

LAMB | M C E R L A N E ^{PC}

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May 14, 2021

Via First Class Mail

Matthew M. McKeon, Esquire
MacElree Harvey
17 W. Miner Street
P.O. Box 660
West Chester, PA 19381

**Re: Charlestown Township
Conditional Use Application- Derek and Jamie Finger
UPI # 35-4-138.8**

Dear Mr. McKeon:

Enclosed please find the Decision and Order regarding the above referenced Application.

Very truly yours,

LAMB MCERLANE PC

By: 

Mark P. Thompson

Enclosure

cc: Linda Csete, Charlestown Township

CHARLESTOWN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

DECISION AND ORDER

**Application of Derek and Jamie Finger
Conditional Use Approval**

April 5, 2021

I. INTRODUCTION

Derek and Jamie Finger (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 to construct an accessory walkway and swimming pool in areas of steep slope area and Section 27-1203.2.B(2) of the Zoning Ordinance to construct portions of a stormwater management facility in areas of steep slope on the property located at 9 South Winds Lane, Malvern, PA 19355 (the “Property”).

A public hearing on the above referenced conditional use application was commenced on April 5, 2021, with public notice properly provided. The Applicants’ case was presented by Jamie Finger and Amanda Schnieder, P.E. of D.L. Howell Associates.

II. RELIEF REQUESTED

The Property that is the subject of this application is owned by the Applicants with an address at 9 South Winds Lane, Malvern. The Property consists of approximately 4 acres located in the FR-Farm Residential Zoning District and is also identified at tax parcel 35-04-138.8 The Property is currently improved with a dwelling in which the Applicants reside. In order to construct proposed swimming pool and walkway 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 steep slope areas.

The proposed accessory swimming pool, walkway, stormwater facilities, and associated improvements are shown on the Plan identified at the hearing as Exhibit A-5 (the “Plan”).

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 South Winds Lane. The Applicants proposed improvements are located outside the very steep slope areas of the Property and comply with all area and bulk requirements.

The standards for conditional use are set forth in Section 1809 of the Zoning Ordinance. According to evidence presented by the Applicants, 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 Derek and Jamie Finger and is located 9 South Winds Lane, Malvern, PA 19355.
2. The Property consists of approximately 4 acres and is improved with a 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 South Winds Lane.
5. The proposed accessory swimming pool, walkway and associated improvements are shown on the Plan identified at the hearing as Exhibit A-5 (the "Plan").
6. The Applicants propose to control stormwater from the improvements with an underground stormwater infiltration bed identified on the Plan as "Proposed Infiltration Bed."

7. The Plan identifies the proposed swimming pool on the Property outside areas of very steep slope and in compliance with all area and bulk requirements.

8. There is no viable alternative alignment or location for the proposed improvements to be located outside of areas of Steep Slope.

IV. CONCLUSIONS OF LAW

1. The Applicants have standing.

2. 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 5th day of April, 2021, upon consideration of the testimony and exhibits presented, it is ORDERED that the Applicants, Derek and Jamie Finger are granted conditional use approval pursuant to Sections 27-1203.2.B(2) and 27-1203.2.B(6) of the Charlestown Township Zoning Ordinance to permit an accessory walkway, swimming pool and associated stormwater management in areas of Steep Slope on the property located at 9 South Winds Lane, Malvern also identified at tax parcel 35-04-138, subject to the following conditions.

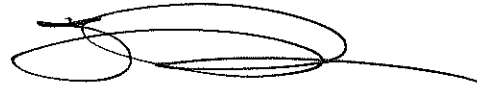
1. The proposed uses are subject to compliance with all terms and provisions of the Zoning Ordinance, and all other Township Ordinances and regulations, and in addition to the regulations of all other government agencies having jurisdiction over the use.

2. The scope of this approval is limited to the requested uses as shown on the Applicants' Conditional Use Plan (Exhibit T-6) and representations made by the Applicants as part of the record at the public hearing.

3. The Applicant shall comply with all exhibits, representations, and record evidence, including the February 18, 2021 Memorandum from Thomas Comitta Associates (Exhibit T-5) which is incorporated herein as part of this approval.

4. The Applicants shall express to the Board in writing within fourteen (14) days of the date of this Decision and Order, their 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



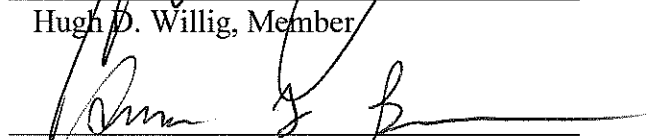
Charles A. Philips, Vice Chairman



Kevin R. Kuhn, Member



Hugh D. Willig, Member



Susan Bednar, Member

Linda M. Csete, Secretary