

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

APPLICATION OF EMANUEL AND ANDREANA CHRYSOS

NO. 2014-06

**PROPERTY: 656 SHOEMAKER LANE
KING OF PRUSSIA, PA 19406**

OPINION AND ORDER

This zoning application involves residential landowners' request for a special exception to enable landowners to keep guinea hens in the backyard of their single-family residence.

On May 7, 2014, the Zoning Hearing Board ("ZHB") of Upper Merion Township ("Township") held a public hearing with regard to application no. 2014-06 of Emanuel and Andreana Chryssos (collectively, "Landowners"). The members of the ZHB present were Lynne Gold-Bikin, Esq., Chairwoman; Maria Mengel, Acting Secretary; Judith A. Vicchio, Member; and, John M. Tallman, Jr., Member. The ZHB was represented by Marc D. Jonas, Esq., of the law firm of Eastburn and Gray, P.C., solicitor for the ZHB. Landowner was not represented by counsel.

Landowners sought a special exception pursuant to section 165-209.A(2)(e) of the Upper Merion Township Zoning Ordinance of 1942, as amended ("Ordinance") to permit the keeping of farm animals other than household pets at a residential property.

The ZHB admitted the following exhibits into the record:

Landowners' exhibits

A-1 One-page document entitled "Guinea Hens"

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 656 Shoemaker Lane, King of Prussia, Pennsylvania ("Property"). [N.T. 4-5]
2. The Property is approximately 19,800 square feet in area and is zoned R-1 Residential District. [N.T. 4]
3. Improvements on the Property include a single family residence with a split-rail and wire fence enclosing the backyard. [N.T. 6, 14]
4. The R-1 Residential District permits, as an accessory use, the keeping of and shelters for farm animals other than common household pets when authorized as a special exception by the ZHB.
5. Landowners' application requests a special exception pursuant to section 165-209.A(2)(e) of the Ordinance to permit the keeping of guinea hens and a hen house at their residential Property.

ZHB HEARING

6. Testimony was offered by Landowners in support of the application.
7. The testimony was as follows:
 - three to six guinea hens are proposed at the Property for the purpose of combating a deer tick problem [N.T. 6];
 - Landowners' dogs bring the deer ticks into the house [N.T. 7];
 - Landowners are concerned about getting Lyme Disease [N.T. 7];
 - guinea hens eat deer ticks, and Landowners prefer to use guinea hens to eradicate deer ticks from their Property rather than the use of harsh chemicals [N.T. 7];
 - the guinea hens will range in the back yard during the day and roost in a hen house at night [N.T. 7];
 - the guinea hens weigh up to 3½ pounds, make little noise, do not have much of an odor, and require little care [N.T. 8, 11, 21-22, 27-28];
 - Landowners' neighbors have no opposition to their application [N.T. 12];
 - the hen house will keep the guinea hens safe from predators and inclement weather [N.T. 12];
 - the guinea hens will have their wings clipped to prevent them from flying off the Property [N.T. 13]; and
 - the backyard of the Property is enclosed by a wood and wire fence [N.T. 14].
8. One Township resident spoke in favor of the application.

9. One neighbor spoke in opposition to the application. The objector voiced the following concerns:

- noise;
- odor; and
- change in the residential character of the neighborhood.

[N.T. 17-25]

B. DISCUSSION

- 1. Landowners proved compliance with the criteria necessary for the grant of a special exception to permit the keeping of guinea hens at their residential Property.**

Landowners sought a special exception to permit, as an accessory use, the keeping of guinea hens and a guinea hen house at their Property located in the R-1 Residential district. Ordinance section 165-209.A(2)(e) permits the keeping of and shelters for farm animals other than common household pets accessory to a dwelling when authorized as a special exception.

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.Cmwlth. 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.Cmwith. 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.Cmwith. 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 special exception requirements stated in section 165-251.B(1) of the Ordinance. Landowners established that the keeping of guinea hens will not adversely affect neighboring land uses in any way and will not impose upon their neighbors, in terms of noise or odor. [N.T. 8, 11, 22, 27-28] Landowners' backyard is completely secured with a wood and wire fence, and the guinea hens will roost in a fully enclosed hen house at night. The guinea hens will have one of their wings clipped so that they cannot stray from the Property. [N.T. 12-14] Guinea hens produce little, if any odor. [N.T. 21-22]

Landowners demonstrated compliance with the special exception requirements. The proposed keeping of guinea hens at the Property is a permitted use and is consistent with the health, safety, and welfare of the community. The burden shifted to the objector 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 objector failed to do.

The objector presented no expert witnesses or documentary evidence regarding noise or odor caused by guinea hens. [N.T. 17-25] The objector merely speculated that the guinea hens would cause excessive noise and emit excessive odor from the Property. The ZHB limited the number of guinea hens to six as a condition of approval of the grant of the special exception. This condition of approval mitigated the Objector's concerns relating to noise and odor.

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 Ordinance criteria for a special exception to permit the keeping of guinea hens and a shelter for the guinea hens as an accessory use at the residential Property.

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

9. Objector offered no competent evidence establishing, with a high degree of probability, that the proposed accessory use of keeping guinea hens at the Property would adversely impact the health, safety and welfare of the community.

At the conclusion of its May 7, 2014 hearing, the ZHB entered the following order:

ORDER

AND NOW, this 7th day of May, 2014, on the application of Emanuel and Andreana Chryssos, the following relief is GRANTED:

A special exception from section 165-209.A(2)(e) of the Upper Merion Township Zoning Ordinance of 1942, as amended, to permit, as an accessory use, the keeping of and shelter for guinea hens, subject to the following condition:

- (i) At no time shall there be more than six guinea hens at 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.

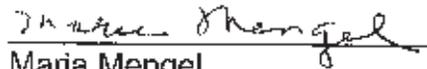
The applicant is directed to section 165-257 "Expiration of Special Exceptions or Variances" and applicable statutory provisions governing the expiration of special exceptions and variances.

Written notice of the ZHB's decision was mailed to Landowner on May 8, 2014.

**ZONING HEARING BOARD OF
UPPER MERION TOWNSHIP**



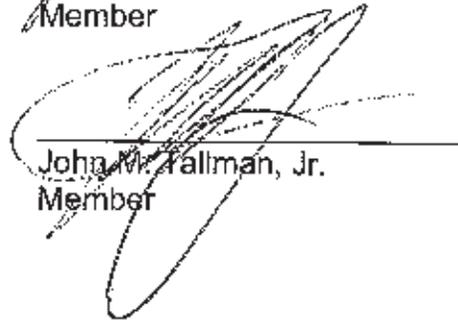
Lynne Gold-Bikin, Esquire
Chairwoman



Maria Mengel
Acting Secretary



Judith A. Vicchio
Member



John M. Tallman, Jr.
Member

Date of Mailing: