

L A M B | M C E R L A N E <sup>PC</sup>

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November 9, 2022

Gregg I. Adelman, Esquire  
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P.O. Box 3037  
Blue Bell, PA 19422

**Re: Charlestown Township  
Conditional Use Application of Kathy Greene and Christopher Marks  
Property at 4219 Howell Road**

Dear Mr. Adelman:

Enclosed please find the Decision and Order regarding the above referenced Application which was approved by the Board of Supervisors of Charlestown Township at their meeting on November 7, 2022.

Very truly yours,

LAMB MCERLANE PC

By: 

Mark P. Thompson

Enclosure

cc: Chris Heleniak, Charlestown Township

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CHARLESTOWN TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA

**DECISION AND ORDER**

**Application of Kathy Greene and  
Christopher Marks for  
Conditional Use Approval**

**November 7, 2022**

**I. INTRODUCTION**

Kathy Greene and Christopher Marks (the “Applicants”) filed an Application for conditional use approval pursuant to Sections 27-1203.2.B(6) of the Charlestown Township Zoning Ordinance (“Township Zoning Ordinance”) in order to permit a driveway to be constructed within an area Steep Slopes on the Property located at 4219 Howell Road (the “Property”).

A public hearing on the conditional use Application was commenced by the Board of Supervisors at its meeting on June 6, 2022, with public notice properly provided. The hearing was continued on the record until the Board’s meeting on October 3, 2022. The Applicants were represented by Gregg Adelman, Esquire of the firm of Kaplin Stewart. The Applicants’ case was presented by the testimony of Brynn Schaffer, P.E. of Carta Engineering.

Jill Green and Frank Beyer, the owners of property located at 4221 Howell Road, adjacent to the Applicants’ Property, was granted party status to the Application and was represented by George Asimos, Esq. at the hearing and presented the testimony of Neal Camens, P.E. of Chester Valley Engineers. Additionally, Brian Wood with an address at 4 Spring Meadow Farm Lane and Kelly Sweppenhiser, with an address at 2 Heatherwood Road were granted party status

**II. FINDINGS OF FACT**

1. The Applicants are the owners of the Property located at 4219 Howell Road consisting of 9.07-acres of land and identified as Tax Parcel No. 35-5-22.

2. The Property is located in the FR Zoning District.

3. The Property is currently undeveloped.

4. The Property is flag lot with the flag pole extending approximately 540 feet to permit access to Howell Road.

5. There is an area of Steep Slope (15%-25%) as defined by the Zoning Ordinance bisecting the Property from north to south consisting of approximately 3.1-acres.

6. There is no alternative other than to cross the area of Steep Slope in order to access the rear of the Property.

7. The Applicants propose to construct a paved driveway at an angle across the area of Steep Slope in the area where a previous access driveway had been located.

8. There is no viable alternative alignment or location feasible outside the Steep Slopes on the Property to provide for access to the rear of the Property.

9. As shown on the Plans, Exhibit A-6, it appears that there is no more direct route to cross the Steep Slopes and there is no way to avoid crossing the Steep Slopes.

10. The Applicants are proposing to construct stone swales on both sides of the driveway in the area of Steep Slope in order to control stormwater associated with the driveway.

11. The proposed driveway itself will not cause excessive surface water runoff, erosion, sedimentation and unstable soil conditions to the adjacent properties.

12. Through a separate application, the Applicants are proposing to subdivide the Property into three residential lots.

13. The proposed driveway would cross the area of Steep Slope to access two proposed single-family detached dwellings to the south of the area of Steep Slope.

14. One lot and single-family detached dwelling is proposed to be located on the north side of the area of Steep Slope.

15. As part of Plans identified as Exhibit A-6, there is a Post Construction Stormwater Management Plan (Sheet 3) that proposes extensive improvements to control stormwater associated with the three proposed single-family detached dwellings and accessory uses associated with the dwellings including areas of driveway.

16. The Applicants' Post Construction Stormwater Management Plan is being reviewed by the Chester County Conservation District and the Township Engineer as part of the Subdivision and Land Development Application review process.

### **III. CONCLUSIONS OF LAW**

1. The Applicants have standing.
2. The Applicants have met the standard for approval of the proposed conditional use.

3. The Applicants have satisfied the standards set forth in Sections 27-1203 and 27-1809 of the Zoning Ordinance for Conditional Use Approval.

#### **IV. DISCUSSION**

The Property is located within the FR Zoning District and the Applicants have requested conditional use approval to permit a driveway within an area of slope between 15% and 25% (“Steep Slopes”) pursuant to Section 27-1203.2.B of the Township Zoning Ordinance, which provides as follows.

27-1203.2 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:

(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.

Additionally, Section 27-1205 of the Township Zoning Ordinance provides specific standards for approval of conditional uses in the Steep Slope District as follows:

1. In addition to the standards described in § 27-1809, pertaining to conditional uses, the Board of Supervisors shall consider the following:
  - A. The degree of modification, proposed within the District to the topographic, soil and vegetation resources, and the techniques proposed to mitigate potential environmental impacts.
  - B. The effect the development of the subject district would have on adjacent properties.
  - C. The relationship of the proposed uses to the objectives described in § 27-1201, herein.
2. Any application for a conditional use shall provide evidence that:
  - A. The Steep Slope Conservation District is being proposed for development since no other alternative location is feasible or practical.
  - B. Earthmoving activities and vegetation removal will be conducted only to the extent necessary to accommodate proposed uses and structures and in a manner that will not cause excessive surface water runoff, erosion, sedimentation and unstable soil conditions. Further, it shall be demonstrated that any and all

reasonable mitigation techniques and procedures will be utilized or have been considered in the preparation of the plan.

C. Proposed buildings and structures are of sound engineering design and that footings are designed in response to the site's slope, soil and bedrock characteristics; and, where applicable, shall extend to stable soil and/or bedrock

A conditional use is a form of permitted use. *Pennridge Development Enterprises, Inc. v. Volovnik*, 624 A.2d 674 (Pa. Cmwlth. 1993). The fact that a use is permitted as a conditional use evidences a legislative decision that the particular type of use is not adverse to the public interest per se. *Vision Quest National Ltd. v. Board of Supervisors of Honeybrook Township*, 169 A.2d 915 (Pa. 1990). Initially, both the burden and the duty fall upon the applicant to affirmatively prove they comply with “specific requirements” of the ordinance. A conditional use applicant must demonstrate that it is entitled to a conditional use by establishing compliance with the specific objective criteria for the use detailed in the zoning ordinance. *Bray v. Zoning Board of Adjustment*, 410 A.2d 909 (Pa. Cmwlth. 1980).

The burden then shifts to any objectors to establish that the proposed use is not, in fact, consistent with the promotion of health, safety and general welfare in the community. *Id.* The protestants must present sufficient evidence to establish that there is a high degree of probability that the use will cause substantial threat to the community. *In re: Appeal of the Cutler Group, Inc. from the Decision of the Board of Supervisors of East Vincent Township*, 880 A.2d 39 (Pa. Cmwlth. 2005). Such evidence must be more than a mere speculation of harm. *Szewczyk v. Zoning Board of Adjustment of the City of Pittsburgh*, 654 A.2d 218 (Pa. Cmwlth. 1995) (citing *Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg*, 329 A.2d 912, 917 (Pa. Cmwlth. 1974)). The adverse impact upon the public interest must exceed that which might be expected in normal circumstances. *Brentwood Borough v. Cooper*, 431 A.2d 1177 (Pa. Cmwlth. 1981).

Under Sections 603(c)(2) and 913.2(a) of the MPC (53 P.S. §§10603(c)(2) and 913.2(a)), the Board of Supervisors, as the governing body of the Township, has the authority to grant conditional uses pursuant to the express standards and criteria set forth in the Zoning Ordinance and to attach such reasonable conditions and safeguards in addition to those expressed in the Zoning Ordinance, as it may deem necessary to implement the purposes of the MPC and the Zoning Ordinance. *Clinton County Solid Waste Authority v. Wayne Township*, 643 A.2d 1162 (Pa. Cmwlth. 1994). Any conditions which the Board imposes must be upheld if the conditions are reasonably related to the health, safety or welfare of the public. *Id.*

In this case, in addition to the general standards for approval of conditional uses by the Board of Supervisors set forth in Section 1809 of the Township Zoning Ordinance, Section 27-1205 of the Township Zoning Ordinance sets for specific standards for uses to be located in areas of Steep Slope. First the Board of Supervisors must determine whether there is no viable alternative alignment or location feasible for the proposed driveway. According to evidence presented by the Applicant’s Engineer, specifically the Plan, Exhibit A-6, it does not appear feasible to construct the proposed driveway without encroaching in areas of Steep Slope and there is no more direct route to cross the Steep Slopes than that proposed by the Applicants.

Furthermore, Section 27-1205 of the Township Zoning Ordinance requires the Board of Supervisors to consider the degree of modification, proposed within the District to the topographic, soil and vegetation resources required for the proposed driveway, and the techniques proposed to mitigate potential environmental impacts; the effect the proposed driveway would have on adjacent properties; and the relationship of the proposed driveway to the objectives described in § 27-1201 of the Township Zoning Ordinance.

In this case, the evidence presented at the hearing indicates that the proposed location of the driveway will have the least possible impact on the area of Steep Slopes, the Applicants' Post Construction Stormwater Management Plan proposes extensive improvements to control stormwater associated with the three proposed single-family detached dwellings and accessory uses associated with the dwellings including areas of driveway, therefore there is evidence of mitigation of potential environmental impacts the driveway would have the adjacent downhill property, and given the driveway is proposed to be located in area of an existing pathway reducing the need for excessive grading, land form alteration or extensive vegetation removal, the proposed driveway meets the objectives described in § 27-1201 of the Township Zoning Ordinance.

Finally, while the neighboring property owner presented the testimony of Neal Camens, P.E., this evidence was primarily a technical critique of the Applicants' Subdivision and Land Development Application to develop the Property with three single-family detached dwellings and issues related to the operation of the improvements proposed as part of the Post Construction Stormwater Management Plan. The Applicants' Subdivision and Land Development Application Plan is currently being reviewed by the Township and Chester County Conservation District and may be subject to being revised based on that review. While the Township recognizes these issues, in the context of an application for a conditional use where the Board is only considering whether the proposed driveway use is a permitted use, the Applicants have presented sufficient evidence to demonstrate compliance with the standards in the Township Zoning Ordinance. Conversely, there is not sufficient evidence to establish that the proposed use is not, in fact, consistent with the promotion of health, safety and general welfare in the community or would cause substantial threat to the community. *In re: Appeal of the Cutler Group, Inc. from the Decision of the Board of Supervisors of East Vincent Township*, 880 A.2d 39 (Pa. Cmwlth. 2005).

Therefore, the Board issues the following Order.

## **V. DECISION AND ORDER**

AND NOW, this 7<sup>th</sup> day of November 2022, upon consideration of the testimony and exhibits presented, it is ORDERED that the Applicants are granted conditional use approval to permit a driveway on the Property within areas of Steep Slopes pursuant to Section 27-1203.2.B(6) of the Charlestown Township Zoning Ordinance subject to the following conditions.

1. The proposed driveway 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 and representations made by the Applicants made 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 not inconsistent with this Decision and Order required by any current or subsequent Chester County Conservation District review of the Applicants' Plans for improvements to the driveway in the areas of Steep Slope.

5. The Applicants shall complete all improvements listed in the Advanced Geoservices review letter dated May 16 2022 or any other review by the same on such revised plans as may be submitted by the Applicants.

6. The Applicants agree to submit to the Township Engineer for review and approval all stormwater management information and calculations documenting the extent of disturbance for the construction of the driveway.

7. The Applicants shall minimize and mitigate disturbance to steep slopes, including but not limited to minimization of disturbed areas, mitigative plantings, slope stabilization, and Best Management Practices such as stormwater infiltration in order to mitigate runoff that may enter any specially protected watershed.

8. The Applicant 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



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Frank Pilierro, Chairman

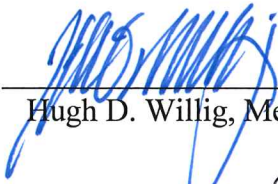
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Charles A. Philips, Vice Chairman



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Kevin R. Kuhn, Member



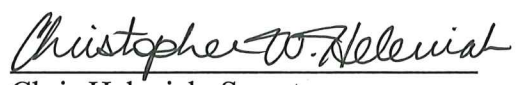
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Hugh D. Willig, Member



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Susan Bednar, Member



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Chris Heleniak, Secretary