

ZONING HEARING BOARD OF LOWER PROVIDENCE TOWNSHIP

APPLICATION NO. Z-16-02	:	HEARING DATE: March 24, 2016
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	:	
APPLICATION OF:	:	
Gene Hoffman and	:	
Maureen McQuiggan	:	
	:	
PROPERTY:	:	
251 Pinetown Road	:	
Norristown, PA 19403	:	
Parcel No. 43-00-10942-00-4	:	

OPINION, DECISION AND ORDER OF THE LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD

On February 25, 2016 the applicants, Gene Hoffman and Maureen McQuiggan (hereinafter "Applicants"), filed a Special Exception application regarding their intended development of a parcel of land located at 251 Pinetown Road, Norristown, PA 19403, parcel number 43-00-10942-00-4 (hereinafter the "Property"). Applicants are seeking to develop a residential lot for the construction of a single-family detached home in the R-2 zoning district with Steep Slope Conservation District overlay. Applicants have requested that the Lower Providence Township Zoning Hearing Board (the "Board") grant a Special Exception under §143-239 of the Lower Providence Township Zoning Ordinance ("Ordinance"), particularly subsections A., B. and D., to permit the intended use in the Steep Slope Conservation District. The Application was properly advertised, and a public hearing was held before the Board on March 24, 2016 at the Lower Providence Township Building. Chairwoman Cluley, Vice Chair Kathy Eskie, members Robert Hardt, Joseph Pucci, and alternate member Joseph Bergquist of the Zoning Hearing Board were present. Also present were Keith McLennan, the Solicitor, Michael Mrozinski, the Director of Community Development responsible for Zoning/Code enforcement and Paula Meszaros, the Court Reporter.

FINDINGS OF FACT

1. The Applicants are Gene Hoffman and Maureen McQuiggan who reside at 205 Camsten Court, Chesterbrook, Pennsylvania 19087.
2. The Applicants are the equitable owners of the subject Property located at 251 Pinetown Road, Norristown, PA 19403.
3. The Applicants were not represented by counsel.
4. Testimony for the Applicants was provided by Applicant Gene Hoffman, Rene Hoffman, president and Registered Architect of R.A. Architects, and Robert Wager, Project Engineer of RKW Engineering Services.
5. Three (3) township residents appeared at the hearing, but none expressing any opposition to the Applicants' requests.
6. The Property is located within the R-2 Residential District and contains "steep slopes" as defined in §143-236 of the Ordinance and thus is subject to the Steep Slope Conservation District overlay.
7. The present use of the Property is residential.
8. The Property is approximately 96,603 square feet.
9. The Property is or will be served by public water and public sewer.
10. Applicants had not submitted their application and plans for review to the Office of the Montgomery County Conservation District before the hearing on March 24, 2016 as per § 143-242 A. (2) of the Ordinance, but will have submitted such materials immediately after the hearing.
11. The Application and plans were submitted to the Lower Providence Township Planning Commission for its review and recommendations in compliance with § 143-242 A. (3) of the Ordinance.

12. Neither the proposed residence nor proposed pool is to be set in the designated steep slope area.

13. The following exhibits were made of record:

- A-1 Property Plan indicating topography and natural features.
- A-2 Profile view of site with proposed home indicating slope.
- A-3 Property Plan dated January 19, 2016 showing topographical features and proposed home prepared by Robert K. Wager, P.E. RKW Engineering Services.
- B-1 The Application.
- B-2 Application advertisement.
- B-3 Proof of Publication of the Advertisement.

14. The application seeks development of the property while substantially preserving the natural features of the property, including the steep slopes and wooded areas.

15. The proposed lot and building will conform to lot size and setback requirements of the Zoning Ordinance.

DISCUSSION

I. Procedural and Factual Background

The Applicants have requested a Special Exception pursuant to § 143-239 of the Lower Providence Township Zoning Ordinance, to permit the construction of a new single family dwelling in the Steep Slope Conservation District. The Steep Slope Conservation District was created by Article XXIX § 143-235 of the Lower Providence Code to (among other things):

“... conserve and protect those areas having steep slopes, as defined herein, from inappropriate development and excessive grading, as well as to permit and encourage the use of the said areas for open space purposes so as to constitute a harmonious

aspect of the continuing physical development of Lower Providence Township.”

§143-236 of the Ordinance defines the Steep Slope Conservation District as those areas having slopes of 25% or greater. The Applicants have acknowledged in Exhibit A-1 that the Property contains steep slopes as defined by the Ordinance.

Ordinance §143-238 sets out 9 uses permitted in the Steep Slope Conservation District, none of which include the Applicants’ intended use. Fortunately for the Applicants, §143-239 of the Ordinance provides them the opportunity to install site improvements to the Property to support the development of building lots by special exception upon the submission of an erosion and sediment control plan and all other supporting plans and documentation required by §143-241.

II. The Special Exception

A special exception is a conditionally permitted use, which the municipal legislative body has determined to be appropriate in the zoning district if specific standards set forth in the zoning ordinance are met. Mehring v. Zoning Hearing Bd. of Manchester Twp., 762 A.2d 1137, 1139 (Pa. Commw. 2000); In re Brickstone Realty Corp., 789 A.2d 333, 340 (Pa. Commw. 2001)(citing Bray v. Zoning Bd. of Adjustment, 410 A.2d 909, 911 (Pa. Commw. 1980)). A special exception is thus not an exception to a zoning ordinance, but rather a use, which is expressly permitted, absent a showing of a detrimental effect on the community. Greaton Properties, Inc. v. Lower Merion Twp., 796 A.2d 1038, 1045 (Pa. Commw. 2002); Freedom Healthcare Services, Inc. v. Zoning Hearing Bd. of City of New Castle, 983 A.2d 1286, 1291 (Pa. Commw. 2009); Morrell v. Zoning Hearing Bd. of Borough of Shrewsbury, 17 A.3d 972, 975 (Pa. Commw. 2011).

III. Establishing a Right to a Special Exception

To establish entitlement to a special exception, the applicant must initially prove that the proposed use complies with the specific, objective criteria set forth in the zoning ordinance. Mehring v. Zoning Hearing Bd. of Manchester Twp., 762 A.2d 1137, 1139 (Pa. Commw. 2000). Under Ordinance §§143-241 and 242, an applicant for a special exception in the Steep Slope Conservation District must submit an application along with the required studies to educate the Board why a special exception is appropriate. That application packet must not only be provided to the Board, but it must also be delivered to the Montgomery County Conservation District and to the Township's Planning Commission for review at least 30 days prior to the Board's hearing. These requirements were met.

The Board then under §143-168 B. of the Ordinance must evaluate the Application under §143-242 B which states:

§ 143-242 Procedures and standards for special exception uses and variances.

B. Standards for approval of uses by special exception. In considering a use as a special exception, the Zoning Hearing Board shall consider the following:

(1) That the use is one which is permitted by special exception in §143-239 herein.

(2) The relationship of the proposed use to the specific objectives set forth in §143-235 of this article.

(3) The design standards set forth in the Subdivision and Land Development Ordinance of Lower Providence Township.

(4) The erosion and sediment control plan submitted with the application, drawn in accordance with the requirements of the Subdivision and Land Development Ordinance of Lower Providence Township.

(5) Abutting property shall not be adversely affected by runoff or erosion from the proposed use.

(6) The general welfare, safety and public interest of Lower Providence Township or adjacent municipalities shall not be adversely affected.

(7) Any use permitted by special exception shall provide evidence that:

(a) Proposed buildings or structures are of sound engineering design and that footings are designed to extend to stable soil and/or bedrock as required by the Township Building Code.

(b) Proposed vehicular facilities, including roads, drives and/or parking areas, shall be so designed that land clearing and/or grading will not cause accelerated erosion. Both vertical and horizontal alignments of vehicular facilities shall be so designed that hazardous circulation conditions shall not be created.

(c) Proposed on-lot sewage disposal facilities shall be properly designed and installed in conformance with all pertinent health regulations.

(d) Proposed nonagricultural displacement of soil shall be for causes consistent with the intent of this article and shall be executed in a manner that will not cause excessive erosion or other unstable conditions.

(e) Surface runoff of water will not create unstable conditions, including erosion, and that appropriate stormwater drainage facilities or systems will be constructed as deemed necessary.

Finally, § 143-242 A.(5) of the Ordinance provides that the Board: "...may impose special measures or conditions as deemed reasonably necessary and appropriate for the proposed use(s) to conform to the intent of this article." See also §913.2 of the Pennsylvania Municipalities Planning Code and Feldman v. Board of Supervisors of East Caln Twp., 48 A.3d 543, 548 (Pa. Commw. 2012).

IV. Applicant's Proposed Use

Applicants' proposed residential use for the construction of a single family detached dwelling is consistent with the R-2 zoning district. Applicants' proposed use is, for the most part, consistent with the legislative intent behind the Steep Slope Conservation District set forth in Ordinance § 143-235. The Applicants testified that the goal was to minimize the disruption of steep slopes and nestle the proposed house into the existing features of the Property. An existing

retaining wall will be pushed back slightly, disturbing only a small section of steep slope. In addition, both power lines and telephone lines connecting to the proposed house would be buried, and a water retention basin would be installed. All of these installations would have a minimal impact on the steep slopes located on the Property.

Applicants have also asserted that they would further improve the property by correcting existing erosion issues. In addition, Applicants have pledged to work with surrounding landowners to maintain the privately maintained public road. Water and sewer service can be connected, evidenced by a Will Serve letter from the water company. A swale system, which was recommended by the Township Engineer, is planned for the Property, as well as a plan for storm water run-off. The Applicants have demonstrated that the development will not alter the character of the neighborhood and is consistent with both existing development in the area and the Township's master plan. Further, the development will not impair development of adjacent property nor be detrimental to public welfare, safety or the public interest.

Accordingly, the Board grants the Special Exception requested by the Applicants to construct a new single family dwelling, pursuant to section 143-239 A.B. and D. with a condition that applicant submits the plan to the Montgomery County Conservation District and provide the community development director with proof of delivery.

CONCLUSIONS OF LAW

1. Applicants have standing to appear before the Board regarding the requested relief.
2. Applicants have complied with all special exception procedures required by Ordinance §§143-241 and 143-242 A except for submission of the application and plans to the Montgomery County Conservation District, which the Applicants will do.

3. The proposed use is one which is permitted by special exception in §143-239 herein.

4. The proposed use is consistent with the legislative intent and specific objectives set forth in §143-235.

5. The general welfare, safety and public interest of the Township or adjacent municipalities will not be adversely affected by the grant of the relief requested.

6. The variance is necessary to enable the Applicants' reasonable use of the Property.

7. The Board has the authority to impose special measures or conditions as deemed reasonably necessary and appropriate for the proposed use.

DECISION

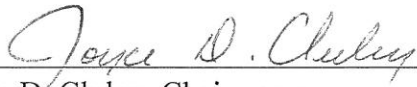
The decision of the Lower Providence Township Zoning Hearing Board is as follows:
The application for a special exception pursuant to §143-239 of the Lower Providence Township Zoning Ordinance is GRANTED by a vote of 5 to 0 with the condition that Applicants submit the plan to the Montgomery County Conservation District and provide the community development director with proof of delivery as well as compliance with all other Lower Providence Township applicable Ordinances.

Dated: April 19, 2016

ORDER

The foregoing Findings, Discussion and Decision are hereby approved and ordered.

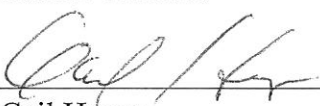
LOWER PROVIDENCE TOWNSHIP ZONING HEARING BOARD




Joyce D. Cluley, Chairwoman

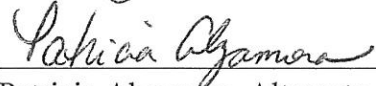


Kathie A. Eskie, Vice Chairwoman

Robert G. Hardt


Gail Hager



Joseph Pucci


Patricia Alzamora, Alternate

Joseph Bergquist, Alternate

NOTICE 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 received Zoning Hearing Board approval, the Applicant must secure all applicable permits from Lower Providence Township within one (1) year of the date of the approval or the decision granting approval.