

## ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2010-28 : HEARING DATE: February 16, 2011  
: :  
APPLICATION OF: Sandra Hardel : :  
: DECISION DATE: March 16, 2011  
: :  
PROPERTY: 704 Hidden Valley Road : :  
: :  
Upper Merion Township : :

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

The Applicant, Sandra 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 from her residence. The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on February 16, 2011 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 Sandra Hardel, 704 Hidden Valley Road, King of Prussia, PA 19406.
2. The legal owner of the subject property is Darren and Sandra Hardel, 704 Hidden Valley Road, King of Prussia, PA 19406.
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 Applicant is proposing a child day care home.
7. The Applicant previously applied for a special exception and was rejected by the Zoning Hearing Board.
8. The Applicant introduced her notes that she used to testify and marked it as Exhibit "A-1".
9. The Applicant introduced four (4) pictures and marked them as Exhibit "A-2".
10. The Applicant introduced a petition signed by neighbors in favor of the project and marked it as Exhibit "A-3".
11. The difference between the prior application and the current application is that the Applicant agreed to the following conditions:
  - A. The Applicant will have no more than three (3) children in the house at any one time.
  - B. The Applicant's day care home will cease automatically on or before September 30, 2013.
  - C. There will be no children allowed to play in the front yard and they will be kept either inside or in a fenced area at all times.
  - D. All play areas shall remained fenced.
13. There were three (3) residents who testified in favor of the application.
14. There was one (1) resident who testified against the application.

## DISCUSSION AND CONCLUSIONS OF LAW

The Applicant, Sandra 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 that the Applicant's proposal falls within the criteria outlined in the zoning ordinance. The Applicant reduced the number of children to three (3) children, which requires no formal training and no state licensing. The Applicant also erected a fence and agreed to have the play areas within the fenced area. The Applicant also agreed that she only wants to do this use until her youngest child goes to school, therefore, the use will automatically cease on or before September 30, 2013.

Based on the conditions agreed to by the Applicant, the board felt that the interests of the community were served by the proposal and that the Applicant sufficiently satisfied the standards of the ordinance.

**ORDER OF THE UPPER MERION TOWNSHIP**

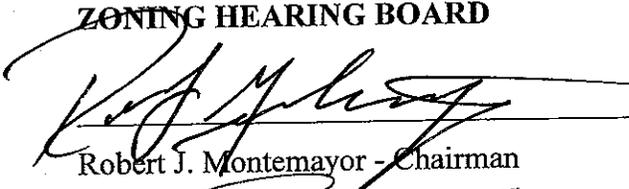
**ZONING HEARING BOARD**

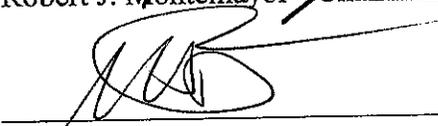
IT IS HEREBY ORDERED AND DECREED that the Board finds that the Applicant presented sufficient testimony to grant a special exception under Section 165-218.B in order to operate a child day care home. This special exception is conditioned upon the following:

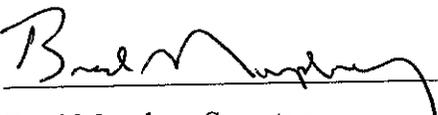
1. The Applicant must comply with the testimony presented by the Applicant at the hearing on February 16, 2011.
2. The Applicant will have no more than three (3) children in the house at any one time.
3. The Applicant's day care home will cease automatically on or before September 30, 2013.
4. There will be no children allowed to play in the front yard and they will be kept either inside or in a fenced area at all times.
5. All play areas shall remained fenced.

Decision Dated: March 16, 2011

**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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Brad Murphy - 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.