



**ZONING BOARD OF ADJUSTMENT**

**Date of Hearing:** February 12, 2026  
**Date of Decision:** March 18, 2026

**Zone Case:** 169 of 2025  
**Address:** 724 Maryland Avenue  
**Lot and Block:** 84-N-275, 84-N-277  
**Zoning Districts:** R2-M  
**Ward:** 7  
**Neighborhood:** Shadyside

**Request:** Three two-unit residential buildings

**Application:** BDA-2025-11184

<b>VariANCES</b>	Section 903.03.C	30' exterior side setback required; 13'-5" requested (Lot 1)  30' rear setback required; 9' requested (Lots 1, 2, and 3)  30' front setback required 5' requested (Lots 1, 2 and 3)
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**Appearances:**

Applicant: Matthew Brind'Amor, Shima Martin

Opposed: David Molder, Guy Billeloch, Frank Golba, Tim Nye

**Findings of Fact:**

1. The Subject Property is comprised of two adjacent lots, at 724 and 728 Maryland Avenue (Parcel Nos. 84-N-275 and 84-N-277). The site is in an R2-M (Residential Two Unit Moderate Density) District in Shadyside.
2. The 724 Maryland Avenue parcel is on a corner of Maryland Avenue and Elwood Street. Rosary Way extends along the rear of both parcels.
3. Single-unit, two-unit and multi-unit residential uses are located within the vicinity of the Subject Property.

4. The Applicant provided a site plan which indicates that the dimensions of both the 724 and 728 Maryland Avenue parcels are 36' by 150' (5,400 sf). The Applicant did not provide a survey to confirm the dimensions of the parcels. Contrary evidence indicates that the width of the 728 Maryland Avenue parcel is 32'. If the width of the 728 Maryland Avenue parcel is 32', its area is 4,800 sf.

5. Like other parcels on the same block of Maryland Avenue, both of the lots that form the Subject Property are of a regular, rectangular shape and are generally flat.

6. A residential structure is located on each of the lots, with a garage at the rear of the 724 Maryland Avenue parcel and a parking pad at the rear of the 728 Maryland Avenue parcel, with access from Rosary Way. Both structures were built in the early 1900s.

7. A 1976 Certificate of Occupancy permits the use of the structure on the 724 Maryland Avenue parcel for "2 family dwelling and one car detached garage."

8. A 1976 Certificate of Occupancy permits the use of the structure on the 728 Maryland Avenue parcel for "2 family dwelling and three outdoor parking stalls."

9. The Applicant proposes to demolish both structures; to consolidate the parcels; and to re-subdivide the site into three new lots. Each of the new lots, as proposed, would front onto Elwood Street and would extend to the interior side of the parcel at 732 Maryland Avenue.

10. Using the Applicant's assertion that the width of both of the existing lots is 36', the dimensions of each of the new lots would be 50' by 72' (3,600 sf). Using a 32' width for the 728 Maryland Avenue parcel, the dimensions of each of the new lots would be 50' by 68' (3,400 sf).

11. The Applicant proposes to construct a three-story structure on each of the three new lots, each to be used for two residential units.

12. The Applicant proposes the following setbacks for the new structures, as depicted on the Applicant's site plan, which shows a 36' width for the 728 Maryland Avenue parcel and a 72' length for the new parcels:

- **Lot 1** (Maryland Avenue and Elwood Street corner): A 5' front setback from the Elwood Street property line; a 13'-5" exterior side setback from the Maryland Avenue property line; a 12'-9" rear setback from the interior side of the 732 Maryland Avenue parcel; and a 5' setback from the interior side property line shared with the new Lot 2;
- **Lot 2** (interior lot): A 5' front setback from the Elwood Street property line; a 12'-9" rear setback from the 732 Maryland Avenue parcel; a 12'-6" interior side setback from the property line shared with the new Lot 1; and a 5' interior side setback from the property line shared with the new Lot 3; and
- **Lot 3** (Elwood Street and Rosary Way corner): A 5' front setback from the Elwood Street property line; a 12'-9" rear setback from the 732 Maryland Avenue parcel; a 12'-6" interior side setback from the property line shared with Lot 2; and a 5' setback from the Rosary Way property line.

13. If the width of the 728 Maryland Avenue parcel is actually 32', the length of the new parcels would be reduced from 72' to 68' and the rear setback proposed for each of the new structures would be reduced from the 12'-9" depicted on the site plan to 8'-9".

14. As designed, each house would have an integral garage, for two tandem spaces, with access from a new curb cut on Elwood Street.

15. The Applicant's site plan indicates an intent to provide landscaping within the setback along the 732 Maryland Avenue property line.

16. The Applicant provided a series of photographs and graphic depictions to support the assertion that the setbacks proposed would be generally consistent with other residential structures in the vicinity of the Subject Property.

17. The Applicant acknowledged that the inability to comply with the front and rear setback requirements is a consequence of the dimensions of the new parcels, which results from the Applicant's decision to change the orientation of the original parcels on Maryland Avenue to orientation on Elwood Street.

18. The Applicant did not offer any evidence of any unique physical characteristics or conditions of the Subject Property that prevent development of the site for a structure or structures that comply, or more closely comply, with the Code's requirements. The Applicant simply expressed a preference for the development as proposed and asserted that it would not be possible without the required variances.

19. David Molder, the owner of the property at 725 Maryland Avenue; Guy Billeloch, the owner of the property at 718 Maryland Avenue; Frank Golba, the owner of the 732 Maryland Avenue parcel; and Tim Nye, the owner of the property at 708 Maryland Avenue, appeared at the hearing to oppose the request.

20. The Objectors all expressed concerns about the magnitude and impact of the proposed variances from the setback requirements and the impact of new curb cuts on safety and the availability of on-street parking on Elwood Street. They also questioned whether the width of the 728 Maryland Avenue parcel is 36', as the Applicant asserted, or 32', as reflected in City and County records.

21. Mr. Golba owns the parcel that abuts the rear of the new lots, with the configuration proposed. He expressed specific concerns regarding the impact on his property of a reduced rear setback for the structures on the new lots. He acknowledged that the existing structure on the 728 Maryland Avenue parcel has limited setbacks from the shared property line and from the front property line and that the proposed development would allow for increased setbacks. However, he noted that the impact of the three structures proposed, along the full 150' of the shared property line would be significantly different than the impact of the existing single structure, with an extensive rear yard.

## Conclusions of Law:

- **Controlling Code Provisions and Legal Principles**

1. Pursuant to Section 911.02, two-unit residential uses are permitted in R2-M Districts, subject to site development standards set forth in Section 903.03.C.2, which include 30' front, 30' rear and 30' exterior side setback requirements. The interior side setback requirement is 5', which can be reduced pursuant to the Contextual Side Setback provisions in Section 925.06.C.

2. Zoning ordinances allow for variances from the strict application of the ordinance provisions. An applicant may seek a "use variance" to allow for a use that is not permitted the relevant zoning district. A "dimensional variance," by contrast, allows for reasonable adjustment of a dimensional regulation to accommodate a use that is permitted.

3. 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 Inc. v. City of Philadelphia*, 266 A.3d 495, 511 (Pa. 2021). Any application for a variance is, in essence, a request to do something does not comply with the zoning ordinance requirements.

4. Zoning ordinances allow for variances from strict compliance with the ordinance's requirements, subject to specific standards. Section 922.09.E of the Zoning Code sets forth the standards the Board is to consider with respect to both use and dimensional variances, which 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.*, 266 A.3d at 210.

5. In *Hertzberg*, the Pennsylvania Supreme Court recognized that a less restrictive application of the standards 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, it remains the applicant's responsibility to present substantial and credible evidence in support of the request. Even where a dimensional variance is sought and the less restrictive standard applies, the applicant must still provide some evidence of a unique condition of the property that results in an unnecessary hardship. See *In re Wagner*, 339 A.3d 582 (Pa. Commw. Ct. 2025) (Court observed that even under the post-*Hertzberg* relaxed standards, it would "stretch the concept of relaxation past the breaking point" to make a finding of "hardship" without some credible supporting evidence).

6. An assertion that property would have more value but for the Code's requirements does not support a claim of an "unnecessary hardship." A variance cannot be granted simply because the zoning ordinance "deprives the landowner of the most lucrative and profitable

uses.” *Wilson v. Plumstead Twp. Zoning Hearing Bd.*, 936 A.2d 1061, 1070 (Pa. 2007), citing *Laurel Point Assoc. v. Susquehanna Twp. Zoning Hearing Bd.*, 887 A.2d 796, 803 (Pa. Commw. Ct. 2005), *alloc. denied* 903 A.2d 1235 (Pa. 2006); *Valley View Civic Ass’n v. Zoning Bd. of Adj.*, 462 A.2d 637, 640 (Pa. 1983) (citations omitted) (“mere evidence that the zoned use is less financially rewarding than the proposed use is insufficient to justify a variance”); see also *Lamar Advantage GP Co. v. Zoning Hearing Bd. of Adj. of City of Pittsburgh*, 997 A.2d 423, 445–46 (Pa. Commw. Ct. 2010); *Lawrenceville Stakeholders v. City of Pittsburgh Zoning Bd. of Adj.*, 247 A.3d 465, 477 (Pa. Commw. Ct. 2021).

7. An applicant for a variance must also prove that a claimed hardship is not self-created. *Appeal of Volpe*, 121 A.2d 97, 100 (Pa. 1956) (where applicant had subdivided property into one lot that conformed to the minimum area requirement and one undersized lot, the Pennsylvania Supreme Court held that denial of variance to build on the undersized lot was appropriate because any hardship was self-inflicted); *Appeal of Grace Building Co.*, 392 A.2d 888, 890 (Pa. Commw. Ct. 1978) (where applicant conveyed lots that would have allowed compliance with minimum area requirement, the Commonwealth Court held that, in choosing to convey the lots, the applicant created its own hardship); see also Robert S. Ryan, *Pennsylvania Zoning Law and Practice*, § 6.2.11.

- **The Applicant Failed To Support the Request for Multiple Dimensional Variances**

8. The Applicant seeks to subdivide the two parcels with frontage on Maryland Avenue into three new lots that would be oriented towards Elwood Street. As proposed, each of the new lots would be used for a new two-unit structure. Although two-unit uses are permitted in the R2-M District, the proposed structures are subject to the current setback requirements for R2-M Districts.

9. With the proposed development, Elwood Street would be the “front” of the site and the proposed structures would be subject to the 30’ front setback requirement. What had been a “side,” shared the 732 Maryland Avenue parcel, would be the “rear” of the site and the 30’ rear setback requirement would apply. What had been the “front” on Maryland Avenue would be the exterior side, subject to the 30’ exterior side setback requirement.

10. For the structures on all three lots, the Applicant seeks variances to reduce the front setback from the required 30’ to 5’ and to reduce the rear setback from the required 30’ to 12’-9” (or 8’-9”, using the 32’ dimension for the 728 Maryland Avenue lot and the 68’ length of the new lots). On the new “exterior” side, the Applicant seeks a variance to reduce the required 30’ setback to 13’-5”.

11. The Applicant did not provide any evidence of any unique condition of the parcels that creates any “unnecessary” hardship. Both parcels have a regular, rectangular shape and both are generally flat. The Applicant’s preference for the proposed development on the reconfigured parcels simply does not constitute an “unnecessary hardship.”

12. Further, by seeking to change the orientation of the lots, the Applicant created the necessity of applying the setback requirements to the new parcels as reconfigured. Any “hardship” resulting from the application of the setback requirements is self-created.

13. Reasonable development of the site may require some relief from the Code's dimensional requirements. However, the Applicant did not provide any credible evidence or testimony that would support the assertion that the variances requested reflect the "minimum" that would afford relief. To the contrary, the variances requested appear to maximize use of the site and are of an order of magnitude that essentially ignores the existence of the site development standards, pushing the more relaxed Hertzberg standard beyond breaking point.

14. The existing structures, as located on the existing parcels, do not comply with the current front and exterior side setback requirements. Because those structures predated the current requirements, the setbacks for the existing structures are legally nonconforming. The Applicant proposes to demolish those structures, which constitutes the abandonment of the legally nonconforming conditions, and any new structures must comply with the current requirements. Again, it is the Applicant's preference to demolish the existing structures and to reorient the lots that eliminates any nonconforming setbacks and creates the necessity of applying the current setback requirements to new structures on the lots as reoriented.

15. For these reasons, consistent with the evidence and testimony presented and the applicable legal standards governing dimensional variances, the Board concludes that denial of the request is appropriate.

**Decision: The Applicant's request for variances from Section 903.03.C.2 to allow for the construction of three two-unit residential structures with limited setbacks on three new lots 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.