ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2011-26	:	**HEARING DATE:** November 2, 2011
APPLICATION OF: James Burdumy	:	**DECISION DATE:** December 7, 2011
PROPERTY: 338 Ross Road	:	
Upper Merion Township	:	

OPINION AND ORDER OF THE UPPER MERION TOWNSHIP ZONING HEARING BOARD

The Applicant, James Burdumy, (hereinafter referred to as the "Applicant"), filed an application requesting a special exception under Section 165-209 in order to operate a personal training studio from the residence. The application was properly advertised, and a public hearing was held before the Upper Merion Township Zoning Hearing Board on November 2, 2011 at the Upper Merion Township Building. All members of the Zoning Hearing Board, except Brad Murphy, were present as well as the Solicitor, Zoning Officer, and Court Reporter. Gina, LaMarra the alternate for the board, sat in place of Mr. Murphy.

FINDINGS OF FACT

1. The Applicant is James Burdumy, 5454 Vicaris Street, Philadelphia, PA 19128.
2. The legal owner of the subject property is Independent Mortgage Company, 1250 Germantown Pike, Suite 305, Plymouth Meeting, PA 19462.
3. The property is located at 338 Ross Road, King of Prussia, PA 19406.
4. The Applicant was not represented by an attorney.

5. The property is zoned “R-2” Residential.
6. The Applicant is proposing to operate a personal training studio from his residence, which requires a special exception.
7. The personal training facility would involve fitness and nutrition, as well as conditioning.
8. The Applicant anticipates working with two to four people per day.
9. The coaching and training sessions are not loud and it would not disturb area residents.
10. All coaching and training sessions will be conducted indoors with no activities occurring outside.
11. Any small group training will be held offsite such as at a park or field.
12. The Applicant has a certification as a holistic lifestyle coach, as well as a certification as a personal fitness trainer.
13. The Applicant introduced the following exhibits:

    Exhibit “A-1” – Garage Elevation

    Exhibit “A-2” - Picture of the Tri-Plex

    Exhibit “A-3” - Sketch Plan

    Exhibit “A-4” - Packet of Information and Certifications
14. The Applicant agreed as a condition of approval to limit the hours of operation from 8:00 am to 8:00 pm, Monday through Friday and from 8:00 am to 4:00 pm on Saturday with no activity occurring on Sunday.
15. There were no residents who testified against the project.
16. There were no residents who testified in support of the project.

DISCUSSION AND CONCLUSIONS OF LAW

The Applicant, James Burdumy, (hereinafter referred to as the "Applicant"), filed an application requesting a special exception under Section 165-209 in order to operate a personal training studio from the 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 very small personal training studio for an existing single family attached dwelling. The Applicant anticipates two to four people per day and the sessions will not involve any noise that would disturb the neighbors. All activities will be conducted indoors with no training outdoors. All small groups will be conducted offsite at a park or field. The Applicant's use is permitted by special exception. The Applicant has the burden of proving that the proposed use fits into the criteria specifically enumerated in the zoning code for that particular use. After the Applicant has satisfied that burden, then it is up to the protestants to prove that the proposed use is injurious to the public safety, health and welfare of the community. In the case at bar, the Applicant proved that the proposed use falls within the confines of the ordinance and there was no testimony from protestants, 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 165-209 in order to operate a personal training studio from the 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 November 2, 2011.

2. The hours of operation will be 8:00 am to 8:00 pm, Monday through Friday, 8:00 am to 4:00 pm on Saturdays and no sessions on Sunday.

Decision Dated: December 7, 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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Gina LaMarra - Alternate

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.