

Date of Mailing: 7-5-18

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

**APPLICATION OF MARK AND KATHY ANNE WARGO**

**No. 2018-10**

**PROPERTY: 171 Crooked Lane**

**AMENDED DECISION**

This application concerns a request to modify conditions imposed on a 1980 special exception approval that allowed the conversion of the property from a single-family home into a two-family dwelling; alternatively, a variance to permit more than a 25% expansion of a non-conforming use. The conditions at issue restricted the outside alteration or modification of the building and limited the second floor dwelling unit to one-bedroom.

The only asserted basis for the modification and variance was the claimed, but unsupported inability of the landowners to charge higher rents to maximize the profit from the property. The application was denied.

Mark and Kathy Anne Wargo ("Landowners") are the owners of the property located at 171 Crooked Lane, Upper Merion Township, tax parcel number 58-00-04942-00-4 (the "Property"). The Property is presently improved with a two-story two-family detached home that was converted by special exception with one apartment per floor.

Landowners requested modifications of the conditions imposed on the prior special exception approval to allow an addition to the rear of the Property and to add two bedrooms to the second floor unit. Alternatively, Landowners requested a variance from section 165-199.B<sup>1</sup> of the Upper Merion Township Zoning Ordinance of 1942, as Amended (the "Zoning Ordinance").

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<sup>1</sup> § 165-199 **Continuation; extension; restoration; abandonment.**

...  
B. Extension.

- ...  
(2) Any building containing a lawful nonconforming use may be extended upon the lot occupied by such building, provided that the area of such building shall not be increased by more than a total of 25% of the area of such building existing on the effective date of this chapter

On June 6, 2018, the Zoning Hearing Board (the "ZHB") of Upper Merion Township (the "Township") held an advertised hearing on Landowners' application. The hearing was stenographically recorded. All members of the ZHB were present at the hearing: M Jonathan Garzillo, Chairman; Lynn Z. Gold-Bikin, Esq., Vice-Chairman; John M. Tallman, Jr., Secretary; Maria Mengel, Member; and Mark S. 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. The applicant was represented by M. Joseph Clement, Esq. of the law firm of Wisler Pearlstine, LLP.

After careful consideration, the ZHB makes the following findings of fact and conclusions of law:

**A. FINDINGS OF FACT**

**BACKGROUND**

1. Landowners are the legal owners of the Property. [Exhibit A-5.]
2. Landowners purchased the Property at sheriff's sale. [N.T., p. 7, 8, 9.]
3. The Property is located in the Township's R-2 Residential Zoning District. [Exhibit A-7.]
4. The Property has a total lot area of 20,719 square feet. [Exhibit A-7.]
5. The Property is improved with a converted two-family home with a 2-bedroom apartment on the first floor and a 1-bedroom apartment on the second floor. [N.T., p. 12.]
6. A prior ZHB decision, dated May 6, 1980, granted Landowners' predecessor in title a special exception pursuant to section 1712 of the Zoning Ordinance to convert the Property

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or the date of the subsequent amendment which rendered the use nonconforming and further provided that any structural alteration, extension or addition shall conform to all setback, yard and coverage requirements of the district in which the use is located. Notwithstanding the above, a single-family dwelling which exists as a nonconforming use may alter, extend or add to the structure in a manner which does not meet the height, setback, yard or coverage requirements when permitted by special exception.

from a single-family residence to the present duplex configuration (the "1980 ZHB Decision").  
[Exhibit A-4.]

7. In 1980, section 1712 of the Zoning Ordinance specifically permitted the conversion of a single-family dwelling in the R-2 district into duplex apartments by special exception. [Exhibit A-4.]

8. Since 1980, section 1712 of the Zoning Ordinance was repealed. A duplex is not a permitted use in the R-2 district. However, section 165-212 of the Zoning Ordinance permits conversion of a single-family detached dwelling into a two-family dwelling when authorized as a special exception, subject to certain standards.

9. The 1980 ZHB Decision imposed several conditions, which in pertinent part, required:

a. "There shall be no outside alteration or modification of the building," and

b. "The apartment on the second floor of the structure in question shall be maintained as a one bedroom apartment and shall not be further divided." [Exhibit A-4; N.T., p. 18.]

10. Landowners propose making a building addition, measuring 16 feet by 28.33 feet, onto the rear of the existing structure, building two decks, adding a 7-space parking lot, and installing a rain garden. [Exhibit A-4.]

11. The proposed addition would make the second floor apartment a three-bedroom apartment, contrary to the previously imposed condition. [N.T., p. 14; Exhibit A-6.]

12. To allow the proposed addition Landowners requested the following relief:

a. "[A] modification of the conditions of the [1980 ZHB Decision]...to: 1) permit outside alteration or modification of the building to construct the addition...; and 2) to renovate the second floor dwelling unit from a 1 bedroom unit to a 3 bedroom unit." [Exhibit ZHB-1.]

b. “[A] dimensional variance [from Section 165-199.B] to expand a pre-existing nonconforming structure (that is, the dwelling) by greater than 25% of the area of such building.” [Exhibit A-3.]

### **ZHB HEARING**

1. The ZHB marked the following exhibits:
  - a. ZHB-1 — ZHB application, addendum and exhibits
  - b. ZHB-2 — Upper Merion Township ZHB decision dated May 6, 1980
  - c. ZHB-3 — Use and Occupancy permit no. 11868, dated March 21, 1982
  - d. ZHB-4 — deed between U.S. Bank National Association, as Trustee for Greenpoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2006-AR7, by Ocwen Loan Servicing, LLC as Attorney-in-Fact (grantor), and Michael Wargo and Kathy Anne Wargo, husband and wife (grantees), dated October 26, 2017, recorded in Montgomery County Deed Book 6088, page 1450
  - e. ZHB-5 — plan set entitled “171 Crooked Lane, King of Prussia, PA 19406 Proposed Renovations,” sheets CS-1, A-1 through A-10, and E-1 through E-3, prepared by Brian J. Billings, Architects, dated March 8, 2018
  - f. ZHB-6 — site plan entitled “Zoning Hearing Board Application Plan,” sheet 1 of 1, prepared by Joseph M. Estock Consulting Engineers & Land Surveyors, dated March 28, 2018
  - g. ZHB-7 — aerial photo of 171 Crooked Lane from Google Maps
  - h. ZHB-8 — Montgomery County Board of Assessment Appeals property information and tax map, parcel 58-00-04942-00-4
  - i. ZHB-9 — legal notice
  - j. ZHB-10 — proof of posting
  - k. ZHB-11 — proof of publication

2. Landowners entered the following exhibits:
  - a. A-1 — aerial photo of 171 Crooked Lane from Google Maps
  - b. A-2 — ZHB application
  - c. A-3 — ZHB application addendum
  - d. A-4 — Upper Merion Township ZHB decision dated May 6, 1980
  - e. A-5 — deed between U.S. Bank National Association, as Trustee for Greenpoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2006-AR7, by Ocwen Loan Servicing, LLC as Attorney-in-Fact (grantor), and Michael Wargo and Kathy Anne Wargo, husband and wife (grantees), dated October 26, 2017, recorded in Montgomery County Deed Book 6088, page 1450
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  - g. A-7 — site plan entitled "Zoning Hearing Board Application Plan," sheet 1 of 1, prepared by Joseph M. Estock Consulting Engineers & Land Surveyors, dated March 28, 2018.

3. Landowners presented two witnesses: Joseph M. Estock, P.E., who was accepted as an expert in his field of civil engineering; and Mark McKee, the brother-in-law of Landowners.

4. Mr. Estock offered the following testimony:
  - a. He described the current configuration of the property, noting an existing nonconforming front yard setback. [N.T., p. 12.]
  - b. The neighborhood surrounding the Property is composed of small, single-family detached homes with lots that are approximately 100 feet wide. [N.T., p. 12.]
  - c. A number of properties have free-standing garages. [N.T., pp. 12-13.]

d. He stated that "there are some" duplexes in the surrounding neighborhood, but failed to identify any specific properties presently used as duplexes. The ZHB found this testimony was not credible.

e. He identified an apartment house located at 117 Crooked Lane, which was later determined, through comments from the public and affirmed by Landowners' attorney, to be located outside the Township and not subject to the requirements of the R-2 district. [N.T., p. 13.]

f. He described the proposed additions to the existing structure. [N.T., pp. 13-16.]

g. He contended that "the condition of this property and the circumstances surrounding this property have changed since 1980," and that the conditions imposed by the 1980 ZHB Decision "are no longer appropriate." [N.T., pp. 18-19.] However, there was no foundation regarding the condition of the Property or the surrounding neighborhood in 1980, upon which this testimony could have been based. The ZHB found this testimony not credible.

h. He further testified that "it would be an economic hardship to not allow the applicant to expand this building." [N.T., p. 19.] There was no foundation for such a conclusion in his prior testimony, and the opinion was outside Mr. Estock's expertise. The ZHB found this testimony was neither competent, nor credible.

5. Mr. McKee offered the following lay testimony:

a. He was the brother-in-law of the Landowners. [N.T., p. 45.]

b. He did not reside in the immediate neighborhood, but claimed to be familiar with the neighborhood. [N.T., p. 48.]

c. The neighborhood is "a neighborhood of bungalows and colonial houses that have existed for many years." [N.T., p. 48.]

d. The proposed improvements would be “a big improvement to the property and would be a substantial improvement to the neighborhood. [N.T., p. 52.]

e. His brother-in-law did not talk to him about the property before acquiring it. [N.T., p. 54.]

f. Conversions of single-family dwellings to two-family or multifamily dwellings is permitted by special exception pursuant to section 165-212 of the Zoning Ordinance. [N.T., pp. 55-56.]

6. Four neighboring property owners testified in opposition to the application, raising concerns about the impact of the project on property values and on the character of the neighborhood. [N.T., pp. 31-43, 59-60.]

7. Jim Ronan, who resides at 160 Charles Street, testified that most of the houses in the neighborhood were one-family. [N.T., p. 31.]

8. Janet Hnatin, who resides at 171 Crooked Lane, testified that she was similarly unaware of any other duplexes in the area around the Property. [N.T., p. 42.]

9. Mike Zadroga, who resides at 146 Crooked Lane across the street from the Property, stated that he was also unaware of any other duplexes in the neighborhood and that the apartment building located at 117 Crooked Lane, identified by Mr. Estock, was not located in the Township. [N.T., p. 36.]

## **B. DISCUSSION**

- 1. Landowners presented no evidence of a change in circumstances since the 1980 ZHB Decision was issued that would warrant consideration of a modification of the imposed conditions.**

A property owner that wishes to obtain a modification of a zoning hearing board condition can obtain relief if he establishes: (1) either grounds for traditional variance or changed circumstances that render the condition inappropriate; and (2) absence of injury to the public interest. *German v. Zoning Bd. of Adjustment*, 41 A.3d 947, 950 (Pa. Cmwlth. Ct. 2012) (citing 2

Robert S. Ryan, Pennsylvania Zoning Law and Practice, § 9.4.20). The Court in *German*, described the applicable considerations for modification of conditions:

Because, as noted above, conditions imposed by a zoning hearing board are presumed to be for the purpose of protecting the public interest, when a party demonstrates a change in circumstances related to the land at issue which indicates that the conditions are no longer appropriate for the protection of the public's interest, a zoning hearing board may re-evaluate the conditions it originally imposed. If a party demonstrates a change in circumstances, then a reviewing body may proceed to consider whether the original conditions continue to serve the function of protecting the public interest that gave rise to the particular conditions in the first place. The question at the heart of the inquiry is what changes in circumstances render the conditions *no longer appropriate*.

*German*, 41 A.3d at 950 (emphasis in original).

Landowners assert in their application that “the surrounding neighborhood has evolved and been ‘built up’ with additions and accessory structures, resulting in a change in circumstances that makes the conditions set forth in the [1980 ZHB Decision] inappropriate at this time.” [Exhibit A-3.] However, no testimony or evidence was presented that described the condition of the neighborhood in 1980, or how that condition has changed in the subsequent 37 years.

Mr. Estock, Landowners’ engineer, testified that the neighborhood surrounding the Property was comprised of “generally small, single-family detached lots,” [N.T., p. 12.], and Mr. McKee, Landowner’s brother-in-law, characterized the area as being “a neighborhood of bungalows and colonial houses that have existed for many years.” [N.T., p. 48.] When asked by Landowners’ attorney “are there some duplexes in the surrounding neighborhood?” Mr. Estock responded vaguely with “[t]here are some.” [N.T., p. 13.]

Landowners identified no specific properties in the neighborhood that were used as duplexes, or that had been converted into duplexes since 1980. In fact, the only multi-family dwelling identified in the area—117 Crooked Lane—was subsequently revealed to be located outside the Township, and, thus, not subject to the requirements of the R-2 district. [N.T., p. 36, 38.] The paucity of Mr. Estock’s testimony was further highlighted and credibly rebutted by Mr.



Zadroga who has resided across the street from the Property since 1995. Mr. Zadroga testified that he was unaware of any duplexes in the area. [N.T., p. 36.]

Landowners' attorney attempted to argue the sale of the Property at sheriff's sale constituted a "change of circumstances" to warrant a modification of the 1980 ZHB Decision. Landowners' attorney was unable to provide any legal authority for this position. The ZHB is unaware of any such authority. No witness testified about the sheriff's sale.

To warrant a modification of the conditions imposed on the Property in the 1980 ZHB Decision it was Landowners' burden to demonstrate changed circumstances. None of the evidence and testimony presented by Landowners supported the contentions raised in Landowners' application or advanced by Landowners' attorney during the hearing. Bald assertions without factual support do not establish a change in circumstances.

Landowners are not entitled to a modification of the conditions imposed by the 1980 ZHB Decision absent a demonstrated change in circumstances.

**2. Landowners failed to satisfy any of the requirements for establishing entitlement to the requested variance.**

A zoning hearing board may only 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 S. Whitehall Twp.*, 578 A.2d 1002, 1005 (1990).

Variances should be granted sparingly, and the reasons for granting variances 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). A relaxed standard applies to applications for dimensional, as opposed to use, variances, but an applicant must still demonstrate an unnecessary hardship caused by unique physical characteristics of the property. See *Singer v. Phila. Zoning Bd. of Adjustment*, 29 A.3d 144, 149 (Pa. Commw. Ct. 2011). "It 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 variances 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).

The Commonwealth Court in *Pequea Twp. v. Zoning Hearing Board of Pequea Twp.*, 180 A.3d 500 (Pa. Commw. Ct. 2018) summarized the standard applied to requests for dimensional variances:

Although *Hertzberg* sets forth a more relaxed standard for a dimensional variance, it does not stand for the proposition that "a variance must be granted from a dimensional requirement that prevents or financially burdens a property owner's ability to employ his property *exactly as he wishes*, so long as the use itself is permitted." *Yeager v. Zoning Hearing Board of the City of Allentown*, 779 A.2d 595, 598 (Pa. Cmwlth. 2001) (emphasis in original); see also *Singer* (quoting *Yeager*). Additionally, it has been the law of this Commonwealth that **the mere desire for more space does not establish the requisite unnecessary hardship for a variance**. See *Larsen v. Zoning Board of Adjustment of City of Pittsburgh*, 543 Pa. 415, 672 A.2d 286, 290 (1996) (ruling that the zoning board erred as a matter of law in granting a dimensional variance where the applicants sought a variance to construct a 400-square foot deck in order to provide a play area for their child, because the "mere desire to provide more room for a family member's enjoyment fails to constitute the type of 'unnecessary hardship' required by the law of this Commonwealth"); see also *McClintock v. Zoning Hearing Board of Fairview Borough*, 118 Pa.Cmwlth. 448, 545 A.2d 470 (1988) (denying a dimensional variance where the property could be used for a one-car garage

instead of a two-car garage); *Vito v. Zoning Hearing Board of Borough of Whitehall*, 73 Pa.Cmwth. 270, 458 A.2d 620 (1983) (finding no hardship to grant a dimensional variance to build an addition to an existing two-car garage where the property was useable in its present condition).

*Pequea Twp.*, 180 A.3d at 507–08 (emphasis added).

In *Pequea Township* the applicant sought a variance to construct a second floor addition over his garage to a height of 28 feet, where a maximum height of 20 feet was permitted by the zoning ordinance for accessory structures. The applicant stated that he wanted the additional space to accommodate overnight guests and argued that building on top of the existing garage was his only option due to the spatial constraints presented by an in-ground pool located behind the garage and the setback requirement to the side of the garage. The zoning hearing board granted the dimensional variance.

The Commonwealth Court reversed the ZHB's decision. It found that "[t]he desire to provide more living space fails to constitute the type of 'unnecessary hardship' required by the law of this Commonwealth." *Pequea Twp.*, 180 A.3d at 508. The court reasoned that:

Applicant does not need the variance to construct the second floor addition on the garage in order to make reasonable use of the Property, as he is already doing so. Indeed, Applicant's Property is improved with, among other things, a principal residence and a garage. (F.F. No. 2.) Because the variance is not necessary to enable Applicant to pursue the reasonable use of the Property, Applicant has not met his burden to establish that he is entitled to a variance. See 53 P.S. § 10910.2, *Yeager*. The failure of the Board to consider and address this requirement for a variance constitutes legal error.

*Pequea Twp.*, 180 A.3d at 508–09.

In *Dunn v. Middletown Township Zoning Hearing Board*, 143 A.3d 494 (Pa. Commw. Ct. 2016) an applicant sought variances from maximum density and lot width requirements in order to demolish his existing home, subdivide the property, and construct two new homes. The Commonwealth Court concluded that the only hardship asserted by the applicant was his desire

to increase profitability, an insufficient basis for granting the requested dimensional variances.

The Court concluded:

Indeed, where no hardship is shown, or where the asserted hardship amounts to a landowner's mere desire to increase profitability, the unnecessary hardship criterion required to obtain a variance is not satisfied even under the relaxed standard set forth by the Supreme Court in *Hertzberg*. See, e.g., *Soc'y Hill Civic Ass'n v. Phila. Zoning Bd. of Adjustment*, 42 A.3d 1178 (Pa.CmwltH.2012) (rejecting applicants' request for dimensional variance from zoning code's loading space requirement where need for variance was triggered by applicants' desire to expand use of property to maximize profitability); *Singer v. Zoning Bd. of Adjustment of City of Phila.*, 29 A.3d 144 (Pa.CmwltH.2011) (rejecting applicant's request for dimensional variances from zoning code's parking, floor area ratio and loading dock requirements where asserted hardship amounted to applicant's desire to maximize development potential of property); *Lamar Advantage GP Co. v. Zoning Hearing Bd. of Adjustment of City of Pittsburgh*, 997 A.2d 423 (Pa.CmwltH.2010) (rejecting applicant's request for dimensional variance for proposed sign where only asserted hardship involved alleged benefit to community and increase in income); *Twp. of Northampton v. Zoning Hearing Bd. of Northampton Twp.*, 969 A.2d 24 (Pa.CmwltH.2009) (rejecting applicant's request for variance from ordinance's off-street parking requirements where no evidence of hardship presented even under relaxed *Hertzberg* standard and evidence revealed applicant could use property in a manner consistent with ordinance requirements); *In re Boyer*, 960 A.2d 179 (Pa.CmwltH.2008) (rejecting applicant's requests for dimensional variances from ordinance's steep slope and setback requirements in order to construct in-ground pool where no evidence of hardship presented even under relaxed *Hertzberg* standard); *Se. Chester County Refuse Auth. v. Zoning Hearing Bd. of London Grove Twp.*, 898 A.2d 680 (Pa.CmwltH.2006) (rejecting request for dimensional variance where evidence indicated applicant could continue to operate at a profit without variance relief; no hardship shown); *One Meridian Partners, LLP v. Zoning Board of Adjustment of City of Phila.*, 867 A.2d 706 (Pa.CmwltH.2005) (rejecting request for dimensional variance from floor area ratio and height requirements where asserted hardship was essentially financial in nature); *Yeager v. Zoning Hearing Board of City of Allentown*, 779 A.2d 595 (Pa.CmwltH.2001) (rejecting applicant's request for dimensional variances from ordinance's setback and clear sight triangle requirements where only hardship amounted to applicant's desire to construct a building for its new car dealership that complied with specifications required by vehicle manufacturer).

*Dunn*, 143 A.3d at 506.

The only unnecessary hardship asserted by Landowners was economic hardship – a reference to a need for a certain income stream, which was argued by Landowner’s counsel, but unsupported. While this, even if substantiated, would be insufficient grounds for granting the requested variance, Landowners failed to present any evidence to support their assertion of economic hardship. No evidence regarding the rent currently or previously charged for the apartments was presented. No evidence of higher rents being charged for duplex units in the area was presented. No evidence was presented regarding the rents presently being charged or the expenses currently being incurred to maintain the Property. The only evidence offered by Landowners regarding economic hardship was the following exchange between Mr. Estock, Landowners’ engineer, and Landowners’ attorney:

Q. Would it be an economic hardship to not allow the applicant to expand this building?

A. It would.

[N.T., p. 19.]

Mr. Estock lacked the qualifications and factual foundation to make such an assertion, a point noted by the ZHB solicitor.<sup>2</sup>

Having failed to establish an unnecessary hardship, Landowners similarly failed to present evidence regarding the other four requirements for obtaining the requested variance. No testimony or evidence was presented that the Property could not be reasonably used without the requested variances. The asserted basis for the variance, Landowners’ desire to derive higher income from the Property was personal and self-inflicted. No testimony was offered that the requested variance would not be detrimental to the public welfare.

Finally, Landowner failed to demonstrate that the requested variance was the minimum necessary to afford relief.

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<sup>2</sup> Landowners’ attorney stated that Landowners were present at the hearing and that he could put Mr. Wargo on to “testify to the economic hardship.” However, despite the ZHB solicitor’s suggestion that Landowner provide such testimony, Landowner did not testify. [N.T., pp. 28-29.]

**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).

3. Landowners have standing to seek the requested zoning relief as the owners of the Property.

4. The ZHB is obligated to ensure compliance with the Zoning Ordinance.

5. The use of the Property as a duplex would be legally nonconforming as a result of the repeal of section 1712 of the Zoning Ordinance upon which the special exception had been granted. However, section 165-212 of the Zoning Ordinance today permits by special exception conversion of a single-family detached dwelling into a two-family dwelling.

6. For the ZHB to consider a modification to previously imposed conditions on the grant of a special exception approval in the 1980 ZHB Decision, Landowners must demonstrate grounds for traditional variance or changed circumstances and that the proposed modification will not injure the public interest.

7. Landowners failed to demonstrate changed conditions, precluding the need for the ZHB to consider modifications to the previously imposed conditions on the 1980 ZHB Decision.

8. Section 165-199.B of the Zoning Ordinance restricts the extension of lawfully nonconforming structures to no more than 25% of the area of the building.

9. The ZHB may only grant a variance if 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.

10. Landowner failed to demonstrate an unnecessary hardship due to the unique physical circumstances or conditions peculiar to the Property.

11. Landowner failed to demonstrate that the property cannot be developed in conformity with the zoning ordinance and, that the variance is necessary to enable the reasonable use of the property.

12. While no unnecessary hardship was established, any unnecessary hardship that may exist on the Property was created by the applicant's desire to charge higher rents for the two apartments; not any physical circumstances or conditions peculiar to the Property.

13. Landowner failed to demonstrate that the variance would not be detrimental to the public welfare.

14. Landowner failed to demonstrate that the requested variance was the minimum necessary to afford relief.

At the conclusion of the June 6, 2018 public hearing, the ZHB voted unanimously to deny the application. On June 7, 2018, ZHB mailed the following notice of decision:

*This letter provides notice of the decision of the Upper Merion Township Zoning Hearing Board at the conclusion of the hearing on Wednesday, June 6, 2018.*

*The Zoning Hearing Board voted to deny the application seeking a modification of the previous Zoning Hearing Board decision dated May 6, 1980, and also the alternative request for a variance from section 165-199.B of the Upper Merion Township Zoning Ordinance of 1942, as Amended, relating to a proposed expansion of a lawful nonconforming use by greater than 25% of the area of the building.*

*Since this application was denied, the Zoning Hearing Board will issue a decision with findings of fact, conclusions of law, and reasons.*

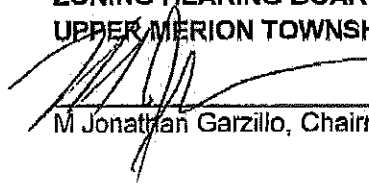
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This decision may be appealed to the Court of Common Pleas of Montgomery County within 30 days of the date of mailing.

**ZONING HEARING BOARD OF  
UPPER MERION TOWNSHIP**

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**ZONING HEARING BOARD OF  
UPPER MERION TOWNSHIP**



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M Jonathan Garzillo, Chairman