

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

**APPLICATION OF WILLIAM CHU**

**NO. 2013-18**

**PROPERTY: 444 CROOKED LANE  
KING OF PRUSSIA, PA 19406**

**OPINION AND ORDER**

The underlying zoning application involves a property owner's request for a special exception to permit expansion of a legal nonconforming structure.

The Zoning Hearing Board ("ZHB") of Upper Merion Township ("Township") held a public hearing with regard to application no. 2013-18 of William Chu ("Landowner"). The members of the ZHB present were William J. Clements, Esq., Chairman; Brad Murphy, Secretary; John M. Tallman, Jr., Member; and Mark DePillis, Esq., Member. The ZHB was represented by Michael E. Peters, Esq. 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 165-199.B of the Upper Merion Township Zoning Ordinance of 1942, as Amended ("Ordinance") to permit expansion of an existing nonconforming single family home ("Existing Residence") located at 444 Crooked Lane, King of Prussia, Montgomery County, Pennsylvania 19406 ("Property"). The Property is located within Upper Merion Township.

The ZHB admitted the following exhibits into the record:

**Landowner exhibits**

- A-1      ZHB Application
- A-2      Plan set titled 444 Crooked Lane
- A-3      Legal description of the Property
- A-4      Photograph of the front of the Property

**Objector exhibits**

- O-1      Photograph of Property from across Crooked Lane
- O-2      Photograph of side of Existing Residence

The zoning hearing was 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 legal owner of the Property. The Property is zoned LI Limited-Industrial District. [A-1; A-2.]
2.    The Property contains the Existing Residence which is a two-bedroom, two-story house measuring 30' by 22' 7" with a small porch in the front and a small shed in the back. [A-2; N.T., pp. 7, 11.]
3.    The Existing Residence is presently a nonconforming structure in the LI District, which encroaches into the required side-yard setbacks on both sides. [A-1.]

4. On May 2, 2013, the ZHB granted Landowner a variance from section 165-199.B to permit Landowner to construct a 40' x 20' 7" two-story addition to the Existing Residence. The ZHB imposed one condition on the variance, specifically that the addition could not be wider than the width of the existing house. [See A-1; N.T., pp. 6-7, 15.]

5. In the application *sub judice*, Landowner requested an additional 12' to the presently approved 40' addition, for a total depth of 52'. [A-2; N.T., pp. 7-8.]

#### **ZHB HEARING**

6. Landowner testified on his own behalf.

7. The testimony was as follows:

- a. The total size of the Existing Residence, with the requested additional 12', would be 82' by 22' 7". [N.T., p. 13.]
- b. The Existing Residence and the addition both encroach, or would encroach, into the required side-yard setback. [N.T., p. 14.]
- c. The additional 12' is requested to increase the number of the proposed number of bedrooms and bathrooms, specifically six (6) bedrooms and four and one-half (4 1/2) bathrooms. [N.T., p. 20.]
- d. Construction is projected to take six (6) to eight (8) months. [N.T., p. 22.]
- e. The basement of the Existing Residence is to remain unfinished and will contain the HVAC and water-heater systems. The basement of the entire proposed addition (52') is to be finished and to serve as a "play area" for Landowner's children. [N.T., p. 24.]

f. Landowner was unsure of whether the expansion could be designed to accommodate the desired number of bedrooms and bathrooms without the additional twelve (12) feet. [N.T., pp. 42-43.]

g. Landowner did not know if the Property is served by public sewer, and did not have a home inspection before purchase of the Property and Existing Residence. [N.T., pp. 30-31.]

8. No one spoke in support of Landowner's application.

9. Two neighboring property owners spoke in opposition to the application. Their concerns included:

- Blockage of sunlight due to the height and length of the proposed addition (52')
- Creation of a wind tunnel due to the height and length of the proposed addition (52')
- Drainage issues on the Property and the effect of the addition on drainage and the effect of same on surrounding properties
- Adverse impact on the character of the neighborhood
- Adverse impact on the property values of the neighboring properties

[N.T., pp. 29-43].

## **B. DISCUSSION**

An application for a special exception "is to be granted or denied by the ZHB pursuant to the express standards and criteria set forth in the applicable zoning ordinance." *Elizabethtown/Mt. Joy Assocs. v. Mount Joy Twp. Zoning Hearing Bd.* 934 A.2d 759, 764 (Pa. Commw. Ct. 2007); *In re Brickstone Realty Corp.*, 789 A.2d 333,

340 (Pa. Commw. Ct. 2001). What an applicant must demonstrate in seeking a special exception "is determined on a case-by-case basis and will vary among municipalities based on the use requested and the language in the ordinance." *Elizabethtown/Mt. Joy Assocs.*, *supra*, 934 A.2d at 764; *In re Thompson*, 896 A.2d 659, 670 (Pa. Commw. Ct. 2006). Section 165-251.B(1) of the Ordinance sets forth the standards for special exceptions that must be met before the ZHB may grant approval of a special exception:

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. The applicant shall provide the Board with sufficient plans, studies or other data to demonstrate compliance with all applicable regulations.
7. 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.

Only after an applicant for a special exception has met its initial burden of showing compliance with the objective requirements of the zoning ordinance does the burden shift to objectors to prove that the proposed use is detrimental to the health, safety and general welfare of the community. *Elizabethtown/Mt. Joy Assocs.*, *supra*, 934 A.2d at 764; *Brickstone Realty Corp.*, *supra*, 789 A.2d at 340.

Landowner seeks a special exception to permit expansion of the nonconforming structure on the Property. Section 165-199.B(2) of the Ordinance provides:

Any building containing a lawful nonconforming use may be extended upon the lot occupied by such building, provided that the area of such building shall not be increased by more than a total of 25% of the area of such building existing on the effective date of this chapter or the date of the subsequent amendment which rendered the use nonconforming and further provided that any structural alteration, extension or addition shall conform to all height, setback, yard and coverage requirements of the district in which the use is located. Notwithstanding the above, a single-family dwelling which exists as a nonconforming use may alter, extend or add to the structure in a manner which does not meet the height, setback, yard or coverage requirements when permitted by special exception.

Section 165-199.B(3) of the Ordinance further provides:

Nonconforming structures being used for a conforming use may continue and may be extended or altered if the extension or alteration does not increase the nonconformity of the building or structure with respect to the height, setback, yard or coverage requirements of the district in which it is located. Notwithstanding the above, any single-family dwelling which exists as a nonconforming structure may be altered, extended or added to in a manner which does not meet height, setback, yard or coverage requirements when authorized as a special exception.

Landowner has failed to demonstrate his entitlement to the requested special exception.

Landowner failed to establish by credible evidence that “the proposed special exception will not adversely affect neighboring land use in any way and will not impose upon its neighbors in any way but rather shall blend with them in a harmonious manner.” See Ordinance § 165-251.B.1(c). To the contrary, the evidence demonstrated that an 82’ house would be entirely inconsistent with the surrounding residences, all of which are small, single-family, homes. [F.O.F. 9.] Objecting neighbors testified to their concerns regarding the length and height of the house, specifically about wind, lack of sunlight, and drainage issues as a result of the 52’ addition. These concerns were undisputed by Landowner. [*Id.*]

Landowner failed to establish by credible evidence that the “proposed special exception shall be properly serviced by all existing public-service systems.” See Ordinance § 165-251.B.1(d). Landowner did not know whether the Property and Existing Residence are served by public sewer. [F.O.F. 7(g).]

### **C. CONCLUSIONS OF LAW**

1. The ZHB has jurisdiction under section 912.1 of the Pennsylvania Municipalities Planning Code, 53 P.S. §10912.1, and Ordinance section 165-251.A(6), Ordinance § 165-251.A(6).
2. Landowner has standing as the legal owner of the Property.
3. The ZHB is obligated to ensure compliance with the technical requirements of the Ordinance.
4. Landowner’s proposed addition to the nonconforming structure requires a special exception per section 165-199.B of the Ordinance.

5. The ZHB may grant a special exception provided that an applicant demonstrates compliance with the express standards and criteria set forth in the applicable ordinance.

6. The express standards applicable to an application for special exception in Upper Merion Township are set forth in section 165-251 of the Ordinance.

Landowner failed to provide substantial competent evidence satisfying the requirements for a special exception to permit expansion of his nonconforming residence, especially given the evidence adduced by the objectors.

At the conclusion of its November 6, 2013 hearing, the ZHB entered the following order:

**ORDER**

AND NOW, this 6th day of November, 2013, on the application of William Chu, the Zoning Hearing Board DENIES a special exception pursuant to section 165-199.B to permit expansion of a nonconforming structure.

An opinion with findings of fact, conclusions of law, and reasons will follow.

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

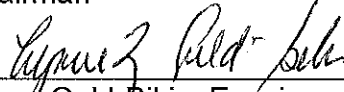


Written notice of the ZHB's decision was mailed to Landowner on November 7,  
2013.

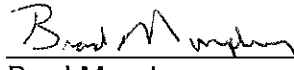
**ZONING HEARING BOARD OF  
UPPER MERION TOWNSHIP**



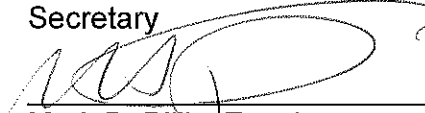
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