

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2011-13 : **HEARING DATE:** May 18, 2011
: :
APPLICATION OF: Ruppert Landscape : :
: **DECISION DATE:** June 15, 2011
: :
PROPERTY: : :
: :
Upper Merion Township :

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

The Applicant, Ruppert Landscape, (hereinafter referred to as the “Applicant”), filed an application requesting a special exception under Section 165-146.E in order to locate a structure within 150 ft. of a residential zoning district. The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on May 18, 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 Ruppert Landscape, c/o Christopher A. Girandi, 214 W. Church Road, King of Prussia, PA 19406.
2. The legal owner of the subject property is Fran Pietrini, 111 E. Church Road, King of Prussia, PA 19406.
3. The property is located at 214 W. Church Road, King of Prussia, PA 19406, Upper Merion Township.
4. The Applicant was not represented by an attorney.

5. The property is zoned “LI” Limited Industrial.
6. The lot is approximately one (1) acre.
7. The Applicant is a commercial landscaper and wants to build a slab and metal frame building that measures approximately 24 ft. by 40 ft.
8. The building will be used for storage.
9. The code requires a special exception any time a commercial building is 150 ft. from a residential district.
10. In this case, the residential district within 150 ft., is a cemetery.
11. The property is approximately 150 ft. wide, therefore, regardless of what the Applicant would ever do, he would always need a special exception.
12. There were no residents who testified against the project.
13. There were no residents who testified in support of the project.

DISCUSSION AND CONCLUSIONS OF LAW

The Applicant, Rupert Landscape, filed an application requesting a special exception under Section 165-146.E in order to locate a structure within 150 ft. of a residential zoning district.

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 metal frame building measuring approximately 24 ft. by 40 ft. to be used for storage for an existing landscaping business. The Applicant's parcel is only 150 ft. wide. Any structure the Applicant would put on his parcel would require a special exception because the code requires a special exception for any commercial building that is within 150 ft. of a residential district. In this case, any building on the parcel would be within 150 ft. from a residential district. The residential district effected by this application is a cemetery. Obviously, this building would not have a detrimental impact on the use and enjoyment of a cemetery, therefore, the special exception should 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 165-146.E in order to locate a structure within 150 ft. of a residential zoning district.

This special exception is conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on May 18, 2011.

Decision Dated: June 15, 2011

UPPER MERION TOWNSHIP
ZONING HEARING BOARD

Robert J. Montemayor - Chairman

Mark S. DePillis, Esq. – Vice Chairman

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.