

**ZONING HEARING BOARD OF UPPER MERION TOWNSHIP**

**APPLICATION NO.** 2010-13 : **HEARING DATE:** July 21, 2010  
: :  
**APPLICATION OF:** Darren & Sandy Hardel :  
: **DECISION DATE:** September 1, 2010  
: :  
**PROPERTY:** 704 Hidden Valley Road :  
: :  
Upper Merion Township :

**OPINION AND ORDER OF THE UPPER MERION  
TOWNSHIP ZONING HEARING BOARD**

The Applicant, Darren and Sandy Hardel, (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. The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on July 21, 2010 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 Darren and Sandy Hardel, 704 Hidden Valley Road, King of Prussia, PA 19406.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 704 Hidden Valley Road, King of Prussia, PA 19406, Upper Merion Township.
4. The Applicant was not represented by an attorney.
5. The property is zoned “R-2” Residential .
6. The lot is approximately .28 acres.

7. The Applicant is proposing a child day care home.
8. The Applicant currently has children that she is watching who ride bikes and play in the front yard.
9. The Applicant has no training, no licensing and no certifications for child day care.
10. Richard Bosco, a nearby neighbor testified against the project. Mr. Bosco testified that the house is too small for a child day care home and that the kids play in the street. Mr. Bosco also testified that the Applicant's use would be too loud for a quiet neighborhood.
11. Joyce Tower, another nearby neighbor, testified against the project because the road is too narrow with parking on both sides, thereby, presenting a safety issue.
12. Other neighbors testified in support of the project.
13. The Applicant did not present any credible evidence that the special exception complies with the statement of community development objectives as stated in Article I of the applicable chapter.
14. The Applicant did not offer credible evidence that the proposed special exception will not adversely affect neighboring land uses in any way and will not impose upon their neighbors in any way. To the contrary, many neighbors testified that a child day care home in that area would be inconsistent with the character of the neighborhood.
15. The Applicant did not offer credible evidence that the traffic generated by the proposed use would be accommodated in a safe and efficient manner or that any improvements would be made in order to accommodate the business in a safe and efficient manner.

16. The Applicant did not offer any credible evidence that the proposed use would be designed with regard to internal circulation, parking, buffering and other elements of proper design. To the contrary, there was no testimony regarding any of these issues.
17. The Applicant did not offer sufficient testimony to satisfy Section 165-250.B(1) of the Upper Merion Township Zoning Code.

### **DISCUSSION AND CONCLUSIONS OF LAW**

The Applicant, Darren and Sandy Hardel, filed an application requesting a special exception under Section 165-218.B in order to operate a child day care home.

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 has the burden of proving the elements necessary for the granting of a special exception. The Applicant did not offer any credible testimony satisfying the elements for a special exception as outlined above, therefore the application must be denied.

**ORDER OF THE UPPER MERION TOWNSHIP**

**ZONING HEARING BOARD**

**IT IS HEREBY ORDERED AND DECREED** that the Board finds that the Applicant did not present sufficient testimony to grant a special exception under Section 165-218.B in order to operate a child day care home, therefore, the application is denied.

Decision Dated: September 1, 2010

**UPPER MERION TOWNSHIP  
ZONING HEARING BOARD**

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Robert J. Montemayor - Chairman

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Mark S. DePillis, Esq. – Vice Chairman

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William C. Whitmore, Sr. - Secretary

**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.