

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

**APPLICATION OF DEBRA HESCHL**

**NO. 2013-12**

**PROPERTY: 210 RIVERVIEW ROAD  
KING OF PRUSSIA, PA 19406**

**OPINION AND ORDER**

This zoning application involves a residential lessee's request for a special exception to permit a child day-care home at a property located in the R-2 Residential District.

On May 15, 2013, and June 5, 2013, the Zoning Hearing Board ("ZHB") of Upper Merion Township ("Township") held public hearings with regard to Application No. 2013-12 of Debra Heschl ("Landowner"). The members of the ZHB present were William J. Clements, Esquire, Chairman; Lynne Gold-Bikin, Esquire, Vice-Chair; John M. Tallman, Jr., Member; and Mark DePillis, Esquire, Member. The ZHB was represented by Marc D. Jonas, Esquire, of the law firm of Eastburn and Gray, P.C., solicitor for the ZHB. Landowner was not represented by counsel.

Landowner sought a special exception pursuant to section 165-218.B of the Upper Merion Township Zoning Ordinance of 1942, as amended ("Ordinance") to permit a child day-care home for no more than 6 children who are not permanent residents of the dwelling at a property located in the R-2 Residential District.

The ZHB admitted the following exhibits into the record:

**ZHB exhibits**

A-1 ZHB application

- A-2 state certificate of registration for a day-care located at 334 Coates Street, Bridgeport, PA
- A-3 Upper Merion Township use and occupancy permit for a day-care located at 334 Coates Street, Bridgeport, PA
- A-4 Upper Merion Township business privilege license issued to Debra Heschl's family day-care
- A-5 Department of Public Welfare printout listing of different types of day-care
- A-6 Allstate Property Casualty Insurance Company declaration of insurance
- A-7 Pennsylvania child abuse history clearance
- A-8 Pennsylvania criminal background check
- A-9 FBI criminal background check
- A-10 group training certificate
- A-11 certificate of attendance for Hand and Hand for Children Training
- A-12 letter in support of the application from Mr. and Mrs. Patent
- A-13 email in support of the application from Mr. Sweeney, III
- A-14 invoice from Stop Fire Services
- A-15 first floor plan of 210 Riverview Road
- A-16 packet of material, including: TREND Realty Records Detailed Report; deed for 210 Riverview Road; letters in support of the application; tax maps; floor plans; and color photographs

**Objector's exhibit**

- O-1 letter of Kellie Muscarella in opposition to the application

The zoning hearings were 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. Landowner is the lessee of the parcel of land located at 210 Riverview Road, King of Prussia, Pennsylvania ("Property"). [N.T. 5/15/13, p. 15; Exhibit A-1]

2. The Property is approximately 8,800 square feet in area, and is zoned R-2 Residential District. [Exhibit A-16]

3. Improvements on the Property include a single-family dwelling of approximately 1,600 square feet with an attached garage and 2-car driveway. [N.T. 5/15/13, pp. 23, 25; Exhibit A-16]

4. Landowner proposes a child day-care home at the Property. [N.T. 5/15/13, p. 13; Exhibit A-1]

5. Sections 165-22 and 165-218.B of the Ordinance permit child day-care homes by special exception in single-family dwellings located in the R-2 Residential District. Ordinance section 165-22 is a table of permitted uses in the residential districts, which shows that a child day-care home is permitted by special exception in the R-2 Residential District. Ordinance section 165-218.B provides:

Child day-care home. When authorized by the Zoning Hearing Board as a special exception, a child day-care home shall be permitted in any single-family dwelling.

6. Landowner's application requests zoning relief to permit a child day-care home for no more than 6 children who are not permanent residents of the dwelling.

## ZHB HEARINGS

7. Landowner testified as follows:

- Landowner has operated a licensed day-care for the last 10 years on Coates Street in Bridgeport, PA [N.T. 5/15/13, pp. 7-8; Exhibits A-2 through A-4];
- the day-care license from the Department of Public Welfare (“DPW”) must be transferred to the Property before Landowner may operate the day-care at the Property [N.T. 5/15/13, pp. 10-11];
- the day-care license from DPW limits the number of children in the day-care to 6 [N.T. 5/15/13, p.12];
- the house on the Property is a single-family dwelling [N.T. 5/15/13, p. 15];
- Landowner will reside at the Property [N.T. 5/15/13, p. 15];
- during the hours of operation of the day-care there will be no more than 6 non-resident children present at the Property at any time [N.T. 5/15/13, p. 15];
- Landowner has a first aid certificate, liability insurance, a child abuse history clearance, a group training certificate, and a clean criminal background check [N.T. 5/15/13, pp. 15-17; Exhibits A-6 through A-10];
- the Property has a 2-car driveway [N.T. 5/15/13, p. 23; Exhibit A-16];
- the day-care drop-off times for the children are staggered [N.T. 5/15/13, p. 23, 26-27];

- the day-care hours of operation are from 7 a.m. to 6 p.m. weekdays [N.T. 5/15/13, p. 23]; and
- the backyard is fully enclosed by a stockade fence [N.T. 5/15/13, p. 24, 73; 6/5/13, p. 107; Exhibit A-16].

8. Seven residents spoke in favor of the application.

9. Thirteen neighboring property owners spoke in opposition to the application.

Their concerns were:

- traffic
- adverse effect on the residential character of the neighborhood
- child safety issues
- potential decrease in home values, and
- noise.

[N.T. 5/15/13, pp. 51-93; 6/5/13, pp. 119-133]

## **B. DISCUSSION**

### **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.Cmwlt. 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.Cmwlt. 2002). The burden then shifts to the objectors to present 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.Cmwlt. 1994), *appeal denied*, 658 A.2d 798 (Pa. 1995).

**Landowner proved compliance with the criteria necessary for the grant of a special exception to permit a child day-care home for no more than 6 children who are not permanent residents of the dwelling.**

Landowner sought a special exception to permit a child day-care home in the R-2 Residential District. Ordinance section 165-22 permits a child day-care home by special exception in the R-2 Residential District. Section 165-218.A of the Ordinance defines child day-care home:

'Child day-care home' shall be defined as a dwelling at which child-care services are available on a full- or part-time basis, whether or not for profit, for no more than six children who are not permanent residents of the dwelling; provided, however, that the operator of such services resides at the dwelling where the services are made available.

Section 165-218.B provides:

Child day-care home. When authorized by the Zoning Hearing Board as a special exception, a child day-care home shall be permitted in any single-family dwelling.

Testimony presented by Landowner demonstrated compliance with the special exception requirements stated in sections 165-218.A and B of the Ordinance. The Property contains a single-family dwelling. Landowner will reside at the Property with

her family. No more than 6 children who are not permanent residents of the dwelling will be cared for at the Property. [N.T. 5/15/13, p. 15]

Landowner demonstrated the suitability of the Property for use as a child day-care home. The Property floor plan showed ample space for the children. [Exhibit A-16] The Property has a stockade fence enclosing the backyard. [Exhibit A-16] The dwelling contains fire extinguishers and smoke alarms. [N.T. 5/15/13, p. 21] The Property has a 2-car driveway for safe pick-up and drop-off of the children. N.T. 5/15/13, p. 23] Landowner provided proof of child safety measures, including, a first aid certificate, liability insurance, a child abuse history clearance, a group training certificate, and a clean criminal background check. [N.T. 5/15/13, pp. 15-17; Exhibits A-6 through A-10]

Landowner demonstrated compliance with the special exception requirements. Objectors were required to show a high probability that the child day-care home would violate the health, safety, and welfare of the community.

Objectors cannot meet their burden of showing that the proposed use would 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. *Manor Healthcare Corporation v. Lower Moreland Township Zoning Hearing Board*, 139 Pa.Cmwlth. 206, 590 A.2d 65 (1991).

Here, Objectors merely speculated about traffic, safety, and noise issues. The ZHB attached appropriate conditions addressing Objectors' concerns. The proposed child day-care home is consistent with the health, safety, and welfare of the community. No evidence, other than unsupported and unsubstantiated speculation, was presented to the contrary. Thus, Landowner proved entitlement to the special exception.

**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. Landowner has standing as the lessee 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. Landowner bears the initial burden of showing the proposed use meets the specific criteria of the ordinance.

6. Once Landowner meets the burden of showing the proposed use meets 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. Landowner provided substantial competent evidence satisfying all of the specific and general criteria for a special exception to permit a child day-care home for no more than 6 children who are not permanent residents of the dwelling at the Property located in the R-2 Residential District.

At the conclusion of its June 5, 2013 hearing, the ZHB entered the following order:

**ORDER**

AND NOW, this 5<sup>th</sup> day of June, 2013, on the application of Debra Heschl, the following relief is GRANTED:



A special exception from section 165-218.B to permit a "child day-care home" for no more than six children who are not permanent residents, of the dwelling, conditioned upon the following four conditions, all of which were accepted by the applicant at the hearing:

1. There will be no more than six children cared for at any one time, excluding the permanent residents of the dwelling.
2. The backyard shall be fenced in.
3. At no time shall there be more than one additional employee, other than the applicant, Debra Heschl.
4. The approval shall not run with the land. The special exception for the day-care home shall terminate if and when the applicant, Debra Heschl, no longer operates the day-care home at this location.


Since this application was contested, the Zoning Hearing Board will issue an opinion with findings of fact and conclusions of law.


This decision is subject to a 30-day appeal period beginning on the date of entry (mailing) of this notice of decision.

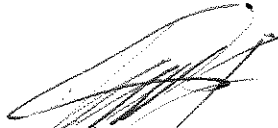
The applicant is directed to section 165-257 "Expiration of Special Exceptions or Variances" and applicable statutory provisions governing the expiration of special exceptions and variances.

Written notice of the ZHB's decision was mailed to Landowner on June 6, 2013.

**ZONING HEARING BOARD OF  
UPPER MERION TOWNSHIP**

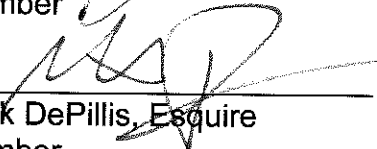
  
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William J. Clements, Esquire  
Chairman

  
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Lynne Gold-Bikin, Esquire  
Vice-Chair



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John M. Tallman, Jr.  
Member



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Mark DePillis, Esquire  
Member

**Date of Mailing:**