

**APPLICATION OF W. HERBERT STAUFFER  
AND JANET L. STAUFFER  
BEFORE THE ZONING HEARING BOARD OF  
CHARLESTOWN TOWNSHIP, CHESTER COUNTY,  
PENNSYLVANIA  
NO. 02-2023**

The Application of W. Herbert Stauffer and Janet L. Stauffer, hereinafter, “Applicants,” was heard by the Zoning Hearing Board of Charlestown Township on August 29, 2023. Applicants are the owners of improvements and realty located at 6 Primrose Lane, Charlestown Township, Chester County, situated in a FR zoning district of said township. Applicants requested variances from the following sections of the Zoning Ordinance of Charlestown Township, as amended: §27-1203.1C.(1) and §27-1203.2.C.(1) which prohibits structures within Very Steep Slopes and Steep Slopes; §27-1203.1.C.(2) and §27-1203.2.C.(2) which prohibits cutting and filling in areas of Very Steep Slope; and §27-1203.1.C.(4) and §27-1203.2.C.(4) which prohibits removal of top soil in areas of Very Steep Slope, so that Applicant may construct a detached garage at 6 Primrose Lane on parts of areas designated Very Steep Slopes and Steep Slopes. David J. Scaggs, Esquire represented Applicants. Mr. Scaggs presented testimony of witnesses and submitted into evidence documents marked A-1 through A-8 in support of Applicants’ variance requests.

**FINDINGS OF FACT**

1. Charlestown Township’s Zoning Hearing Board provided written notice of Applicants’ variance requests to be heard at a public hearing scheduled for August 29, 2023, at 7:30 p.m., which included the names of Applicants, the address of Applicants’ realty and improvements, the zoning district in which the subject property is situated, and the relief sought by Applicants, i.e., variances to construct a detached garage upon parts of areas designated Very Steep Slopes and Steep Slopes. Exhibits B-1, 2, 3, & B- 4 (Record, pages 1-5).

2. Applicants purchased improvements and realty, depicted as Lot 52 on a Plan of Property, prepared by Chester Valley Engineers, dated 2/14/1994, last revised 11/30/1994,

containing 3.233 acres, together with buildings thereon, from Rouse/Chamberlin, a Pa Limited Partnership, by Deed, dated December 18, 1995. (A- 1, Deed, Page 8)

3. Applicant, Janet L. Stauffer, testified that she and her husband have resided in a two-story colonial house, with an attached three car garage at 6 Primrose Lane for 27.5 years (Record, pages 9 and 14)

4. Mrs. Stauffer testified that she and her husband would like to build a detached two-bay garage, with a storage area behind the bays, and a work shop, garden room, powder room and slop sink beneath the storage area. (Record, page 8)

5. Mrs. Stauffer testified that the builder created a steep slope by moving dirt upward and forward to make a level base to enter and exit the driveway. (Record, page 9)

6. Mrs. Stauffer testified that: the A-4 top left photo depicted two stakes on the inside of a driveway turn-around which marked the start place of the proposed garage; the A-4 top right photo depicted two stakes that marked the end of the proposed garage; and the A-4 bottom photo provided a full view of the site of the proposed garage. (Record, page 10)

7. A-3 depicts Applicants' improvements and realty as they presently appear.

8. Mrs. Stauffer testified that she and her husband considered building the proposed garage across from the existing driveway, but the 20 feet setback appeared to be an issue and the area appeared insufficient to exit the existing garage. (Record, page 11)

9. Mrs. Stauffer testified that A-5 depicts a front elevation of the proposed garage front doors for the bays, and its footprint- 24 feet across by 23 feet together with 11 feet storage area. (Record, pages 11 and 12).

10. James David Shula, a professional licensed engineer, testified, inter alia, that: the subject property totals 3.2 acres, 1.53 acres of which are steep slope and very steep slope, a combined area equal to approximately 47.2% of Applicants' property. (Record, page 21)

11. Mr. Shula believed that some of the slopes are natural and some are manmade, and when queried about the location of the proposed garage, offered his belief that those were manmade and his belief that the soil from grading the driveway and constructing the house steepened the slope and created the steep slopes in the area. (Record, p. 22)



12. When queried about how much of the steep slopes the installation of the garage permanently affect, Mr. Shula's opinion was 246 s/f or .4% and 707 s/f or 8.7% of very steep slopes. (Record, pages 22 and 23)

13. When queried by the Board as to which part of the garage would be in Steep Slope and which part of the garage would be in Very Steep Slope, Mr. Shula testified that more than half of the proposed garage would be in Very Steep Slope. (Record, p.30)

14. Mr. Shula testified that they attempted to locate the proposed garage higher up the hill out of the steep slope areas, but to do so would require a variance. (Record, p.23)

15. Mr. Shula testified that they could put the garage along the driveway without going forward of the existing dwelling but doing so may require a side yard setback variance. (Record, p.23)

16. Mrs. Bethany Spangler, who resides with her husband, at 8 Primrose Lane testified that she and her husband supported the Application. (Record, p.29)

17. Ms. Carol Armstrong questioned whether Charlestown Township Ordinance, 6/20/1979, as amended, was enacted prior to the date that the owners purchased their property; and if so; does that mean that these owners are deemed knowledgeable about the hardship at the time they purchased the property? Board replied: "correct". (R. p.31)

18. Attorney Scaggs stated that the relief his clients are seeking is not unprecedented in Charlestown; in that, the Board gave a de minimis variances in the Grafinger case, #04-2019 (Record, p. 37)

19. The facts pertinent to the de minimis variances granted by the Board in the Grafinger case, #04-2019, were as follows: (1) The subject house was a split level constructed in 1950, part of which was situated in a Very Steep Slope, (2) an existing structure permitted under the Steep Slope Conservation District (Ordinance 6/20/1979). (3) Mr. Grafinger witnessed a collapse of part of the Very Steep Slope during a heavy rain fall and that because of extensive runoff he was concerned for the structure integrity of his house and safety of its occupants. (4) Christopher M. Daily, a professional engineer testified to the

accuracy of factual information set forth on Applicant's revised grading plan, prepared by D L Howell, dated 11/19/2019.

20. §27-202 of the Ordinance defines "Critical Environmental Areas" as areas including: Flood hazard and high groundwater areas; wet lands and hydrolic soils, steep and very steep slopes, one-hundred-foot wetlands, etc.

21. §27-202 of the Ordinance defines "Structures" as any man-made object having an ascertainable stationery location on or in land or water, whether or not affixed to the land. Buildings, streets, and any other improvement shall be considered a fixture, however that portion of a street which lies within the yard and is necessary for ingress, egress and access to and from the interior of any lot shall not be considered a structure for the purpose of this definition and the existence of such a street within a yard shall not be deemed to violate any prohibition against structures in a yard set forth in any zoning district in this chapter.

22. §27-1201 of the "SSC-Steep Slope Conservation District (Ord 6/20/1979) sets forth the purpose of this Part is to expand upon the community development objectives associated with environmental protection and the preservation of the natural resources expressed in Part 1, and to complement the provisions of Part 15 relating to open space. The provisions of this Part are designed to encourage the sensitive treatment of hillsides and their related soil and vegetation resources in effort to minimize adverse environmental impacts. The following objectives serve to complement these purposes:

A. To conserve and protect Steep and Very Steep Slopes from inappropriate development such as excessive grading, land form alteration and extensive vegetation removal.

B. To avoid potential hazards to property and the disruption of ecological balance which may be caused by increase runoff, flooding, soil erosion and sedimentation, blasting and ripping of rock, and landslide and soil failure.

C. To encourage the use of Steep and Very Steep Slopes for open space and other uses which are compatible with the preservation of natural resources and the protection of critical environmental areas.

23. §27-1202 of the Ordinance, entitled General Provisions, provides in part:

1. Compliance. No area within the Steep Slope Conservation District shall hereafter be used without full compliance with the terms of this Part and other applicable regulations.

2. Preservation of other Restrictions. It is not intended in this Part to repeal, abrogate or impair any existing zoning or subdivision regulations, easements, covenants or deed restrictions, except that where this Part imposes greater restrictions, its provisions shall prevail. "Further . . ."

24. §27-1202. 3B & 3C of the Ordinance, provides areas of steep slope are characterized by change in elevation from 15 to 25% over a distance or contour specified in subsection 3E and areas of very steep slope as are characterized by change in elevation greater or equal to 25% over a distance or contour specified in subsection 3E.

25. §27-1203. USE REGULATIONS (Ordinance 6/20/1979)

1. Areas of Very Steep Slope (equal to or greater than 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:

A. Permitted Principal Uses: Areas of Very Steep Slope

- (1) Agricultural uses that do not require cultivation or structures;
- (2) Conservation and recreational not requiring structures such as parks; hiking . . . ;
- (3) Structures existing prior to the effective date of this chapter;
- (4) Front, rear and side yards provided by the location of buildings on any lot or tract.

B. Conditional Uses (1). . . (2). . . (3). . . (4). . .

C. Prohibitive Uses and Activities

- (1) Structures other than those associated with subsection with 1A and 1B herein.



- (2) Cut and fill, other than in association with any use related to Subsection 1A and B herein.
  - (3) Soil, rock or mineral retraction.
  - (4) Removal of top soil.
  - (5) Onsite domestic waste disposal systems.
  - (6) Streets including shared driveways.
- 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:
  - A. Permitted Principal Uses. Any principal use permitted in Subsection 1A heretofore.
  - B. Conditional Uses. A conditional use identified in Subsection B. herein and the following: (1) . . . ; (2) . . . ; (3) . . . ; (4) . . . ; (5) . . . ; (6) . . .
  - C. Prohibited Uses and Activities
    - (1) Structures other than those associated with Subsection 2A and 2B herein;
    - (2) Cut and fill, other than in association with any use related to Subsection 2A and B herein;
    - (3) Soil, rock or mineral retraction.
    - (4) Removal of top soil;
    - (5) Filter field elements, mounds, or the like beds of on-site domestic waste disposal systems.

### **CONCLUSIONS OF LAW**

1. §27-1203.1.C.(1) through (6) and §27-1203.2.C.(1) through (5) of the SSC-Steep Slope Conservation District (Ordinance 6/20/1979) prohibit Applicants from building a detached two-bay garage, with a storage area behind the bays, a work shop, garden room, powder room and slop sink beneath the storage area in an area depicted on Applicant's Exhibit 2.

2. Mrs. Stauffer's testimony that the builder created a steep slope by moving dirt upward and forward to make a level base to enter the driveway (FF -5) and Applicant's witness, James David Shula's, opinion that some of the slopes are natural and some are manmade, as well as his belief that those were made from grading the driveway and constructing the house steepened the slope and created steep slopes in the area circa 1995 (FF-11) are not supported by competent evidence.

3. Mr. Shula's opinion that the installation of the proposed garage would permanently affect 246 s/f or .4% of steep slopes and 707 s/f or 8.7% of very steep slopes, and that more than half of the proposed garage would be in very steep slope is accepted. (FF's 12 & 13).

4. The Stauffers' existing attached three car garage at 6 Primrose Lane is sufficient to house their presently owned 3 cars, and should the Stauffers' modify their application by eliminating their proposed two car garage, the Board submits that they would be able to construct an accessory building to house a work shop, garden room, powder room with slop sink, and storage room in areas of their property other than those areas designated steep slope and very steep slope as customary accessory agricultural and residential uses and buildings are permitted uses in their FR zoning district.

5. The Board may grant de minimis variances in very limited situations where the proposed dimensional deviations from the zoning requirement are relatively minor, and *where the insistence in rigid compliance is not absolutely necessary to preserve the public policy to be obtained.* (italicized print added for emphasis) Evans v. Hearing Board of the Borough of Spring City, 732 A.2d 686, 692, n.5 (Pa. Com. 1999).

6. Dimensional variances include setbacks, lot width, building area, impervious surface limitations and minimum lot areas. Robert S. Ryan, Pennsylvania Zoning Law and Practice, §6.3.1; The prohibition against filling wetlands and waters of the United States does not constitute a de minimis variance as the prohibition is substantially different in character than a set back. Segal v. Zoning Hearing Board of Buckingham Township, 771 A.2d 91, 95 (Pa. Com. 2001).

7. Charlestown Township Ordinance, 6/20/1979, as amended, at §27-102.1. provides, in pertinent part, This chapter is designed and enacted for the purpose of promoting and facilitating the health, safety and general welfare of Charlestown Township, its current and future residents and enterprises . . . . ; subparagraph D. provides, To protect and preserve natural resources and to restrict use, and structures at or near bodies of water, places of steep slope and other areas of geological or topographic features other areas. §27-1201 of the “SSC-Steep Slope Conservation District (Ord 6/20/1979) sets forth the purpose of this Part is to expand upon the community development objectives associated with environmental protection and the preservation of the natural resources expressed in Part 1, and to complement the provisions of Part 15 relating to open space. The provisions of this Part are designed to encourage the sensitive treatment of hillsides and their related soil and vegetation resources in effort to minimize adverse environmental impacts. Applicants’ requests for de minimis variances in areas of steep slopes and very steep slopes are precluded as protected uses as they are not dimensional deviations.

8. Applicants have not submitted evidence to support traditional variances.

The foregoing Findings of Fact and Conclusions of Law are made in support of the Zoning Hearing Boards’ unanimous decision, following public vote at the conclusion of the hearing held August 29, 2023, denying W. Herbert and Jane L. Stauffer’s Application for requests for variances or de minimis variances. from (A) §27-1203.1.C.1 and §27-1203.2.C.1 which prohibit structures within areas of Very Steep Slopes and Steep Slopes; (B) variances or de minimis variances from §27-1203.1.C.2 and §27-1203.2.C.2; and (C) variances or de minimis variances from §27-1203.1.C.4 and §27-1203.2.C.4.

9/27/2023

Date



Michael Bowen, Chairman

9-21-2023

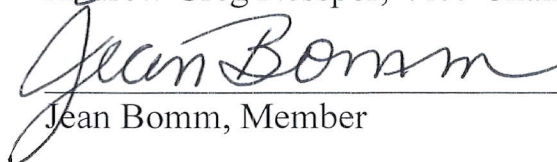
Date



Andrew Greg Nessor, Vice-Chairman

9/21/2023

Date



Jean Bomm, Member