ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2012-004	:	**HEARING DATE:** April 4, 2012
APPLICATION OF:	:	
Manor Care King of Prussia PA, LLC	:	
	:	**DECISION DATE:** April 4, 2012
PROPERTY:	:	
600 West Valley Forge Road	:	
King of Prussia, PA 19406	:	

OPINION AND ORDER OF THE UPPER MERION TOWNSHIP ZONING HEARING BOARD

The Applicant, Manor Care King of Prussia PA, LLC (hereinafter referred to as the "Applicant"), filed an application requesting a special exception to Section 165.82(A)(7)(b), a special exception to Section 165.84.F, a special exception to Section 165-85, a variance to Section 165-85, a variance to Section 165-86, and a variance to Section 145-24.A(1). The application was properly advertised, and public hearing was held before the Upper Merion Township Zoning Hearing Board on April 4, 2012 at the Upper Merion Township Building. At the hearing, the Applicant withdrew their request to a variance pursuant to Section 145-24.A(1).

All members of the Zoning Hearing Board were present except for Stephen Levine, as well as the Solicitor, Zoning Officer, and Court Reporter.

FINDINGS OF FACT

1. The Applicant is Manor Care King of Prussia PA, LLC, with a mailing address of 600 West Valley Forge Road, King of Prussia, PA 19406.

2. The legal owner of the subject property is HCR Manor Care Properties, LLC.

3. The property is located at 600 West Valley Forge Road, King of Prussia, PA 19406.

4. The applicant was represented by Neil Stein, Esquire of Kaplin, Stewart, Meloff, Reiter & Stein, P.C.

5. The subject property is located in the "A-R" zoning district.

6. The lot is approximately 5.72 acres.

7. The Applicant desires to permit a modest expansion of existing facilities, including the addition of parking spaces, to allow for areas adequate to provide skilled nursing and related facilities and services.

8. The subject property is a skilled nursing facility.

9. Greg Newell testified as an expert for the Applicant.

10. Richard Snoddy, a Manor Care employee, on behalf of the Applicant.

11. Residents Camille Kondratieff, Eric Kondratieff, Elma Betz and Allison Mille had comments with regard to the project.

CONCLUSIONS OF LAW

1. The Applicant is Manor Care King of Prussia PA, LLC, with a mailing address of 600 West Valley Forge Road, King of Prussia, PA 19406.

2. The legal owner of the subject property is HCR Manor Care Properties, LLC.

3. The property is located at 600 West Valley Forge Road, King of Prussia, Upper Merion Township.

4. The subject property is located in the "A-R" zoning district and is a skilled nursing facility.

5. The lot is approximately 5.72 acres.

6. The Applicant desires to permit a modest expansion of existing facilities, including the addition of parking spaces, to allow for areas adequate to provide skilled nursing and related facilities and services.

7. In order to accomplish this request, the Applicant requires a special exception to Section 165.82(A)(7)(b) of the Upper Merion Zoning Ordinance, to permit the expansion of the existing nursing home by an additional 20 beds. In accordance with Section 165.82(A)(7)(b), "a building may be erected, altered or used and a lot may be used or occupied for any of the following purposes and no other when authorized by special exception…hospital, nursing or convalescent home, excluding sanatorium."

8. Applicant further requires a special exception to Section 165.84.F of the Upper Merion Zoning Ordinance, in order to permit the expansion of the existing nursing home, with a setback from a residential zoning district line of less than the requires 150 feet. In accordance with Section 165.84.F for lots near residential or agricultural districts, "unless authorized as a special exception, in no case shall any building or structure be erected closer than 150 feet to any residential or agricultural district".

9. Applicant further requires a special exception to Section 165-85 of the Upper Merion Zoning Ordinance, in order to permit the installation of 22 additional parking spaces with a setback from a residential zoning district line of less than the required 150 feet. In accordance with Section 165-85, parking shall be provided in accordance with the provisions of Article XXVIII herein. Notwithstanding the provisions of Article XXVIII, no parking area shall be permitted within the front yard of any lot in this district nor closer than 150 feet to any agricultural or residential district unless authorized as a special exception, but in no case shall any parking be permitted closer than 100 feet to any agricultural or residential district."

10. Applicant further requires a variance to Section 165-85 of the Upper Merion Zoning Ordinance, to permit 7 additional parking spaces within the front yard and parking spaces within 50 feet from a residential zoning district. In accordance with Section 165-85, parking shall be provided in accordance with the provisions or Article XXVIII herein. Notwithstanding the provisions or Article XXVIII, no parking area shall be permitted within the front yard of any lot in the district nor closer than 150 feet to any agricultural or residential district unless authorized as a special exception, but in no case shall any parking be permitted closer than 100 feet to any agricultural or residential district."

11. Finally, the Applicant requires a variance to Section 165-86 to permit a building addition within the required screen buffer of 50 feet. In accordance with Section 165-86, all front yards and all areas delimited by any side or rear lot line abutting or directly across a street from any agricultural or residential district shall be effectively screened by a buffer of not less than 50 feet in width. Such planting shall be in accordance with the provisions of Section 165-217.1.

12. 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.

13. 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 1 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.

14. The findings that the Board must make, where relevant, in granting a variance as set forth in the Municipalities Planning Code are as follows:

> 1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
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> 2. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

3. That such unnecessary hardship has not been created by the Applicant.

4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

15. Here, the Applicant is requesting permission to build a modest expansion of the existing skilled nursing facility and is seeking additional parking spaces in order to allow for areas adequate to provide skilled nursing and related facilities and services. The Board found that the Applicant met the criteria to grant the requested special exceptions and variances.

16. Additionally, the Board found that the criteria for granting a variance were met and that the relief granted was the minimum variance that will afford the relief requested.

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 a special exception to Section 165.82(A)(7)(b), a special exception to Section 165.84.F, a special exception to Section 165-85, a variance to Section 165-85, a variance to Section 165-86. These variances and special exceptions are granted conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on April 4, 2012.

Decision Dated:

UPPER MERION TOWNSHIP
ZONING HEARING BOARD

Robert J. Montemayor - Chairman

Brad Murphy – Vice Chairman

Lynne Z. Gold-Bikin - Secretary

William J. Clements

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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.