

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2011-31 : **HEARING DATE:** February 15, 2012
APPLICATION OF: : **DECISION DATE:** February 15, 2012
Charles Ross Smith :
: :
: :
PROPERTY: : :
489 Woodhill Road :
Wayne, PA 19087 :

**OPINION AND ORDER OF THE UPPER MERION
TOWNSHIP ZONING HEARING BOARD**

The Applicant, Charles Ross Smith (hereinafter referred to as the "Applicant"), filed an application requesting a special exception to Section 165-199(B)(3) or, in the alternative, a variance to Section 165-24(C). The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on February 15, 2012 at the Upper Merion Township Building. All members of the Zoning Hearing Board were present as well as the Solicitor, Zoning Officer, and Court Reporter.

FINDINGS OF FACT

1. The Applicant is Charles Ross Smith, with a mailing address at 489 Woodhill Road, Wayne, Upper Merion Township.
2. The legal owner of the subject property is Charles Ross Smith.
3. The property is located at 489 Woodhill Road, Wayne, Upper Merion Township.
4. The Applicant was not represented by an attorney.

5. The subject property is located in the “R-1A ” zoning district.
6. The lot is approximately 21,979 square feet.
7. The Applicant desires to build a garage, which shall be attached to the residence on the subject property.
8. The subject property is a single family residence that exists as a nonconforming structure.
9. There were no residents who testified in favor of the project.
10. The Board recognized that the Applicant presented signed correspondence from adjoining neighbors in favor of the variance requested.
11. There were no residents who testified against the project.

CONCLUSIONS OF LAW

1. The Applicant is Charles Ross Smith, with a mailing address at 489 Woodhill Road, Wayne, Upper Merion Township.
2. The legal owner of the subject property is Charles Ross Smith.
3. The property is located at 489 Woodhill Road, Wayne, Upper Merion Township.
4. The subject property is located in the “R-1A ” zoning district.
5. The lot is approximately 21,979 square feet.
6. The subject property is a single family residence that exists as a nonconforming structure.
7. The Applicant desires to build a garage, which shall be attached to the residence on the subject property.
8. In order to accomplish this request, the Applicant requires a special exception to Section 165-199(B)(3) of the Upper Merion Zoning Code. In accordance with Section 165-199(B)(3), “a single-family dwelling which exists a nonconforming structure may be

altered, extended or added to in a manner which does not meet height, setback, yard or coverage requirements when authorized as a special exception.”

9. A special exception is a conditionally permitted use, allowed by the legislature if specifically listed standards are met. Appeal of Brickstone Realty Corp, 789 A.2d 333 (Pa. Cmwlth 2001). As such, a special exception is not an exception to the zoning ordinance, but a use permitted conditionally, the application for which is to be granted or denied by the Zoning Hearing Board pursuant to express standards and criteria. Id. As a matter of law, an applicant has an absolute right to a special exception, *unless it is injurious to the public safety, health, and welfare of the community*. Manor Health Care v. Zoning Hearing Bd., 139 Pa. Commw. 206, 590 A.2d 65 (1991) (emphasis supplied). An applicant for a special exception has the burden of proving that it has met the criteria for a special exception contained in the ordinance. Shamah v. Hellam Township Zoning Hearing Board, 167 Pa. Cmwlth. 610, 648 A.2d 1299 (1994). The applicant must prove not only that the proposed use is of a type permitted by special exception, but also that the proposed use complies with the other applicable requirements of the ordinance which expressly govern such a grant. Id. Once the applicant for a special exception shows compliance with the specific requirements of the ordinance, it is presumed that the use is consistent with the promotion of health, safety and general welfare. Brickstone, 789 A.2d at 340. At this point, the burden shifts to objectors to prove that the proposed use is not consistent with the health, safety and general welfare. Id.
10. Pursuant to Section 165-250B(1) of the Upper Merion Zoning Code, the Board is required to consider the following criteria that is outlined in Section 165-250B of the Zoning Code.

- (a) The Applicant shall establish, by credible evidence, that the special exception complies with the statement of community development objectives as stated in Article I of this Chapter and with the declaration of legislative intent that may appear at the beginning of the applicable district under which approval is sought.
- (b) The Applicant shall establish, by credible evidence, compliance with all conditions on the special exception enumerated in the section which gives the Applicant the right to seek a special exception.
- (c) The Applicant shall establish, by credible evidence, that the proposed special exception will not adversely affect neighboring land uses in any way and will not impose upon its neighbors in any way but rather shall blend with them in a harmonious manner.
- (d) The Applicant shall establish, by credible evidence, that the proposed special exception shall be properly serviced by all existing public service systems. The peak traffic generated by the subject of the approval shall be accommodated in a safe and efficient manner, or improvements shall be made in order to effect the same. Similar responsibility shall be assumed with respect to other public service systems, including, but not limited to, police protection, fire protection, utilities, parks and recreation.
- (e) The Applicant shall establish, by credible evidence, that the proposed special exception shall be in and of itself properly designed with regard to internal circulation, parking, buffering and all other elements of proper design.
- (f) The Applicant shall provide the Board with sufficient plans, studies or other data to demonstrate compliance with all applicable regulations.

(g) The Board shall impose such conditions as are necessary to ensure compliance with the purpose and intent of this chapter, which conditions may include plantings and buffers, harmonious design of buildings and the elimination of noxious, offensive or hazardous elements.

11. Here, the Applicant is requesting permission to build an attached garage to the single family dwelling that exists on the property. The pre-existing condition and the location of the house do not permit construction of the garage within the setback guidelines unless a special exception is granted. The Board found that the Applicant met the aforementioned criteria to warrant granting of the special exception. Additionally, the Board found that the use is consistent with the promotion of health, safety and general welfare.

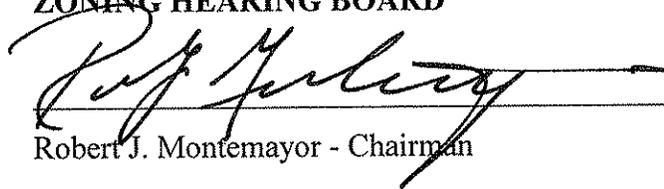
ORDER OF THE UPPER MERION TOWNSHIP

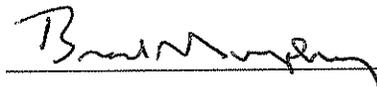
ZONING HEARING BOARD

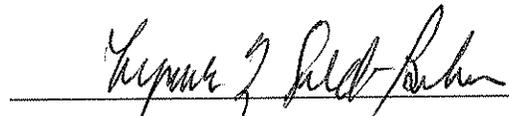
IT IS HEREBY ORDERED AND DECREED that the Board finds that the Applicant presented sufficient testimony to grant a special exception to Section 165-199(B)(3). This special exception is conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on February 15, 2012.

Decision Dated:

**UPPER MERION TOWNSHIP
ZONING HEARING BOARD**


Robert J. Montemayor - Chairman


Brad Murphy – Vice Chairman


Lynne Z. Gold-Bikin - Secretary

NOTE TO APPLICANT:

There is a thirty (30) day period after the date of a decision for an aggrieved person to file an appeal in the Court of Common Pleas of Montgomery County to contest an approval or denial by the Zoning Hearing Board. If the Applicant has been granted Zoning Hearing Board approval, the Applicant may take action on said approval during the thirty (30) day appeal period; however, the Applicant will do so at his or her own risk. If the Applicant has received Zoning Hearing Board approval, the Applicant must secure all applicable permits from Upper Merion Township within one (1) year of the date of the approval or the decision granting approval.