

**BEFORE THE ZONING HEARING BOARD OF EXETER TOWNSHIP,
BERKS COUNTY, PENNSYLVANIA**

IN RE: APPLICATION OF
M.B. INVESTMENTS TO OPERATE
A DAY CARE CENTER AT 10 CARDINAL
DRIVE, BIRDSBORO, PENNSYLVANIA

HEARING DATE: September 17, 2015

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

M.B. Investments (the “Applicant”) submitted an Application (the “Application”) to the Exeter Township Zoning Hearing Board (the “Board”) seeking relief from the Exeter Township Zoning Ordinance (the “Ordinance”) in the form of a special exception to operate a state-licensed day care center at 10 Cardinal Drive in Exeter Township. On September 17, 2015, the Board held a duly-noticed public hearing pursuant to the Pennsylvania Municipalities Planning Code, 53 P.S. §§ 10101, *et seq.* (the “MPC”), the Ordinance, and the By-Laws of the Board.

Having considered the evidence and testimony presented, the Board voted unanimously, 2-0¹, to approve the Application, subject to the conditions imposed by the Township’s Planning Commission (the “Planning Commission”).

In support of the foregoing determination, the Board makes the following findings of fact and conclusions of law, and enters the following decision:

I. FINDINGS OF FACT

1. Applicant has a business address of 2650 Audubon Road, Audubon, Pennsylvania 19403. [See N.T., Exh. B-1].
2. The subject property of the Application consists of 5.3 +/- acres containing a commercial building with detached improvements located at 10 Cardinal Drive, Birdsboro,

¹ Currently, the Board consists of two members, Dean R. Batson and William “Chip” White.

Berks County, Pennsylvania 19508, and is specifically identified on Berks County assessment records by tax parcel identification number 43533515642566 (the “Property”). [Id.].

3. The Property is owned by Applicant. [Id.].

4. The zoning classification for the Property is “HC – Highway Commercial District” pursuant to Section 390-22 of the Ordinance. [Id.].

5. On July 20, 2015, Applicant submitted its Application seeking a special exception to permit the operation of a state-licensed day care center (the “Day Care Center”) on the Property. [Id.].

6. On August 20, 2015, the Planning Commission submitted a letter to the Board and Applicant recommending that the Board grant the requested special exception on the condition that the special exception applies only to the building presently located on the Property so long as it remains a Day Care Center, and provided Applicant complies with all applicable state regulations for day care facilities, zoning regulations, and building codes. [See Exh. B-6].

7. On September 17, 2015, the Board held a duly-noticed and posted public hearing on the Application at the Exeter Township Municipal Building (the “Hearing”). [See N.T., Exhs. B-2 – B-3].

8. At the Hearing, Applicant presented sworn testimonial evidence from the following witnesses: (1) the commercial property manager of Applicant, Brooke Kramer; and (2) the manager of the proposed tenant of the Property and proprietor of the Day Care Center, Kids Depot Learning Station (“Kids Depot”), Laura Tranovich. [See N.T., generally].

9. During his direct examination, Mr. Kramer testified that Applicant is in the business of owning and leasing commercial property. [Id. at p. 14].

10. Applicant agreed to lease commercial space on the Property to Kids Depot for Kids Depot to operate a state-licensed Day Care Center. [Id. at p. 19].

11. Accordingly, Kids Depot entered into a lease with Applicant to lease the Property with a commencement date 30 days after it receives a license from the Commonwealth. [See N.T., Exh. A-1].

12. The Property has an existing parking lot, which will be reserved for the exclusive use of the Day Care Center. [Id. at pp. 16-17].

13. Additionally, Cardinal Drive is a private road owned by Applicant and no restrictions prohibit cars from parking on Cardinal Drive. [Id. at p. 17].

14. Ms. Tranovich testified that Kids Depot intends to operate the Day Care Center on the Property for children between the ages of 6 weeks and 5 years. [Id. at p. 27].

15. The Day Care Center's hours of operation will be 6:00 a.m. to 6:30 p.m. [Id. at p. 27].

16. Ms. Tranovich anticipates that between 20 and 30 children will attend the Day Care Center. [Id. at p. 28].

17. Most children will arrive between 7:00 a.m. and 8:00 a.m. and most pick-ups will occur between 4:30 p.m. and 5:30 p.m. [Id. at pp. 28-29].

18. Mr. Kramer testified that the Day Care Center will have a fenced-in play area for the children attending the Day Care Center comprising 3,200 square feet adjacent to the Day Care Center building and situated safely back from the main roadway. [Id. at pp. 34-35].

19. Ms. Tranovich testified that Kids Depot has no plans to provide before/after school care for school-aged children at the Day Care Center. [Id. at p. 36].

20. Prior to occupancy by Kids Depot, Applicant must obtain a building permit and will renovate the building. [See N.T. at p. 20].

21. The property adjacent to the Property houses an ambulance transportation company and an environmental remediation company. [Id. at p. 21].

22. No objections to the Application have been presented to the Board. [See N.T., generally].

II. CONCLUSIONS OF LAW

23. The Board's role is to review the Application to ensure that the facts, circumstances, and conditions exist and comply with the standards of the Ordinance and warrant approval of the Application. See Broussard v. Zoning Bd. of Adjustment of City of Pittsburgh, 907 A.2d 494, 499 (Pa. 2006).

24. Section 390-22(C) (Uses Permitted by Special Exception) of the Ordinance identifies four uses expressly permitted by special exception in the Highway Commercial District: (1) churches or similar places of worship; (2) nursing home, convalescent home, personal care home or retirement home; (3) state-licensed day care centers and nursery schools; and (4) accessory uses and structures to the above permitted uses when on the same lot as the permitted use per §§ 390-29 and 390-30. See Ordinance, § 390-22(C).

25. The review of a request for special exception is subject to specific standards and criteria, and an applicant for special exception must demonstrate compliance with the following criteria, as well as any other criteria specified elsewhere in the Ordinance for the proposed use in question:

- (a) the proposed uses must be specifically authorized as a "Special Exception Use" in zoning district HC – Highway Commercial District;

- (b) the special exception shall only be granted subject to any other applicable conditions and safeguards required by the Ordinance;
- (c) the use shall not “adversely affect the character of the general neighborhood, or the conservation of property values, or the health and safety of residents or workers on adjacent properties and in the general neighborhood;”
- (d) the use shall be “of such size and so located and laid out in relation to the access streets that vehicular and pedestrian traffic to and from such use will not create undue congestion or hazards prejudicial to the general neighborhood;”
- (e) services and utilities shall be made available to adequately service the proposed use; and
- (f) the special exception shall be consistent with the Township plan.

See Ordinance, § 390-96(H)(1).

26. If the criteria for a special exception are satisfied, a special exception is “expressly permitted absent a showing of a detrimental effect on the community.” Freedom Healthcare Servs. v. Zoning Hearing Bd. of City of New Castle, 983 A.2d 1286, 1291 (Pa. Commw. Ct. 2009).

27. An applicant has the duty to present evidence and the burden of persuading the Board that the proposed use satisfies the Ordinance’s requirements for a special exception. Id.

28. Here, it is uncontroverted that Applicant’s proposed operation of the Day Care Center on the Property complies with the Ordinance’s requirements for a special exception.

29. First, the proposed use of the Property as a state-licensed Day Care Facility is specifically authorized by the Ordinance as a Special Exception Use. See Ordinance § 390-22(C).

30. Second, the Day Care Center is consistent with the character of the general neighborhood, and will not adversely affect the conservation of property values, or the health and safety of residents or workers on adjacent properties and in the general neighborhood, because, among other reasons, the Property is zoned for commercial use and the property adjacent to the Property is occupied by an ambulance transportation company and an environmental remediation company. [See N.T., pp. 21-22].

31. Third, vehicular and pedestrian traffic to and from the Day Care Center will not create undue congestion or hazards prejudicial to the general neighborhood given that only 20 to 30 children will attend the Day Care Center and the pick-up and drop-off times are narrowly circumscribed. [Id. at pp. 28, 30-31].

32. Fourth, Applicant intends to comply with all applicable state regulations for day care center facilities, zoning ordinances, and building codes. [Id. at p. 41; Exh. B-6].

33. Fifth, adequate provision for utilities and related services has been made for the proposed use. [See, e.g., A-1].

34. As such, Applicant has met its burden that it is entitled to a special exception. [See N.T., generally].

35. The Board also adopts the Planning Commission's recommendation and will require that Applicant ensure that the Day Care Center operates only at the existing building located on the Property and that its operation, at all times, complies with all applicable state regulations, ordinances, and building codes, as set forth in the Planning Commission's letter dated August 10, 2015. [See Exh. B-6].

36. Furthermore, in the event that Applicant desires to physically expand the facilities to allow for substantially more than 20 to 30 children to attend the Day Care Center, Applicant

must first seek approval from, as applicable, the Zoning Officer or the Board as such use will be materially different from the use presented to the Board here. [Id. at p. 41].

DECISION/ORDER

For the reasons set forth in detail above, the Board finds that Applicant met its burden to establish that it is entitled to a special exception to operate the state-licensed Day Care Center at the existing commercial building on the Property. The Application is, therefore, granted, subject to the requirement that Applicant comply with all applicable regulations for day care facilities, ordinances, and building codes. Further, if Applicant desires to physically expand the facilities for substantially more than 20 to 30 children to attend the Day Care Center, Applicant must first seek approval from, as applicable, the Zoning Officer or the Board.

The Findings of Fact, Conclusions of Law and Decision set forth herein are rendered by the Zoning Hearing Board members whose signatures appear on their individual signature pages.

Dated this 27th day of October, 2015



Dean R. Batson, Chairman, Zoning
Hearing Board

William "Chip" White, Member, Zoning
Hearing Board

DECISION/ORDER

For the reasons set forth in detail above, the Board finds that Applicant met its burden to establish that it is entitled to a special exception to operate the state-licensed Day Care Center at the existing commercial building on the Property. The Application is, therefore, granted, subject to the requirement that Applicant comply with all applicable regulations for day care facilities, ordinances, and building codes. Further, if Applicant desires to physically expand the facilities for substantially more than 20 to 30 children to attend the Day Care Center, Applicant must first seek approval from, as applicable, the Zoning Officer or the Board.

The Findings of Fact, Conclusions of Law and Decision set forth herein are rendered by the Zoning Hearing Board members whose signatures appear on their individual signature pages.

Dated this 27th day of October, 2015

Dean R. Batson, Chairman, Zoning
Hearing Board



William "Chip" White, Member, Zoning
Hearing Board