ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2012-025	:	**HEARING DATE:** November 14, 2012
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APPLICATION OF:	:	
William and Janice Fogel	:	
	:	
	:	**DECISION DATE:** November 14, 2012
PROPERTY:	:	
507 Brookwood Road	:	
Wayne, PA 19087	:	

OPINION AND ORDER OF THE UPPER MERION TOWNSHIP ZONING HEARING BOARD

The Applicant, William B. and Janice M. Fogel (hereinafter collectively referred to as the "Applicant"), filed an application requesting a special exception to Section 165.209(2)(e) of the Upper Merion Zoning Code (the "Code"). The application was properly advertised, and public hearing was held before the Upper Merion Township Zoning Hearing Board on November 14, 2012, 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 William B. and Janice M. Fogel, with a mailing address of 507 Brookwood Road, Wayne, PA 19087.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 507 Brookwood Road, Wayne, PA 19087

4. The applicant was not represented by an attorney.

5. The subject property is located in the "R1" zoning district.

6. The Applicant applied for a special exception to Section 165.209(2)(e) of the Code to house up to four (4) Bantam chickens in their backyard as pets.

7. Pursuant to the Applicant's testimony, the intent of the Applicant is to build an insulated chicken coup which will be located in the backyard and near the house.

8. The Applicant testified that the chickens to be kept as pets will be Silkie chicken which is a special breed of Bantam chickens.

9. The Applicant testified that Bantam chickens are one-fifth of the size of standard chickens.

10. The Applicant's testified that their primary concern is cleanliness and that avian flu is not typically an issue for this type of chicken.

11. The Applicant testified that the chicken coop shall be fenced in and insulated.

12. The Applicant testified that the coop will not be visible from the street.

13. The Applicant testified that she spoke to the neighbors about their expressed concern for noise of the rooster crowing. According to the Applicant's testimony, if the rooster crows or the chickens otherwise make noise, she will bring them inside the garage. The chickens will be house in the garage in the cold weather.

14. The Applicant testified that this breed to chicken lays one (1) egg every three (3) days which are edible.

15. The Applicant testified that the waste generated by the chickens will be composted and the coop will be lined with pine chips.

16. The Applicant submitted letters from neighbors: Paul and Ruth Ahrens, 513 Brookwood Road; David and Cheryl Marques, 501 Brookwood Road; Lisa and John Egan, 505 Forest Road; and Lucie McDermott, 704 Mallard Road – all of which were in favor of the application.

17. Dr. William Lehner testified and entered his appearance. Dr. Lehner resides at 540 Lindsey Drive and is a family physician. He opposed the application on the following grounds:

a. The neighborhood is a residential neighborhood and not a farm.

b. Chickens are farm animals and not pets.

c. The dogs in the neighborhood howl and bark when the rooster crows, causing considerable noise in the neighborhood.

d. Avian flu is possible if the right circumstances exist.

e. West Nile virus is a potential problem.

18. Martin D. Nickel testified and entered his appearance. Mr. Nickel resides at 521 Brookwood Road which is immediately behind and adjacent to the Applicant's residence.

19. The coop will be located 145 feet from his back patio.

20. The rooster has crowed for over an hour at a time causing him and his family considerable disturbance.

21. He related a number of instances illustrating the noise problem:

a. He, on occasion, has a guest at his house and on his back yard patio, which visits were disturbed by the rooster crowing.

b. He and his wife have been awakened from sleep on a number of occasions by the crowing of the rooster.

c. He has had to shut his bedroom window in the summer time to keep out the noise.

d. He would not oppose the application if the Applicant agreed to keep only hens and eliminated the rooster.

22. David Marquis testified in favor of the application. He and his wife reside at 501 Brookwood Road, which is the house next door to the Applicant's residence. He is not concerned about the noise even though he has heard the rooster on occasion because the rooster is not loud.

23. Julie Dunn testified in favor of the application. She resides at 690 Mallard Road.

24. After considering the evidence and testimony at the hearing, the Board voted 5-0 to approve the application with the condition that there would be no more than four (4) chickens with only one of them being a rooster.

25. The Applicant accepted this condition of approval.

CONCLUSIONS OF LAW

1. The Applicant requests a special exception pursuant to Section 165.209(2)(e) of the Code to permit up to four (4) Bantam chickens in their back yard as pets.

2. In accordance with Section 165-209.(2)(e) "uses accessory to dwelling…(e) [t]he keeping of and shelters for farm animals other than common household pets, when authorized as a special exception by the Zoning Hearing Board.

3. 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.

4. 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.

5. Here, the Applicant is requesting permission to keep up to four (4) Bantam chickens in their backyard as pets. The Applicant provided sufficient testimony and evidence to support this request. Accordingly, the Board found that the Applicant met the criteria to grant the requested special exception.

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 165.209(2)(e). The special exception is granted conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on November 14, 2012.

Decision Dated: November 14, 2012

UPPER MERION TOWNSHIP
ZONING HEARING BOARD

_____

Robert J. Montemayor - Chairman

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Brad Murphy – Vice Chairman

_____

Lynne Z. Gold-Bikin - Secretary

_____

William J. Clements

_____

John Tallman

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.