

**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

APPLICATION OF DAVID H. AND SHERYL WILLIAMS

NO. 2012-033

**PROPERTY: 920 CROTON ROAD
WAYNE, PA 19087**

OPINION AND ORDER

This zoning application involves residential landowners' request for a special exception, or, in the alternative, a variance, to permit a videography editing studio located in the basement of their single-family residence.

On February 20, 2013, the Zoning Hearing Board ("ZHB") of Upper Merion Township ("Township") held a public hearing with regard to Application No. 2012-034 of David H. and Sheryl Williams (collectively, "Landowners"). The members of the ZHB present were William J. Clements, Esquire, Chairman; Brad Murphy, Secretary; John M. Tallman, Jr., Member; and Mark DePillis, Esquire, Member. The ZHB was represented by Marc D. Jonas, Esquire, of the law firm of Eastburn and Gray, P.C., solicitor for the ZHB. Landowners were represented by Paul Toner, Esquire, of the law firm of Vincent B. Mancini and Associates.

Landowners sought a special exception pursuant to sections 165-209(A)(d) and 165-251(A)(6) of the Upper Merion Township Zoning Ordinance of 1942, as amended ("Ordinance") to permit an accessory studio use or professional office use at the property. In the alternative, Landowners sought a variance from section 165-251(B) of the Ordinance to permit an accessory use at the property. Landowners also requested an interpretation that their studio use qualified as a no-impact home-based business

pursuant to section 165-219.2 of the Ordinance. Landowners withdrew their challenge to the zoning officer's enforcement notice dated November 20, 2012.

The ZHB admitted the following exhibits into the record:

Landowners' exhibits

- A-1 Google aerial map
- A-2A- photographs
A-2X
- A-2T-1 photograph number 32
- A-3 first floor plan
- A-4 basement plan
- A-5 CinemaCake webpage
- A-6 video of the property
- A-7 locations of other home-based videographers
- A-8 Upper Merion Township business licenses 2010-2012
- A-9 site plan
- A-10 ZHB decision dated September 25, 1979 on application no. 79-36 of Anthony Lopresti granting a special exception to permit a medical office use on a residential property
- A-11 *Curriculum vitae* of Mark Kingsdorf

Pertuch's exhibits

- P-1 photograph
- P-2 photograph

Wesley's exhibits

W-1 photograph

W-2 photograph

W-3 photograph

W-4 photograph

W-5 photograph

ZHB exhibit

B-1 photograph

The zoning hearing was duly advertised, notice thereof was given in accordance with the requirements of the Ordinance, and the proceedings were stenographically recorded. After careful consideration, the ZHB makes the following findings of fact and conclusions of law:

A. FINDINGS OF FACT

BACKGROUND

1. Landowners are the owners of the parcel of land located at 920 Croton Road, Wayne, Pennsylvania ("Property"). [N.T. 15]

2. The Property is approximately 1.5 acres in area and is zoned R-1A Residential District. The Property is a corner lot with frontage on Croton Road and Kernwood Drive. [Exhibit A-9]

3. Improvements on the Property include a 4,000 square foot single family residence with attached garage. [N.T. 22]

4. On November 20, 2012, the Township Chief Building/Zoning Official issued a notice of violation to Landowners. The notice of violation states in pertinent part:

The property is in violation of the Code. The specific violation alleged is that –

The residentially zoned property is being used and operated by a commercial business entity known as Cinemacake Filmmakers which violates Article VI, section 165-23 of the Code.

[N.T. 7, 10, 43]

5. The R-1A Residential District Office does not permit a professional office use. Ordinance section 165-209.A(2)(d) permits a professional office use accessory to a dwelling when authorized as a special exception, provided that such office is located in a dwelling in which the practitioner resides, and provided further that no goods are publicly displayed on the premises.

6. Landowners' application requests zoning relief to permit an accessory studio use or professional office use at the property in which Landowners reside.

ZHB HEARING

7. Testimony was offered by Landowner, David H. Williams, and Mark Kingsdorf, event planning expert and master wedding coordinator, in support of the application.

8. The testimony was as follows:

- Landowners have resided at the Property since 1996 [N.T. 15];
- Landowners have operated their videography business, CinemaCake form the Property since 2001[N.T. 16];
- Landowners obtained business privilege licenses from the Township for operation of their business [N.T. 16];
- CinemaCake produces wedding and event films [N.T. 17];

- the principal place of business of CinemaCake is the basement of the Property [N.T. 18];
- videography takes place on sites of clients who hire CinemaCake to shoot video [N.T. 18];
- most of the interaction between CinemaCake and its clients is on-line [N.T. 18];
- wedding photographers and videographers work out of their homes [N.T. 19];
- CinemaCake employees rarely meet clients in person, but when they do, the meetings take place at CinemaCake's center city office and not at the Property [N.T. 19];
- CinemaCake's center city office is located in the Versailles Building at 1530 Locust Street [N.T. 19];
- client meetings take place at the center city office, and the video editing is done at the Property [N.T. 20];
- Landowners use 2 rooms in the basement of the Property to operate CinemaCake [Exhibits A-3, A-4; N.T. 21];
- the measurements of the 2 rooms are 9' by 17' and 11' by 12' [N.T. 22];
- Landowners' home is set back 330 feet from Croton Road [N.T. 24];
- there is no signage advertising CinemaCake at the Property [N.T. 26];

- the business address for CinemaCake listed on its website is 1530 Locust Street, Suite D, Philadelphia, PA [N.T. 27];
- the only equipment associated with the business are cameras and computers [N.T. 29];
- CinemaCake has 3 employees in addition to Landowners who work at the Property [N.T. 36];
- Landowners have instructed the CinemaCake employees to park in the driveway of the Property and not on Kerrwood Drive [N.T. 44];
- CinemaCake uses subcontractors who attend shoots; the subcontractors park in the driveway of the Property [N.T. 46]; and
- the hours of operation at the Property are from 9 a.m. to 5 p.m. Monday through Friday [N.T. 47].

9. Landowners agreed to the following conditions if the application were granted by the ZHB:

- there will be no more than 3 employees at the Property at any given time;
- no customers will come to the Property;
- no subcontractors will come to the Property;
- all cars will be parked directly in front of the home; no parking on the street or on the upper portion of the driveway;
- the business operation hours will be limited to 9 a.m. to 5 p.m. Monday through Friday;

- the special exception to permit the professional office use at the Property will terminate when Landowners sell the Property; and
- there will be no signage for the business at the Property.

[N.T. 69-71]

10. Two neighbors spoke in favor of the application.

11. Eight neighbors (“Objectors”) spoke in opposition to the application. The Objectors voiced the following concerns:

- the number of cars parked in the driveway;
- noise;
- garbage;
- traffic; and
- safety of children in the neighborhood.

[N.T. 72-117]

B. DISCUSSION

1. Special Exception

Landowners proved compliance with the criteria necessary for the grant of a special exception to permit an accessory videography editing studio at the Property located in the R-1A Residential district.

Landowner sought a special exception to permit an accessory videography editing studio at the Property located in the R-1A Residential district. Ordinance section 165-209.A(2)(d) permits a professional office use accessory to a dwelling when authorized as a special exception, provided that such office is located in a dwelling in

which the practitioner resides, and provided further that no goods are publicly displayed on the premises.

A special exception is not an exception to a zoning ordinance, but rather a use, which is expressly permitted, absent a showing of a high degree of probability that the proposed use will adversely impact the community. *Rural Area Concerned Citizens, Inc. v. Fayette County Zoning Hearing Board*, 646 A.2d 717 (Pa.Cmwlt. 1994), *appeal denied*, 658 A.2d 798 (Pa. 1995).

Once the landowner meets its burden of proof that the proposed use satisfies the requirements of the zoning ordinance for the grant of a special exception, a presumption arises that the proposed use is consistent with the health, safety and general welfare of the community. *Greaton Properties, Inc. v. Lower Merion Township*, 796 A.2d 1038 (Pa.Cmwlt. 2002). The burden then shifts to the objectors to present competent evidence establishing, with a high degree of probability, that the proposed use would adversely impact the health, safety and welfare of the community. *Rural Area Concerned Citizens, Inc. v. Fayette County Zoning Hearing Board*, 646 A.2d 717 (Pa.Cmwlt. 1994), *appeal denied*, 658 A.2d 798 (Pa. 1995).

Objectors do not meet their burden of showing that the proposed use would, with a high degree of probability, violate the health, safety and welfare of the community by merely speculating as to possible harm; instead, objectors must show a high degree of probability that the proposed use will substantially affect the health, safety and welfare of the community. *Id.*

Testimony presented by Landowners demonstrated compliance with the specific and general special exception requirements stated in sections 165-209.A(2)(d) and 165-251.B(1) of the Ordinance. Landowners demonstrated through testimony and exhibits

that the videography editing studio was located in 2 rooms in the basement where Landowners reside. [Exhibits A-3, A-4; N.T. 16, 18, 21] Landowners testified and showed a video and photographs of the Property demonstrating that no goods are publicly displayed on the premises. [Exhibits A-2A – A-2X, A-6; N.T. 29]

Landowners established that the videography editing studio will not adversely affect neighboring land uses in any way and will not impose upon its neighbors in any way but rather blends with them in a harmonious manner. The accepted conditions will further limit any impact on neighboring property owners. [N.T. 69-71] The conditions include: no customers coming to the Property, restrictions on the number of employees, hours of operation, and parking, and prohibition of signage at the Property. [N.T. 69-71]

Landowners demonstrated compliance with the special exception requirements. The proposed videography editing studio use with conditions is consistent with the health, safety, and welfare of the community. The burden shifted to the objectors to present competent evidence establishing, with a high degree of probability, that the proposed use would adversely impact the health, safety and welfare of the community. This, the objectors failed to do.

The Objectors presented no expert witnesses and introduced photographs only relating to the issue of the number of cars parked at the Property. [N.T. 72-117] Landowners agreed to a condition of approval limiting the number of cars to be parked at the Property at any given time. Thus, this condition of approval addressed the Objectors' issue relating to number of cars parked on the Property.

C. CONCLUSIONS OF LAW

1. The ZHB has jurisdiction under section 909.1(a)(5) of the Pennsylvania Municipalities Planning Code, 53 P.S. §10909.1(a)(5), and Ordinance section 165-251.A(6).

2. Landowners have standing as the owners of the Property.

3. The ZHB is obligated to ensure compliance with the technical requirements of the Ordinance.

4. A special exception is a conditionally permitted use, legislatively allowed where specific criteria in an ordinance are met.

5. Landowners bear the initial burden of showing the proposed use meets the specific criteria of the ordinance.

6. Once Landowners meet the burden of showing the proposed use complies with the specific criteria of the ordinance are met, a presumption arises that the use is consistent with the health, safety, and welfare of the community.

7. Landowners provided substantial competent evidence satisfying all of the specific and general criteria for a special exception to permit an accessory videography editing studio in the R-1A Residential district.

8. The burden shifted to the Objectors to prove that the proposed use would be detrimental to the public health, safety, or welfare.

9. Objectors offered no testimony that the proposed accessory videography editing studio would be detrimental to the health and safety of the community.

At the conclusion of its March 20, 2013 hearing, the ZHB entered the following order:

ORDER

AND NOW, this 20th day of March, 2013, on the application of David H. Williams and Sheryl Williams, the following relief is GRANTED:

1. A special exception from section 165-209.A(d) of the Upper Merion Township Zoning Ordinance of 1942, as amended, to permit an accessory videography editing studio subject to the regulations applicable to home occupations, and subject to the following conditions:
 - (i) The hours of the accessory use shall be 9:00 a.m. to 5:00 p.m. Monday through Friday only;
 - (ii) No customers shall come to the property;
 - (iii) The property shall not be used for meetings or drop-offs for subcontractors or staff (except for staff permitted by this decision)
 - (iv) The applicant shall be limited to not more than 3 employees, and employees are defined as any person not residing at the property who performs work for the accessory business;
 - (v) There shall be no signage advertising the accessory business;
 - (vi) Parking relating to the accessory business shall be limited to the permitted employees/staff and located directly in front of the house on the property.

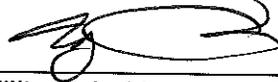
Since the application was contested, a full opinion with findings of fact, conclusions of law and reasons will follow.

This decision is subject to a 30-day appeal period beginning on the date of entry (mailing) of this notice of decision.

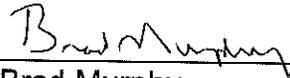
The applicant is directed to section 165-257 "Expiration of Special Exceptions or Variances" and applicable statutory provisions governing the expiration of special exceptions and variances.

Written notice of the ZHB's decision was mailed to Landowner on March 21, 2013.

**ZONING HEARING BOARD OF
UPPER MERION TOWNSHIP**



William J. Clements, Esquire
Chairman



Brad Murphy
Secretary



John M. Tallman, Jr.
Member



Mark DePillis, Esquire
Member

Date of Mailing: