ZONING HEARING BOARD OF UPPER MERION TOWNSHIP

APPLICATION NO. 2012-023	:	**HEARING DATE:** October 17, 2012
	:	
APPLICATION OF:	:	
Richard and Christine Root	:	
	:	
	:	**DECISION DATE:** October 17, 2012
PROPERTY:	:	
255 Gypsy Lane	:	
King of Prussia, PA 19406	:	

OPINION AND ORDER OF THE UPPER MERION TOWNSHIP ZONING HEARING BOARD

The Applicant, Richard and Christine Root (hereinafter referred to as the "Applicant"), filed an application requesting a special exception to Section 165.224.E. The application was properly advertised, and public hearing was held before the Upper Merion Township Zoning Hearing Board on October 17, 2012 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 Richard and Christine Root, with a mailing address of 255 Gypsy Lane, King of Prussia, PA 19406.
2. The Applicant is the legal owner of the subject property.
3. The property is located at 255 Gypsy Lane, King of Prussia, PA 19406.
4. The applicant was not represented by an attorney.

5. The subject property is located in the "R1A" zoning district.

6. The lot is approximately 43,100 square feet.

7. The Applicant desires to replace a driveway bridge that accesses the property and was damaged during a tropical storm in August/September 2012.

8. The property is located within the 100 year floodplain.

9. Applicant has obtained the necessary DEP General Permit for proposed bridge.

10. No neighbors testified against the application.

11. After considering the evidence and testimony at the hearing, the Board voted 4-0 to approve the application.

CONCLUSIONS OF LAW

1. The Applicant requests a special exception pursuant to Section 165-224.E of the Code to permit the reconstruction of a driveway bridge to access the property.

2. In accordance with Section 165-224.E "within the Floodplain Conservation District, the following special exceptions shall be allowed or denied by the Zoning Hearing Board after recommendations by the Planning Commission pursuant to the standards set forth in this article: dams, culverts and bridges approved by PA DEP if the same has jurisdiction over the watershed in question."

3. 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.

4. 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.

5. Here, the Applicant is requesting permission to reconstruct a driveway bridge that was damaged during the tropical storms in August/September 2012. The Applicant provided sufficient testimony and evidence to support his request. Accordingly, the Board found that the Applicant met the criteria to grant the requested special exception.

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 to Section 165-224. The special exception is granted conditioned upon the Applicant's compliance with the testimony of the Applicant at the public hearing on October 17, 2012.

Decision Dated: October 17, 2012

UPPER MERION TOWNSHIP
ZONING HEARING BOARD

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Robert J. Montemayor - Chairman

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Brad Murphy – Vice Chairman

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Lynne Z. Gold-Bikin - Secretary

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William J. Clements

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.