery County. Landowner filed an application seeking a dimensional variance from the Upper Merion Township Zoning Ordinance of 1942, as Amended ("Zoning Ordinance), section 165-23.A *Area, width and yard regulations* to permit an existing shed to remain within the required rear yard setback.

On August 17, 2016, the Zoning Hearing Board of Upper Merion Township ("ZHB") held a public hearing on Landowner's application. All ZHB members were present at the hearing: John M. Tallman, Jr., Chairman; Mark S. DePillis, Esquire, Vice-Chairman; Maria Mengel, Secretary; Lynne Z. Gold-Bikin, Esquire, Member; and M Jonathan Garzillo, Member. Marc D. Jonas, Esquire represented the ZHB as its solicitor. Landowner was unrepresented.

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

**A. FINDINGS OF FACT**

**BACKGROUND**

1. Landowner is the legal owner of the property located at 1013 Croton Road, Upper Merion Township, Pennsylvania, identified as tax parcel number 58-00-06943-00-1 (the "Property"). [ZHB Application, p. 2.]

2. The Property is located in the Township's R-1A Single-Family Residential District. [*Id.*]

3. The Property contains Landowners' home and a 12' x 20' shed. [*Id.* at p. 3.]

4. The shed is located 6 feet from the rear lot line. The required rear yard setback for accessory uses is 10 feet. Zoning Ordinance § 165-23.A.

**ZHB HEARING**

5. Landowner offered no exhibits.

6. Landowner testified on his own behalf. Landowner had no other witnesses.

7. Landowner's testimony was as follows:

a. Landowner resides on the Property. [N.T. pp. 4-5.]

b. Landowner summarized his application as follows:

So basically I'm asking for a variance so I don't have to move the shed.

[N.T. p. 7.]

c. The shed is set on a crushed stone foundation. [N.T. p. 7.]

d. Landowner did not obtain an estimate of the cost to relocate the shed to comply with the Zoning Ordinance. [N.T. pp. 8-9.]

- e. When asked why he chose to locate the shed within the rear yard setback, Landowner testified:

I just wanted it in the rear property, just to put—you know, it was over by the woods. I figure it was kind of just—it's a nice shed and all, but I don't necessarily want to stare at my shed when I look out the window. So I just put it back there near a corner of the lot where the woods were, and I figured it was just kind of out of the way.

[N.T. pp. 9-10.]

**B. DISCUSSION**

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 Twp.*, 578 A.2d 1002, 1005 (1990).

Variations should be granted sparingly, and the reasons for granting variations must be substantial, serious and compelling. *Laurento v. Zoning Hearing Bd. of the Borough of West Chester*, 638 A.2d 437, 439 (Pa. Commw. Ct. 1994). Although a somewhat relaxed standard applies to applications for dimensional, as opposed to use, variations, an applicant must still demonstrate an unnecessary hardship caused by unique physical characteristics of the property. See *Singer v. Philadelphia Zoning Bd. of Adjustment*, 29 A.3d 144, 149 (Pa. Commw. Ct. 2011). Additionally, "[i]t is well-settled that in order to establish unnecessary hardship for a dimensional variance an applicant must demonstrate something more than a mere desire to develop a property as it wishes or that it will be financially burdened if the variance is not granted." *Id.* at 150.

Commonwealth Court rejects requests for dimensional variations where proof of hardship is lacking. *Lamar Advantage GP Co. v. Zoning Hearing Bd. of Adjustment of the City of Pittsburgh*, 997 A.2d 423, 445 (Pa. Commw. Ct. 2010).

- 1. Landowner failed to demonstrate any unique physical conditions of the Property that have caused an unnecessary hardship justifying a variance to permit the shed to remain in the rear yard setback.**

Landowner did not prove that unique physical conditions exist on the Property to prohibit its reasonable use unless the requested variance was granted. The Property contains Landowner's home and an existing shed. The shed is permitted on the Property, provided it complies with the requirements of the Zoning Ordinance, including the minimum required rear yard setback for accessory uses.

Landowner articulated only a personal hardship for the location of the shed. Landowner simply attempted to locate the shed as far from his home as possible, so he

need not “stare at [his] shed when [he] look[s] out the window.” [N.T. pp. 9-10.] Landowner failed to obtain an estimate of the cost to relocate the shed. The ZHB found the Landowner to lack credibility, based on his testimony.<sup>1</sup>

This application and the evidence offered by Landowner present the classic personal articulation of a hardship, which is legally insufficient for the grant of variances. *Nettleton v. Zoning Board of Adjustment of City of Pittsburgh*, 828 A.2d 1033, 1040 (Pa. 2003), citing *Larsen v. Zoning Bd. of Adjustment of City of Pittsburgh*, 672 A.2d 286, 288 (1996); *Singer*, 29 A.3d at 149-150. Unnecessary hardship, caused by unique physical circumstance of the property, is required for the grant of a variance. *Nettleton*, 828 A.2d at 1040. For example, in *Yeager v. Zoning Hearing Board of the City of Allentown*, 779 A.2d 595 (Pa. Commw. Ct. 2001), 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.

779 A.2d at 598.

As in *Yeager*, Landowner did not prove that unique physical conditions exist on the Property to prohibit its reasonable use. Rather, Landowner’s personal preferences

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<sup>1</sup> Landowner attempted to defend the illegal placement of the shed by claimed conversations with an unidentified real estate agent and his neighbors. [N.T. pp. 5-6.] Even more questionable was Landowner’s testimony about his visit to the Township building, where he claimed he was unable to find anyone with whom to speak. [N.T. p. 11.]

and desire to locate his shed in a specific location drive the need for the variance and are totally insufficient under the law.

**2. Landowner failed to demonstrate that the hardship alleged was not self-created.**

Landowner was required to demonstrate that the hardship alleged was not self-created. 53 P.S. § 10910.2(a); *Hohl v. Caernarvon Twp. Zoning Hearing Bd.*, 736 A.2d 57, 59 (Pa. Commw. Ct. 1999). Landowner located the shed within the rear yard setback, so the shed would be “out of the way” and so he would not have to “stare at [his] shed” from his house. [N.T. pp. 9-10.] To the extent Landowner would be required to relocate the shed in order to comply with the Zoning Ordinance, Landowner has created his own hardship.

**3. 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. 53 P.S. § 10910.2(a); *Hohl*, 736 A.2d at 59. Landowner failed to prove that the requested variance was the minimum necessary to afford relief. To the contrary, testimony revealed that Landowner could comply with the Zoning Ordinance by relocating the shed outside of the required setback. Landowner did not obtain an estimate for the cost to relocate the shed. Landowner failed to prove that the requested variance represents the minimum amount necessary to afford relief.

**C. CONCLUSIONS OF LAW**

1. The ZHB has jurisdiction under section 909.1(a)(5) of the Pennsylvania Municipalities Planning Code, 53 P.S. §10909.1(a)(5), and Zoning Ordinance §165-215.A(5).
2. Landowner has standing to seek the requested variance as the legal owner of the Property.
3. The ZHB is obligated to ensure compliance with the Zoning Ordinance.
4. Zoning Ordinance § 165-23.A *Area, width and yard regulations* requires a 10 foot setback for accessory uses in the R-1A Single-Family Residential District.
5. The ZHB may grant a variance provided that an applicant establishes that: (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.
6. Landowner failed to demonstrate any unnecessary hardship entitling Landowner to a variance from section 165-23 *Area, width and yard regulations* to permit the shed to remain within the required rear yard setback.

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 variance is the minimum necessary to afford relief.
9. Landowner failed to demonstrate that the alleged hardship was not self-created.
10. Landowner failed to sufficiently demonstrate his entitlement to the requested variance.

At its August 17, 2016 hearing, the ZHB rendered the following decision:

**DECISION**

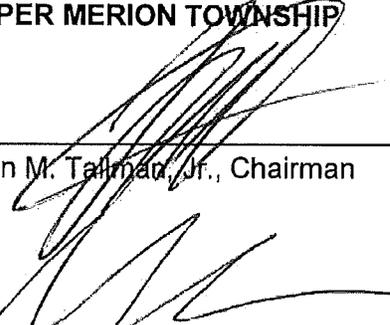
AND NOW, this 17th day of August, 2016, the Zoning Hearing Board of Upper Merion Township DENIES the request for a variance from section 165-23 *Area, width and yard regulations* of the Upper Merion Township Zoning Ordinance of 1942, as Amended, to retain an existing shed within the required rear yard setback

The decision with findings of facts, conclusions of law, and reasons will follow.

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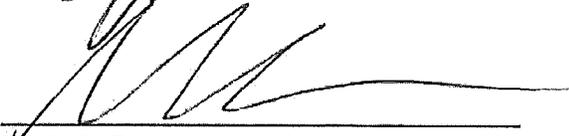
This decision may be appealed to the Court of Common Pleas of Montgomery County within 30 days of the date of mailing.

**ZONING HEARING BOARD OF  
UPPER MERION TOWNSHIP**



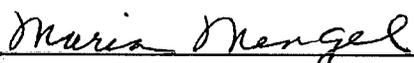
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John M. Tallman, Jr., Chairman



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Mark S. DePillis, Esquire, Vice Chairman



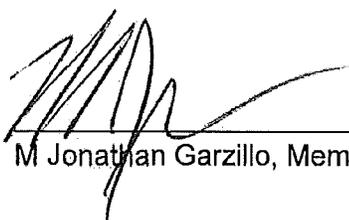
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Maria Mengel, Secretary



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Lynne Z. Gold-Bikin, Esquire, Member



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M. Jonathan Garzillo, Member

Date of Mailing: