

BOARD OF SUPERVISORS OF WEST VINCENT TOWNSHIP

APPLICATION OF : : HEARING DATE: October 21, 2024
1414 Birchrun Road, LLC : :
 : DECISION DATE: December 16, 2024
 :
PROPERTY: 1414 Birchrun Road :
Parcel No. 25-3-101.1 :
Chester Springs :
West Vincent Township :

OPINION AND ORDER
OF THE BOARD OF SUPERVISORS OF WEST VINCENT TOWNSHIP

The Applicant, 1414 Birchrun Road, LLC, (“Applicant”), filed a conditional use application to permit a disturbance of areas within the precautionary slope area (18%-20%) and the prohibited slope area (over 25%) per Section 390-98B of the West Vincent Township Zoning Ordinance, as amended, to permit Stormwater Facilities within the identified steep slopes. The Application was properly advertised, and a public hearing was held before Dana Alan, as hearing officer on behalf of the West Vincent Township Board of Supervisors (“the Board”) on October 21, 2024 (“hearing”), the Township Solicitor was also present at the public hearing.

FINDINGS OF FACT

1. The Applicant is 1414 Birchrun Road, LLC, a limited liability company, with offices located at 1414 Birchrun Road, Chester Springs, West Vincent Township, Pennsylvania.
2. The Applicant is the legal owner of the property located at 1414 Birchrun Road, West Vincent Township, Chester County Tax Parcel No. 25-3-101.1 (“subject property”).

3. The Applicant proposes to construct a single-family dwelling on the property to the West of an existing barn/single-family dwelling and associated improvements including a driveway extension and stormwater management to address the increase in stormwater run off expected from the proposed improvements. The overall project consists of three (3) parcels totaling approximately 62 acres.

4. The Township introduced the following exhibits:

Exhibit B-1: Application for Condition Use;

Exhibit B-2: List of residents within 500 feet;

Exhibit B-3: Preliminary Minor Subdivision Plan;

Exhibit B-4: Review letter from Township consulting engineers, LTC Consultants dated September 10, 2024.

5. The Applicant introduced the following exhibits:

Exhibit A-1: Curriculum Vitae of Justin Brewer;

Exhibit A-2: Plan showing blow up view of proposed improvements;

Exhibit A-3: Plan showing proposed stormwater piping;

Exhibit A-4: Chester County Planning Commission Review Letter dated September 23, 2024

6. As legal owner of the Subject Property, the Applicant has legal standing to proceed with the conditional use application.

7. Justin Brewer (“Brewer”), a registered professional engineer employed by Howell Engineering, providing expert testimony for the Applicant.

8. Brewer testified that the project consists of three (3) parcels totaling approximately 62 acres where there currently exists a barn converted to a single-family dwelling along with a detached garage, driveway and swimming pool.

9. Brewer testified that as part of the land development plan, the Applicant is proposing to construct a single-family dwelling on the property to the West of the existing barn/single-family dwelling.

10. Brewer testified that improvements associated with the proposed new single-family dwelling would be a driveway extension and stormwater management facilities.

11. Brewer testified that Applicant's Exhibit A-2 depicts the proposed improvements along with the existing improvements on the subject property.

12. Brewer testified that Applicant's Exhibit A-3 shows where the proposed stormwater conveyance piping is proposed.

13. Brewer testified that Applicant's Exhibit A-3 is a colored photograph of the steep slope on the property that is subject to the application.

14. Brewer testified that on Exhibit A-2 the lighter grey area represents the precautionary steep slopes and the dark grey area represents the prohibitive steep slopes.

15. Brewer testified that the T shaped solid line would be the proposed stormwater piping and the dashed line immediately below or south of the light grey shaded area is the subsurface infiltration bed.

16. Brewer testified that the relief sought through this conditional use application is limited to the stormwater management facilities that are to be constructed within the steep slope areas.

17. Brewer testified that the stormwater facilities including the closed pipe and subsurface infiltration bed would be underground.

18. Brewer testified that stormwater would be captured at the top of the hill and conveyed down to the bottom of the hill where the subsurface infiltration bed would be constructed.

19. Brewer testified that land development plans submitted, and the relief sought in this conditional use application is compliant with all the comments and recommendations of the Chester County Planning Commission Review Letter dated September 23, 2024.

20. Brewer testified that the applicant will comply with all the recommendations that are outlined in the LTL Consultants review letter dated September 10, 2024.

21. Brewer testified that the relief requested is the minimum necessary to afford what is needed to proceed with the land development project for the construction of a new single-family residence on the property.

22. Brewer further testified that in his opinion the relief requested would minimize erosion on the property and satisfy the intent of the Township's ordinance.

23. Brewer testified that to move the proposed house further North to minimize steep slope encroachment would cause more trees to be removed.

DISCUSSION AND CONCLUSIONS OF LAW

The Applicant filed a conditional use application under Section 390-98 of the West Vincent Township Zoning Ordinance, as amended, to permit stormwater management facilities within the steep slope.

In a conditional use case, the Applicant first bears the burden of establishing that the application falls within the conditional use provision of the particular township ordinance. *See, City of Hope v. Sadsbury Tp. Zoning Hearing Bd.*, 890 A.2d 1137 (Pa. Commw. Ct. 2006); *See also, Bailey v. Upper Southampton Tp.*, 690 A.2d 1324 (Pa. Commw. Ct. 1997). Section 390-98

of the West Vincent Township Zoning Ordinance requires that construction of stormwater management facilities within the precautionary subdistrict and the prohibitive subdistrict must be approved as a conditional use by the Board of Supervisors, per requirements of the steep slope conservation overlay district and Section 390-219 of the Township Zoning Code.

In addition to the other requirements within the particular zoning district for the Subject Property, a conditional use application shall only be approved if the applicant proves that the following general Township conditional use standards set forth under Section 390-219C(1) of the West Vincent Township Zoning Ordinance will be met, as applicable:

- a. The proposed use is consistent with the purposes of the Article wherein it is permitted and is consistent with the overall purpose of the zoning ordinance.
- b. The proposed use shall meet all of the specific standards and regulations for eligibility which appear in the section of this Ordinance authorizing the proposed conditional use.
- c. The proposed use and its location are consistent with Comprehensive Plan, the Township Act 537 Sewage Facilities Plan, and the infrastructure required to service the area, including the logical extension of public services and utilities.
- d. The use will not adversely affect the health, safety, or general welfare of the Township.
- e. The proposed use is consistent with the general nature of surrounding uses and will not conflict with existing uses on neighboring properties and will be maintained in a manner which will protect the character and property values of the surrounding area.
- f. The proposed use will provide for safe and adequate access to roads and public utilities and will not create excessive demands on exiting streets, services, utilities, stormwater controls, or adversely affecting surrounding properties or the area in general.

g. Any construction will be accomplished using sound design and engineering principles and will not adversely affect existing uses in the area.

h. The proposed use will incorporate proper landscaping, screening, parking, signage, and buffering in accordance with the applicable provisions of this Ordinance.

i. The standards set forth in Section 390-228, for the review of special exception applications, shall be met.

When an applicant for a conditional use makes a prima facie case with respect to a provision of an ordinance, the application must be granted unless those opposing the application present sufficient evidence that the use would present a substantial threat to the community. *See Borough of Perkasi v. Moulton Builders, Inc.*, 850 A.2d 778 (Pa. Commw. Ct. 2004); *See also, Westinghouse Elec. Corp. v. Council of Tp. Of Hampton*, 686 A.2d 905 (Pa. Commw. Ct. 1996). The burden then shifts to the protestants to present evidence that the proposed use has a detrimental effect on health, safety and welfare, thus rebutting the legislative presumption, which exists in conditional use cases, that the use is consistent with the health, safety and welfare of the community. *See Glendon Energy Co. v. Borough of Glen.*, 656 A. 2nd 150 (Pa. Commw. 1995).

The mere possibility of adverse impact is not enough; a conditional use application should be granted unless it is proven that the impact on the public is greater than that which might be expected in normal circumstances. *See, Northampton Area School Dist. V. East Allen Tp. Bd. Of Sup'rs*, 824 A.2d 372, (Pa. Commw. Ct. 2003). The degree of harm required to justify denial of the conditional use must be greater than that which normally flows from the proposed use. *See, In re Cutler Group, Inc.*, 880 A.2d 39 (Pa. Commw. Ct. 2005). An objector must prove, to a high degree of probability, that the proposed use will adversely affect the public welfare in a way not

expected from the type of use. *See, Northampton Area School Dist. V. East Allen Tp. Bd. Of Sup'rs., 824 A. 2d 372, (Pa. Commw. Ct. 2003).*

For a conditional use, the Applicant must satisfy the criteria outlined in the zoning ordinance before a conditional use may be granted. All of the criteria required by the ordinance was addressed by the Applicant. The testimony and exhibits offered by the Applicant show that the application proposes to construct stormwater management facilities within the precautionary sloped district and in the prohibitive slope district. Storm management facilities are permitted by conditional use approval within these districts. Further, the applicant through the exhibits and testimony has demonstrated that the proposed stormwater management facilities satisfy the requirements of Section 390-319C(1) of the West Vincent Township Zoning Ordinance. No residents testified against the application. As such, there was no evidence presented that the conditional use would be detrimental to, or will adversely affect, the uses of property in the vicinity of the subject property.

This Board finds that the criteria of the zoning ordinance for the granting of a conditional use has been satisfied through the testimony and exhibits presented by applicant, subject to the conditions set forth herein. As the applicant has satisfied all of the specific criteria outlined in the West Vincent Township Zoning Code, the conditional use must be **Granted**.

ORDER OF THE BOARD OF SUPERVISORS OF WEST VINCENT TOWNSHIP

It is ordered and decreed that the Board of Supervisors of West Vincent Township finds that the Applicant presents sufficient testimony to grant the conditional use with the following conditions:

1. The Applicant must comply with the testimony and exhibits presented by the Applicant at the public hearing before the Board of Supervisors on October 21, 2024;

2. The Applicant must comply with all other conditions of the Township Zoning Ordinance;

3. The Applicant shall obtain land development approval from the Board of Supervisors for the proposed plan.

Decision dated: December 16, 2024

**WEST VINCENT TOWNSHIP
BOARD OF SUPERVISORS**

Dana Alan, Chairman

Bernie Couris, VICE CHAIR

CHARLENE BRIGGS, MEMBER

