



ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2009-09	:	HEARING DATE: April 15, 2009
	:	
APPLICATION OF: Michele Hatcher	:	DECISION DATE: May 20, 2009
	:	
PROPERTY: 389 Springhouse Road	:	
	:	
Upper Merion Township	:	

OPINION AND ORDER OF THE UPPER MERION TOWNSHIP ZONING HEARING BOARD

The Applicant, Michele Hatcher, (hereinafter referred to as the "Applicant"), filed an application requesting a special exception under Section 165-218.B in order to operate a child day-care home from her residence. The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on April 15, 2009 at the Upper Merion Township Building. All members of the Zoning Hearing Board, except Mark S. DePillis, Esquire, were present as well as the Solicitor, Zoning Officer, and Court Reporter. Brad Murphy, the alternate for the board, sat in place of Mark DePillis.

FINDINGS OF FACT

1. The Applicant is Michele Hatcher, 389 Springhouse Road, King of Prussia, PA 19406.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 389 Springhouse Road, King of Prussia, PA 19406, Upper Merion Township .
4. The Applicant was not represented by an attorney.

5. The Applicant is proposing to have a day-care in her house.
6. The Applicant agreed to get all the state and federal background checks that are required for a day-care.
7. There are two (2) parking spaces in the driveway for the proposed use.
8. The Applicant represented that the neighbors do not object to the proposal.
9. The Applicant agreed to a maximum of six (6) children.
10. The Applicant agreed to finish the fencing around the yard to secure the play area.
11. The Applicant agreed that there will be no use and occupancy permit until the rear yard fence is completely enclosed and there is a replacement gate.
12. The Applicant agreed that there will be no use and occupancy permit until the Applicant has secured a locked cover on the hot tub.
13. Ms. Zetts testified at the hearing against the application.
14. The Applicant agreed to eliminate the trampoline that is in the rear yard play area.

DISCUSSION AND CONCLUSIONS OF LAW

The Applicant, Michele Hatcher, (hereinafter referred to as the "Applicant"), filed an application requesting a special exception under Section 165-218.B in order to operate a child day-care home from her residence.

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.

In accordance with § 912.1 of the Municipalities Planning Code, 53 P.S. § 10912.1, the Zoning Hearing Board may attach reasonable safeguards and conditions on the grant of a special exception.

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.

The Applicant is proposing a child day-care home in her residence. The Applicant offered testimony that the outside play area will be completely enclosed and that the Applicant will install a gate area that is currently missing. The Applicant has a hot tub and she agreed to put a locked cover on the hot tub. The Applicant has a trampoline that she agreed to remove. The Applicant must obtain all the appropriate licensing for the proposed use before a use and occupancy permit is obtained. The Applicant is limiting the number of children to a maximum of six (6) children. The zoning code specifically permits child-care uses in a residence by special exception. A special exception is a use that is permitted as long as the Applicant satisfies the specifically enumerated criteria in the code for a granting of a special exception. Through the use of testimony and exhibits, the Applicant sufficiently proved the elements necessary to grant the special exception. After the Applicant satisfied the burden of proving the satisfaction of the elements in the code, the burden than shifts to any protestants to show that the proposed use is injurious to the public safety, health and welfare of the community. Although there was one protestant, the testimony did not rise to the level of satisfying the burden of showing that proposed use is injurious to the public safety, health and welfare of the community, therefore, the special exception must be granted.

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 under Section 165-218.B in order to operate a child day-care home from her residence.

This special exception is conditioned upon the following:

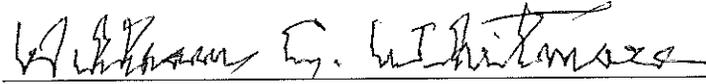
1. The Applicant must comply with the testimony of the Applicant at the public hearing on April 15, 2009.
2. The Applicant must remove the trampoline from the area that is accessible by the children.
3. The Applicant must install and keep locked at all times a cover to the hot tub.
4. The Applicant must completely enclose the fence in the rear property area and reinstall the missing gate.
5. The Applicant must obtain all the applicable licensing before a use and occupancy permit is granted.

Decision Dated: May 20, 2009

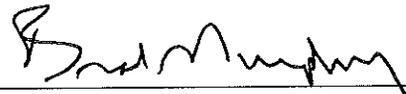
UPPER MERION TOWNSHIP
ZONING HEARING BOARD



Robert J. Montemayor – Chairman – (Voted to Approve)



William C. Whitmore, Sr. – Secretary – (Voted to Deny)



Brad Murphy – Alternate – (Voted to Approve)

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.