

ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2012-07	:	HEARING DATE: March 16, 2012
	:	
APPLICATION OF:	:	
YKOP, L.P.	:	
	:	
	:	DECISION DATE: March 16, 2012
PROPERTY:	:	
215-217 W. Church Road	:	
King of Prussia, PA 19406	:	

OPINION AND ORDER OF THE UPPER MERION TOWNSHIP ZONING HEARING BOARD

The Applicant, YKOP, L.P. (hereinafter referred to as the “Applicant”), filed an application requesting a special exception to Section 165-144 A and 165-10 of the Upper Merion Zoning Code (the ”Code”). The application was properly advertised and a public hearing was held on May 16, 2012 at the Upper Merion Township Building. The members present at the hearing were Robert Montemayor, Chairman, Brad Murphy, Vice Chairman and William Clement, Member. Also present was the Solicitor, Zoning Officer and Court Reporter.

FINDINGS OF FACT

1. The applicant is YKOP, L.P. with a mailing address of 2929 Arch Street, Cira Centre, Suite 1351, Philadelphia, PA 19104.
2. The legal owner of the property is YKOP. L.P.
3. The property is located at 215-217 W. Church Road, Upper Merion Township.
4. The applicant was represented by Ryan Costello, Esq.
5. The subject property is located in the LI Limited Industrial District. It consists of two separate buildings: the “215” building and the “217” building.

6. The “215” building has an approximate footprint of 26,164 feet. The “217” building has an approximate footprint of 16,000 square feet.

7. The “215 building has multiple office type uses. The “217” building is used entirely as a gym facility.

8. The applicant proposes to lease 2600 square feet of the 215 building to the Ismaili community for use as a community center/place of worship.

9. Dr. Nasuruddin Jamal testified on behalf of the proposed tenant.

10. He is the president of the N.E Council of the Ismaili Community.

11. The community is presently located in Upper Darby Township and consists of approximately 120 people.

12. The community would like to relocate to a location more convenient to its members.

13. The hours of use/operation will be Monday through Friday from 6:30 a.m. to 9:30 p.m.; Saturdays from 2:00 p.m. to 9:00 p.m.

14. It will be used as a house of worship on weekdays and for children’s educational programs on Saturday.

15. Typically 10-15 people will be on the property. On Fridays during worship times, as many as 40-50 people will attend services.

16. There will be one part time employee.

17. The area of the property used for worship will be 650 square feet.

18. The parking is adequate and code compliant for the use and occupancy of the premises.

19. There will be no unusual traffic patterns.

20. The use is permitted as a special exception and qualifies with the criteria set forth in the Code.

21. No neighbors testified against the application.

22. No neighbors testified in favor of the application.

23. All members of the Board present voted to approve the application.

CONCLUSIONS OF LAW

1. The applicant is YKOP, L.P. with a mailing address of 2929 Arch Street, Cira Centre, Suite 1351, Philadelphia, PA 19104.

2. The legal owner of the property is YKOP, L.P.

3. The property is located at 215-217 W. Church Road, Upper Merion Township.

4. The subject property is located in the LI Limited Industrial District.

5. The “215” building has an approximate footprint of 26,164 feet. The “217” building has an approximate footprint of 16,000 square feet.

6. The “215” building has multiple office type uses. The “217” building is used entirely as a gym facility.

7. The applicant proposes to lease 2600 square feet of the “215” building to the Ismaili community for use as a community center/place of worship.

8. In order to accomplish this request, Applicants request a special exception in accordance with Sections 165-144(A) and 165-10(E)(1), (4) and (8) of the Upper Merion Zoning Code to permit the lease of 2600 square feet of the “215” building to the Ismaili community for uses as a community center/place of worship.

9. In accordance with Section 165-144(A) of the Code:

“A building may be erected, altered or used and a lot may be used or occupied for any of the following purposes and no other: A) Any use

permitted in AG Agricultural Districts and C-3 Commercial Districts, except that no gasoline service station, hotel, motor lodge, rooming house or tourist home and no uses permitted in a C-1 Commercial District shall be permitted (except that sexually oriented businesses shall be permitted, provided that the requirements of Articles XXXVIII and XXXIX are met); and except that a dwelling shall be permitted only as pursuant to Section 165-205 of Article XXXI herein; provided, however, that dwelling quarters in connection with any manufacturing or industrial establishment, for watchmen and caretakers employed upon the premises, are permitted.”

10. In accordance with Section 165-10(E)(1), (4) and (8):

“A building may be erected, altered or used and a lot may be used or occupied for any of the following purposes and no other:...

(E) Any of the following purposes when authorized as a special exception:

(1) Educational, religious, philanthropic use, excluding correctional or penal institution....

(4) Club, fraternity house or lodge, provided that the principal activity shall not be one which is customarily carried on as a business and provided that all services shall be for members and their guests only....

(8) Community Center, noncommercial park, athletic field, recreation.

11. 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).

12. 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.

13. 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.

14. The use is permitted as a special exception and qualifies with the criteria set forth in the Code.

15. As no neighbors have opposed the proposed use, Applicant has shown that the proposed use will not adversely affect neighboring lands and, rather, blends with neighbors in a harmonious manner.

16. There will be no unusual traffic patterns as a result of permitting the proposed use.

17. The parking is adequate and code compliant for the use and occupancy of the premises.

18. All members of the Board voted to approve the application.