



Division of Development Administration and Review

City of Pittsburgh, Department of City Planning

412 Boulevard of the Allies, Second Floor

Pittsburgh, Pennsylvania 15219

ZONING BOARD OF ADJUSTMENT

Date of Hearing: August 7, 2025
Date of Decision: September 4, 2025

Zone Case: 85 of 2025
Address: 4819 Dearborn Street
Lot and Block: 50-J-44
Zoning Districts: R1A-H
Ward: 10
Neighborhood: Garfield

Request: Second story addition on existing garage

Application: BDA-2025-01935

Variance	Section 912.04.E	15'/one-story maximum accessory structure height; 21.5'/2-stories requested
	Section 912.04.B	2' rear setback required; 1'-4" proposed
	Sections 903.03.D/912.04.C	5' interior side setback required; 1'-4" and 3'-8" proposed

Appearances:

Applicant: Robert Hartle

Opposed: Marissa Getty

Findings of Fact:

1. The Subject Property is located at 4819 Dearborn Street in a R1A-H (Residential One Unit Attached High Density) District in Garfield.
2. The dimensions of the parcel are 16' by 100' (1,600 sf) and its shape is a standard rectangle. The topography of the parcel is generally flat.
3. A three-story house and a one-story detached garage, with access from Alhambra Way, are located on the Subject Property.

4. The existing garage is set back 0' from Alhambra Way, 1'-4" from the property line shared with the parcel at 4817 Dearborn Street and 3'-8" from the property line shared with the parcel at 4821 Dearborn Street.

5. The height of the existing one-story garage is less than 15', which complies with the Code's height requirement for accessory structures.

6. The Applicant proposes to construct a second story addition onto the existing garage. As proposed, the height of the structure with the proposed addition would be 21'- 6"/2-stories. The side and rear setbacks proposed for the second story would be the same as those of the existing garage, which do not conform to the current Code requirements.

7. The Applicant indicated that the intended use of the additional story would be for additional living space and that it would have a full bathroom and a kitchenette.

8. The Department of City Planning determined that the proposed second story, as currently designed and presented to the Board, would not be an "additional dwelling unit" under the Code's definition.

9. The Subject Property was within the Garfield Accessory Dwelling Unit Overlay, which was adopted as a pilot program in 2018 and expired in 2020. When in effect, the overlay program allowed for additional height for accessory structures, which could be used as additional dwelling units. When the overlay program expired, City Council did not renew or extend it.

10. The Applicant presented photographs of other two-story garage structures in the general vicinity of the Subject Property but did not identify if or how those two-story accessory structures had been permitted.

11. The Applicant did not present any evidence of any unique condition or unnecessary hardship associated with the Subject Property that prevents compliance with the Code's height requirements for accessory structures.

12. Marissa Getty, a resident of the property located at 4821 Dearborn Street, appeared at the hearing to oppose the request. She noted that a second story on the existing garage, with reduced setbacks, would have detrimental impacts on her property.

Conclusions of Law:

1. Pursuant to Section 911.02, two-unit residential uses are not permitted in R1 Districts.

2. Under Section 912.04.E, the height limitation for accessory structures is 15'/one-story. The site development standards for accessory structures in R1A-H Districts include 2' rear yard and 5' side yard setback requirements.

3. The Applicant seeks variances from the height and setback requirements for the construction of a second story on an existing accessory garage structure.

4. Section 922.09.E sets forth the general conditions the Board is to consider with respect to variances. The criteria for determining whether to grant a variance include: 1) whether unique circumstances or conditions of a property would result in an unnecessary hardship; 2)

whether the property could be developed in accordance with the Code's requirements to allow for its reasonable use; 3) whether the applicant created the hardship; 4) whether the requested variance would adversely affect the essential character of the neighborhood or the public welfare; and 5) whether the variance requested is the minimum variance that would afford relief with the least modification possible. See *Marshall v. City of Philadelphia and Zoning Bd. of Adj.*, 97 A.3d 323, 329 (Pa. 2014); *Hertzberg v. Zoning Board of Adj. of the City of Pittsburgh*, 721 A.2d 43 (Pa. 1998), citing *Allegheny West Civic Council v. Zoning Bd. of Adj. of the City of Pittsburgh*, 689 A.2d 225 (Pa. 1997); see also *Metal Green Inc. v. City of Philadelphia*, 266 A.3d 495, 510 (Pa. 2021).

5. An application for a variance is, in essence, a request to do something that a zoning ordinance prohibits. Because a zoning ordinance is legislation that a municipality's governing body adopts, the request for a variance is "an exception to the otherwise expressed will of the citizens regarding the use of property in certain neighborhoods of the community." *Metal Green*, 266 A.3d at 511.

6. An applicant is not entitled to the grant of a variance. Whether an applicant seeks a use variance or a dimensional variance, it is the applicant's burden to present substantial and credible evidence in support of the request, in accordance with the applicable variance standards. See Code Section 922.09.E.

7. In *Hertzberg*, the Pennsylvania Supreme Court recognized that a less restrictive standard is appropriate for dimensional variances, which require only for a reasonable adjustment of the zoning regulations to accommodate a use of property that is permitted. *Hertzberg*, 721 A.2d at 47-48. However, even the less restrictive standard does not obviate the requirement of some evidence of a unique condition of the property that results in an unnecessary hardship and some evidence that the asserted hardship is not self-created.

8. The location of a property in an area where a use is not permitted does not, of itself, create a hardship. The hardship asserted must be an "unnecessary hardship," derived from conditions of the property, and not from the Code's requirements. As set forth in the Code's variance standards, an asserted "unnecessary hardship" must be unique to the property and cannot be based on "circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located." Section 922.09.E.1. Consistent with this rule, the Pennsylvania Supreme Court has held that, to support a variance request, an asserted hardship cannot arise from the impact of the zoning regulations on the entire area. *Marshall*, 97 A.3d at 329, citing *Valley View Civic Ass'n v. Zoning Bd. of Adj.*, 462 A.2d 637, 640 (Pa. 1983).

9. The Subject Property at issue here has regular dimensions and generally flat topography.

10. The property is located in an area that was within the Garfield Accessory Dwelling Unit Overlay. Although that pilot program contemplated use of accessory structures, with additional height, for additional dwelling units, the program expired in 2020 and City Council chose not to extend it. The Board cannot, by granting variances, disregard City Council's legislative judgment.

11. The Applicant stated that the proposed second story would include a full bathroom and a kitchenette but would be used only for additional living space for the primary residence

and not as a second residential unit. Accepting this representation that the Applicant does not seek a use variance to allow for a second residential unit in an R1A-H District, dimensional variances for the proposed second story would still be required.

12. The existing accessory structure is nonconforming with respect to the rear and side setback requirements but complies with the 15'/one-story height requirement.

13. To support its request for dimensional variances from the setback and height requirements, the Applicant would have to identify a "unique condition" associated with the property that creates any unnecessary hardship and prevents compliance with the Code.

14. The dimensions and topography of the property are regular and the existing accessory structure complies with the Code's height requirement. The Applicant is unable to identify any unique feature or condition of the property that prevents continued compliance with the height requirement.

15. The nonconforming rear and side setbacks of the existing structure could be considered a unique condition with respect to the setback requirements. However, the Applicant cannot show that extending the nonconforming setbacks for a second story is necessary to allow reasonable use of the property.

16. Under the applicable legal standards, the Applicant did not present any evidence of any unique condition or unnecessary hardship to support the request for the necessary variances to allow for the proposed two-story garage.

17. Consistent with the evidence and testimony presented and the applicable legal standards governing dimensional variances, the Board concludes that denial of the requested variance is required.

Decision: The Applicant's request for variances from Section 912.04 to allow the construction of a 21'-6" high second story addition onto an existing one-story garage is hereby DENIED.

s/Alice B. Mitinger
Alice B. Mitinger, Chair

s/Lashawn Burton-Faulk
LaShawn Burton-Faulk

s/John J. Richardson
John J. Richardson

Note: Decision issued with electronic signatures, with the Board members' review and approval.