

CHARLESTOWN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

DECISION AND ORDER

**Application of Donald and Elizabeth
Andersen For Conditional Use Approval**

May 6, 2019

I. INTRODUCTION

Donald and Elizabeth Andersen (the “Applicants”) filed an application for conditional use approval pursuant to Section 27-402.C(5) of the Charlestown Township Zoning Ordinance (“Zoning Ordinance”) in order to subdivide their property located at 23 Eastwick Road, Malvern (the “Property”), into two residential lots by conventional lot development and conditional use approval pursuant to 27-1203.2.B(2) of the Zoning Ordinance to permit disturbance of steep slopes for stormwater management facilities on the proposed subdivided lot.

At the time of the hearing, the Applicants had submitted a Conditional Use Plan dated August 28, 2018 (the “Plan”), showing the Property subdivided into two lots with Lot 1 containing the existing dwelling and Lot 2 with a proposed dwelling. A public hearing on the Applicant’s conditional use application was originally commenced on November 5, 2018 and continued at the request of the Applicants until the hearing was re-advertised for April 1, 2019, with public notice properly provided. The Applicants were represented by Wendy W. McLean, Esq. and in support of the application the Applicants presented the testimony of their engineer, Daniel Daley P.E.

Diane Liss with an address at 554 Church Road, and Eric Joos, with an address at 18 Tipton Brook Lane directly across the street from the Property, were granted party status to the application.

II. RELIEF REQUESTED

The Property that is the subject of this application is owned by Donald and Elizabeth Andersen and is located at 23 Eastwick Road, Malvern, PA, 19355. The Property consists of 13.3665 acres of land improved with a single family dwelling also identified as Tax Parcel # 35-1-16. As shown on the Plan, the Applicant proposes subdivide the Property into two “conventional” lots.

The existing dwelling on the Property has access by way of a shared driveway referred to as Eastwick Road located on an adjacent property. The Applicants propose that the new lot, Lot 2, shall also have access onto Eastwick Road. The use of Eastwick Road is governed by a Private Drive and Maintenance Agreement (Exhibit A-3), which identifies the Road as providing access to three lots, specifically Lots 10, 11 and 12 on the Plan of Eastwick Property, dated September 18, 1992, last revised January 15, 1994, and recorded as Chester County Plan No. 12428 (the “Eastwick Subdivision”). The Property is Lot 10 of the Eastwick Subdivision. The

Agreement provides that owners of the three lots agree to be “fully responsible for the maintenance of the driveway [Eastwick Road]...and agree that they will share the cost of such maintenance and appropriate and necessary repairs and snow removal...in equal shares based upon the actual dwellings for which the driveway provides access to Church Road.” The Agreement provides further that “...each owner acknowledges that each other owner may subdivide a property and add additional dwellings to the driveway.”

Section 1610.2 of the Zoning Ordinance provides that “No subdivision shall be created which creates a situation whereby more than three lots have access onto a street which does not conform to Part 5 of the Charlestown Township Subdivision and Land Development Ordinance...” Currently Eastwick Road does not conform to the standards for road construction in the Subdivision and Land Development Ordinance and in order to add a fourth lot the Applicants propose to add depressed curbs to the portion of Eastwick Road from Church Road to the driveway to Lot 1 and ensure a minimum width of 18 feet, which would allow that portion of the Road to comply with Section 1610.2 of the Zoning Ordinance.

Pursuant to Section 27-402.C(5) of the Zoning Ordinance a “conventional lot” development is permitted on properties of 10 acres or more *in accordance with Section 27-406*. The term “Conventional Lot Development” is defined by the Zoning Ordinance as a “A subdivision or land development where all of the tract area is consumed by lots for dwellings, streets, stormwater management facilities and utility installations and no common open space is provided, and the use is governed by the conditional use process.” Section 27-406 of the Zoning Ordinance provides as follows:

§ 27-406 Requirements for Development of 10 or More Acres With Single-Family Detached Dwellings on Conventional Lots.

1. The proposed development shall conform to all standards and criteria for conditional uses in § 27-1809, and all other articles, sections, ordinances, and regulations referred to therein.
2. The area and bulk regulations of § 27-405 shall apply to conventional lot development, wherein a net lot area of not less than 80,000 square feet shall be provided for each single-family detached dwelling.
3. The applicant shall demonstrate that a conventional layout of lots will have less cumulative impact than open space development, in terms of less flood hazard area impact, less high groundwater area impact, less wetland and wetland buffer impact, less stream valley buffer impact, less steep and very steep slope impact, less prime woodland impact, less visually sensitive area impact, less view shed protection area impact, and less historic and cultural resource impact.
4. Where development of less than the entire tract is intended, or where the tract is intended to be developed at less density than conventional lots would permit, the Board of Supervisors may require the applicant to file a sketch plan for the entire parcel to illustrate the ability to achieve street access and ingress to and egress

from the property, or may require the applicant to restrict further subdivision or land development on the remainder of the tract by recorded covenant or restriction as necessary to implement the intent set forth in Subsection 3.

Section 27-406.3 of the Zoning Ordinance requires the Applicant to show that the proposed conventional lot development will have less cumulative impact than an open space development (permitted by right in the FR District) in terms of flood hazard, high groundwater, wetlands, stream valley buffer, steep and very steep slopes, prime woodlands, visually sensitive areas, view shed protection areas and historic and cultural resources. The Applicants' proposed plan, identified at the hearing as Exhibit A-5, proposes the additional lot to take access from the Eastwick Road minimizing paving from any individual access driveway, which is an indicator that the proposed conventional lot development will have the same or less cumulative impact than a potential open space development.

Regarding the resources referred in Section 27-406.3, there does not appear to be any additional impact created by the conventional lot development. One exception would be the potential impact caused by stormwater on Church Road and the need for further improvements to the drainage facilities. However, overall there are not significantly different impacts that the Board can envision being caused by the proposed conventional lot development compared with an open space development.

Concerning the Applicants' conditional use requested pursuant to 27-1203.2.B(2) of the Zoning Ordinance to permit disturbance of steep slopes for stormwater management facilities on the proposed subdivided lot, the Applicants propose to construct a subsurface stormwater management system in an area of steep slope on Lot 2 with the ground being restored to its current condition. The proposed system is identified on the Plan as "Proposed Stormwater Bed" north of the proposed dwelling on Lot 2 and partially in areas of steep slope. There was no evidence presented that would indicate that such system would create an issue to the health, safety and welfare of the neighboring properties.

The standards and criteria for conditional uses in Section 27-1809 of the Zoning Ordinance, the proposed development is consistent with the FR District provisions for a conventional lot development; the Plan appears to be feasible under the Subdivision and Land Development Ordinance including sewer and water facilities; there is a demonstrated need for single-family dwellings in the Township; the Plan is consistent with the uses on adjacent lots, which are residential, and is consistent with the character of the neighborhood; and the Plan provides safe and adequate access to Church Road and will not result in excess traffic volumes.

Most importantly, the Applicant's proposal for conventional lot development pursuant to the Plan will be subjected to the Subdivision and Land Development Ordinance review process where additional issues can be addressed including the appropriate level of tree replacement, buffering, and stormwater management engineering.

III. FINDINGS OF FACT

1. The Property that is the subject of this application is located at 23 Eastwick Road, Malvern, PA 19355.
2. The Property consists of 13.3665 acres of land improved with a single family dwelling also identified as Tax Parcel # 35-1-16.
3. The Property is located at the intersection of Church Road and Eastwick Road.
4. The Applicants, Donald and Elizabeth Andersen own and resides on the Property in the existing single-family dwelling.
5. The Property is located in the FR Zoning District.
6. The existing dwelling on the Property has access by way of a shared driveway referred to as Eastwick Road and located on an adjacent property.
7. The Applicants propose that the new lot, Lot 2, shall have access onto Eastwick Road.
8. The use of Eastwick Road is governed by a Private Drive and Maintenance Agreement, which identifies the Road as providing access to three lots, specifically Lots 10, 11 and 12 on the Plan of Eastwick Property, dated September 18, 1992, last revised January 15, 1994.
9. Eastwick Road does not conform to the standards for road construction in the Subdivision and Land Development Ordinance
10. The Applicants propose to add depressed curbs to the portion of Eastwick Road from Church Road to the driveway to Lot 1 and ensure a minimum width of 18 feet, which would allow that portion of the Road to comply with the standards in the Subdivision and Land Development Ordinance
11. The Applicants propose to construct a subsurface stormwater management system partially in an area of steep slope on Lot 2 with the ground being restored to its current condition.

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 Sections 27-406 and 27-1809 of the Zoning Ordinance for Conditional Use Approval.

V. DECISION AND ORDER

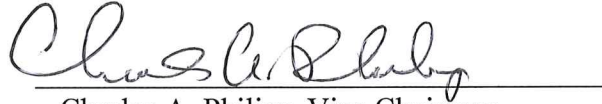
AND NOW, this 6th day of May, 2019, upon consideration of the testimony and exhibits presented, it is ORDERED that the Applicants, Donald and Elizabeth Andersen, are granted conditional use approval pursuant to Section 27-402.C(5) of the Zoning Ordinance in order to develop to the Property located at 23 Eastwick Road by subdividing it into two residential lots permitted by conventional lot development, and granted conditional use approval pursuant to 27-1203.2.B(2) of the Zoning Ordinance to permit disturbance of steep slopes for stormwater management facilities on the proposed subdivided lot subject to the following conditions:

1. The proposed use is subject to compliance with all terms and provisions of the Zoning 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 requested use as shown on the Applicants' Conditional Use Plan (Exhibit A-5) and representations made by the Applicants made as part of the record at the public hearing.
3. The Applicants shall improve Eastwick Road from Church Road to the driveway to Lot 1 to conform to the standards for road construction in the Subdivision and Land Development Ordinance by adding depressed curbs, ensuring a minimum width of 18 feet and any other improvement necessary, to be determined during the land development process, in order to comply with Section 1610.2 of the Zoning Ordinance.
4. The Applicants shall implement any necessary stormwater management related to existing drainage facilities for Eastwick Road and at the intersection of Eastwick Road and Church Road subject to approval by the Township Engineer and PennDOT.
5. Before recording the Plan, the Applicants shall provide to the Township an amended Private Drive and Maintenance Agreement providing for the use of Eastwick Road by the owner of Lot 2 and executed by the owners of the lots utilizing Eastwick Road.
6. The Applicants shall comply with all exhibits, representations, and record evidence, including the October 2, 2018 Memorandum from Thomas Comitta Associates and the October 3, 2018 Review letter from Advanced Geoservices, which are incorporated herein as part of this approval.
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.

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