

CHARLESTOWN TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA

**DECISION AND ORDER**

**Application of  
Conditional Use Approval**

**October 1, 2018**

**I. INTRODUCTION**

Hyung Joo and Laurie Anne Lee (The "Applicants") filed an application for conditional use approval pursuant to Section 27-1203.2.B(6) of the Charlestown Township Zoning Ordinance ("Zoning Ordinance") in order construct a swimming pool and shed as accessory structures to the existing single-family dwelling in a steep slope area and Section 27-1203.2.B(2) of the Zoning Ordinance to construct portions of a stormwater management facility in a steep slope area on the property located at 5 Whisper Lane, Malvern, PA 19355 (the "Property").

A public hearing on the above referenced conditional use application was commenced on August 6, 2018, with public notice properly provided by notice in the Daily Local News on July 23, 2018 and July 29, 2018 as well as by individual notification to property owners within two hundred fifty feet from the property. The hearing was continued on the record to September 4, 2018 at which time the Applicant presented its case to the Board of Supervisors. The Applicants' case was presented by Nick Vastardis, P.E. of Vastardis Consulting Engineers, LLC.

**II. RELIEF REQUESTED**

The Property that is the subject of this application is owned by Hyung Joo and Laurie Anne Lee with an address at 5 Whisper Lane, Malvern, PA 19355. The Property consists of approximately 2.43 acres located in the FR-Farm Residential Zoning District. The Property is currently improved with a dwelling in which the Applicants reside. In order to construct proposed swimming pool and shed improvements on the Property, the Applicants have requested conditional use approval pursuant to Section 27-1203.2.B(6) of the Zoning Ordinance permitting accessory structures in steep slope areas and Section 27-1203.2.B(2) of the Zoning Ordinance to construct portions of a stormwater management facility in a steep slope area.

The proposed accessory swimming pool, shed, stormwater facilities, and associated improvements are shown on the Plan identified at the hearing as Exhibit A-2 (the "Plan"). The Applicants also presented a landscape plan Exhibit A-3 showing landscape buffering adjacent to the proposed swimming pool improvements.

Section 27-1203.2.B of the Zoning Ordinance provides:

2. Areas of Steep Slope (15 to 25%). A building or other structure may be erected, altered or used, and a lot may be used and/or occupied subject to Parts 11 and 12, for the following:

B. Conditional Uses. Any conditional uses identified in Subsection 1B herein, and the following:

- (1) Single-family detached dwellings.
- (2) Stormwater management facilities.
- (3) Public sanitary sewer systems.
- (4) Only those elements of on-lot sewage disposal systems not prohibited under Subsection 1C provided such non-prohibited elements are approved by the County.
- (5) Buildings and other structures permitted in the Limited Industrial and Neighborhood Commercial Districts.
- (6) Accessory uses and structures customarily incidental to any of the foregoing and streets and driveways only if the Board of Supervisors determines no viable alternative alignment or location is feasible.

There are areas of Steep Slope (15%-25%) and Very Steep Slope (>25%) as defined by the Zoning Ordinance on the Property. The Property slopes down from the front to the rear away from Whisper Lane. The Applicants redesigned the original proposed location of the pool to be located outside the very steep slope areas of the Property and outside the side yard setback negating the need for variance approval from the Charlestown Township Zoning Hearing Board. The revised proposed swimming pool configuration is shown on the Plan identified as Exhibit A-2. As part of the Plan the Applicants do not propose to remove existing trees on the Property.

The standards for conditional use are set forth in Section 1809 of the Zoning Ordinance. According to evidence presented by the Applicant, specifically Exhibit A-2, it does not appear the size of the proposed accessory swimming pool or stormwater facilities will create any issue with the health, safety, morals and general welfare of the Township and appears consistent with the nature of the uses in the neighborhood. In addition there appears to be no alternative location for the accessory swimming pool and stormwater facilities that would be less impactful to the surrounding properties.

### **III. FINDINGS OF FACT**

1. The Property that is the subject of this application is owned by Hyung Joo and Laurie Anne Lee and is located 5 Whisper Lane, Malvern, PA 19355.

2. The Property consists of approximately 2.43 acres and is improved with a 2 1/2 story stone dwelling in which the Applicants reside.

3. The Property is located in the FR-Farm Residential Zoning District.

4. The Property slopes down to the rear from Whisper Lane.

5. The proposed accessory swimming pool and associated improvements are shown on the Plan identified at the hearing as Exhibit A-2 (the "Plan").

6. The Applicants also proposes to construct a 20'x24 shed to be located in the steep slopes shown on the Plan as "20'x24' Pad For Future Shed". The Applicants proposes to construct the shed before the swimming pool in order to minimize disturbance.

7. The Applicants propose to control stormwater from the improvements with an underground stormwater infiltration bed identified on the Plan as "Approximate Location of Relocated and Expanded Infiltration Bed."

8. The Plan identifies the proposed swimming pool on the Property outside areas of very steep slope and in compliance with the required side yard setback.

9. The Applicants will be required to obtain an erosion, sedimentation control, permit by submitting a more detailed plan than what was reviewed during conditional with such plan showing tree protection, limit of disturbance, erosion, sanitation control details, etc.

#### **IV. CONCLUSIONS OF LAW**

1. The Applicants have standing.

2. The Applicants have met the standard for approval of the proposed conditional uses.

3. The Applicants have satisfied the standards set forth in Section 27-1809 of the Zoning Ordinance for Conditional Use Approval.

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## V. DECISION AND ORDER

AND NOW, this 1<sup>st</sup> day of October 2018, upon consideration of the testimony and exhibits presented, it is ORDERED that the Applicants are granted conditional use approval pursuant to Section 27-1203.2.B(6) of the Zoning Ordinance in order construct a swimming pool and shed in a steep slope area as shown on the Plan identified as Exhibit A-2 and Section 27-1203.2.B(2) of the Zoning Ordinance to construct portions of a stormwater management facility in a steep slope area on the Property located at 5 Whisper Lane, Malvern, PA 19355 subject to the following conditions.

1. The proposed improvements are subject to compliance with all terms and provisions of the Zoning Ordinance, the Charlestown Township Stormwater Ordinance, and all other Township Ordinances and regulations, and in addition to the regulations of all other government agencies having jurisdiction over the use.

2. The scope of this approval is limited to the representations made by the Applicants as part of the record at the public hearing.

3. The Applicants shall comply with all exhibits, representations, record evidence, and conditions of approval, which are incorporated herein as part of this approval.

4. The Applicants shall complete all improvements consistent with the Advanced Geoservices review letter dated July 12, 2018 or any other review by the same on such revised plans as may be submitted by the Applicants.

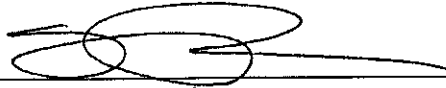
5. The Applicants shall complete all improvements consistent with the Thomas Comitta Associates, Inc. review letter dated July 12, 2018 or any other review by the same on such revised plans as may be submitted by the Applicants.

6. The Applicants agree to complete and maintain all buffering shown on the Landscape Plan, Exhibit A-3

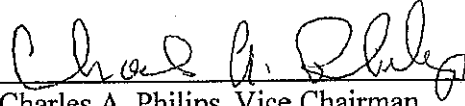
7. The Applicants shall express to the Board in writing within fourteen (14) days of the date of this Decision and Order, its agreement to the above conditions or the Application is denied; the Board expressly finding and concluding that the Application in the absence of compliance with the said conditions is inconsistent with the objective criteria set forth in the applicable provisions of the Zoning Ordinance.

8. The Applicants shall execute and provide to the Township a recordable, notarized copy of a memorandum containing a metes and bounds description of the property in question and stipulating the terms and conditions of this approval and shall consent to the recording by the Township in the office of the Recorder of Deeds of Chester County.

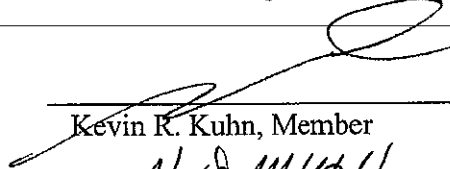
CHARLESTOWN TOWNSHIP



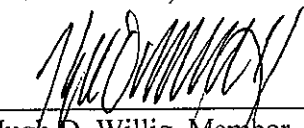
Frank Piliero, Chairman



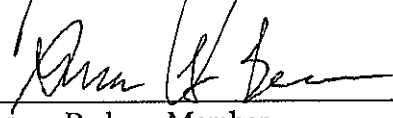
Charles A. Philips, Vice Chairman



Kevin R. Kuhn, Member



Hugh D. Willig, Member



Susan Bednar, Member



Linda M. Csete, Secretary