

**EAST GOSHEN TOWNSHIP
PLANNING COMMISSION
Meeting Agenda
Wednesday, May 3, 2017
7:00 PM**

- A. Call to Order / Pledge of Allegiance and Moment of Silence
- B. Chairman will ask if anyone is going to record the meeting
- C. **Review of Tracking Log / Determine need for Workshop Meeting**
- D. Public Comment on Non-Agenda Items
- E. **Approval of Minutes**
 - 1. **April 5, 2017**
- F. **Subdivision and Land Development Applications**
 - 1. **1506 Meadowbrook Dr. Sketch Plan (Subdivision & Variances)**
- G. Conditional Uses and Variances
 - 1. **The Malvern Institute (Special Exception and Variances)**
 - a. **No presentation during May 3, 2017 meeting**
- H. **Ordinance Amendments**
 - 1. **Medical Marijuana Draft Ordinance**
 - 2. **Floodplain Ordinance**
- I. Old Business
- J. New Business
- K. 2017 Goals
- L. Any Other Matter
- M. Liaison Reports
- N. Correspondence

Bold Items indicate new information to review.

**East Goshen Township
Planning Commission Tracking Log**

Application Name	Application (CU, LD, O, SD, V, SE, CA)	Type (Sk, P, F)	Date Filed	Start Date	Date to Township Engineer	Date to CCPC	Date to Abutting Prop. / ABC's	Extension	PC NLT Action Date	BOS NLT Action Date	Hearing Date	Drop Dead date	Comments
Malvern Institute, 940 King Rd.	V, SE	P	3/27/17	3/27/17	NA	NA	3/30/17	1	5/3/17	5/23/17	6/1/17	6/1/17	
1506 Meadowbrook Dr.	SD / V	Sk	4/24/17	NA	NA	NA	NA		NA	NA	NA	NA	
Bold = New Application or PC action required													
Completed in 2017													
1420 E. Strasburg Rd. / Brakman-Gunnison	SD/LD	P/F	5/18/16	6/1/16	5/19/16	5/19/16	5/20/16	3	3/1/17	3/21/17	NA	3/29/17	APPVD

Draft
EAST GOSHEN TOWNSHIP
PLANNING COMMISSION MEETING
April 5, 2017

The East Goshen Township Planning Commission held a regularly scheduled meeting on Wednesday, April 5, 2017 at 7:00 p.m. at the East Goshen Township building. Members present were: Chairman Adam Knox, Monica Close, Brad Giresi, Dan Daley Jim McRee and new member Silvia Shin. Also present was Mark Gordon, Township Zoning Officer and Janet Emanuel, Mike Lynch and Marty Shane, Township Supervisors.

COMMON ACRONYMS:

<i>BOS – Board of Supervisors</i>	<i>CPTF – Comprehensive Plan Task Force</i>
<i>BC – Brandywine Conservancy</i>	<i>CVS – Community Visioning Session</i>
<i>CB – Conservancy Board</i>	<i>SWM – Storm Water Management</i>
<i>CCPC – Chester Co Planning Commission</i>	

A. FORMAL MEETING – 7:00 pm

1. Adam called the meeting to order at 7:00 pm. He led the Pledge of Allegiance and a moment of silence to remember our troops.
2. Adam asked if anyone would be recording the meeting and if there were any public comments about non-agenda items. There was no response.
3. Adam reviewed the Tracking Log and determined no need for a workshop.
4. Adam noted that the minutes of the March 1, 2016 meeting were approved.
5. Adam announced that the Commission needs to vote for a Vice Chairman since Lori Kier was appointed to a different ABC. Adam nominated Brad. Monica seconded the nomination. The motion passed unanimously.

B. CONDITIONAL USES AND VARIANCES

Malvern Institute - Representatives for the Applicant: Brian Nagel, Attorney; Scott Weisenberger, CEO; Jim Gibbons, Director of Facilities and Robert Plucienik, Civil Engineer. Brian Nagle, Attorney for the applicant, commented that the proposed expansion plan is to serve patients in a way that matches current standards. It is the only treatment facility of its kind in Chester County. They filed the application for the Special Exception and Variances. The Township requested a global plan for the next 10-15 years. So, MI has included a “15 Year Master Plan” with the application. They sent notices of this meeting to all neighbors within 1,000 feet of the facility, which includes East Goshen, East Whiteland, and Willistown. They also held several public meetings so the neighbors could review the plan and tour the facility. Numerous neighbors came to those meetings and gave positive feedback on the improvements that have been done.

Brian listed the improvements in the current plan:

1. Enhance outdoor space within view of the staff
2. Create indoor use space for patients and staff
3. Fewer beds in a room (from 4 to 3 or 2 per room)

He feels the expansion is modest, mostly within current buildings. The variance is for additional parking for staff. There isn't enough parking during shift changes. MI has a license from PA – only 80 beds are allowed. MI is willing to cap at 80. The average daily census is 68. There will be no additional staff.

Improvements for residential neighbors are:

1. Approximately 1,000 feet of new 8' high sound absorbing fence
2. Upgraded landscaping
3. Smoking areas were temporarily moved to the front of the building. A smoking pavilion will be provided furthest from the neighbors in the front of the building.
4. Back smoking areas will be gardens and meditation areas.

Brian introduced Bob Plucienik, Civil Engineer, who showed the existing condition map and 15 year Master Plan map. He pointed out the areas of expansion:

1. 2nd floor will be added on the main building
2. A 2nd floor with an elevator will be added in the Barn
3. New landscaping around the new parking lot and along the entrance drive.
4. Existing fence on the west and south side of the property will remain. An 8' sound fence will be added with significant landscaping around it.
5. Existing pathways will have areas to sit.

Bob showed a display of sight plans from various areas in the facility.

Along King Road will be additional landscaping and estate fencing will be added.

Time was given for the Commission members and residents to look closely at the maps on display.

Commission Members Comments

1. Monica Close – She feels it is good that they are increasing space for the patients and the plan isn't encroaching on the neighbors.

2. Jim McRee – Asked what are the hardships. Brian commented that a non-conforming use has the right to expand. He spoke about a Supreme Court decision regarding this. Jim feels it would be very helpful to have a timeframe for the expansion.

3. Brad Giresi – Since they are asking for relief from the 18 month requirement to get permits, he also thinks a timeframe would be helpful. Brian commented that the 15-year plan shows what they are proposing over the next 15 years. Some improvements will be done sooner. Adam encouraged him to have a timeline for critical items.

4. Jim asked about neighbors input. Brian understands the concerns of the neighbors. In the past there were more issues but the new administration has addressed some of those issues.

5. Adam Knox – There is a proposed gate with a lock for the existing parking lot. Jim Gibbons commented that it will be closed in the evening so anyone coming in has to be identified. Adam pointed out that there isn't a gate for the new lot. Jim assured him that something will be put there. Adam asked about the basketball hoop near the barn. Brian commented that it will be moved slightly and they are adding a fence around it.

6. Dan Daley – He asked for a history of the facility. Scott Weisenberger, CEO, mentioned that the facility has been here since 1948. In 1982 they made a 10,000 SF expansion. The 1985 PA state standards are in place, which requires 60 sf/patient, no more than 4 in a room, so the limit is 80 patients. The average stay is 20 days. The check in is voluntary and they can leave when they want or when service is done. MI has 12 drivers and 12 vehicles that are used to pick up new patients. If a patient drives there, their car must be removed within 24 hours. They can't leave the property alone. If they do, it is AMA (Against Medical Advice) and they will be discharged. They can't come back. They have to go to a different facility. Visitors have to be approved by the counselor. Two visitors are allowed. Visiting hours on weekends are 10:00 am to 12:30 pm. Detox is not allowed to have visitors on weekends.

Dan requested copies of the display plans they presented tonight. Brian provided copies for them.

Dan asked for more detail on the fencing. Brian explained the sound fence is PVC fencing which absorbs some of the sounds. Estate fencing has no screening but landscaping will provide that. King Road right-of-way is 80 feet. Mark Gordon commented that since the fence is in the property envelope it can go to 8'. Also there was a previous decision to allow 8' fencing at this property.

Dan asked when patients are allowed outside. Brian answered 7:00 am to 11:00 pm with staff but there are other things going on during the day.

Dan asked about the encroachments onto the property. Brian answered there is no plan for this.

Dan asked about lighting. Brian responded there is no new lighting planned. The existing lot is lit.

Dan feels since the new lot is for staff parking, lighting will be required.

Dan mentioned the meditation areas and a bridge across the flood plain. Brian commented it is just a footpath they haven't focused on the bridge.

7. Brad also feels the new parking lot could be pushed back from the road.
8. Jim mentioned that below the foot bridge there is a fountain. Brian commented that it's only an idea.
9. Adam asked about the flood plain. Brian answered that a portion of the barn was originally in the flood plain based on an approximate FEMA plan. As a property owner, you can give FEMA the actual location and they can revise the map. This process was done by MI.

Public Comments

1. Lisa O'Neill, 10 Brookmont Dr. – She has lived here 20 years and at the meeting for the first expansion there were 40 patients and that was supposed to be all they would have but now there are 80. Based on what the government requires for optimal treatment, she feels they could cut back on the number of patients to meet optimal care. She doesn't feel that 6200+ sf is a modest expansion. Also, the barn has been considered for storage. Brian explained that, if the Zoning Hearing Board approves their application, a condition of the approval will be a cap of 80 patients forever regardless of the owner. She asked how many leave per month without authorization. Scott answered 8. Lisa mentioned two incidents of patients who left and caused very serious problems. She feels the safety of the neighbors should be the priority. Over the years the noise from volleyball, smoking, cursing, etc. has increased and impacts the neighbors. She works from home and had to call several times about the noise. Adam assured her that this Commission does consider the impact on the neighbors. Lisa also spoke about storm water, which has been a problem causing MI's generator to go on. Scott commented that, if they need a new generator, they will have gas installed so they don't have to use diesel which is louder than gas generators. Mark commented that he can measure the noise and there are noise buffers that can be installed.

2. Mike Lynch, Township Supervisor – He mentioned that what Brian referred to is the PA Supreme Court and he asked Brian if it was a 1969 decision. Brian answered in the 1940's it is called the Doctrine of Expansion. Mike commented that respect of volume and character is mentioned in the decision. Character of the expansion is the change in the barn character that would impact the neighbors.

3. Terri Rellick, 12 Treemont Dr. – In the past they would chase people away from the creek because they were dropping drugs there and the patients would pick them up. That isn't happening now but things aren't better. Is there going to be a deck on the 2nd floors? Brian answered no. Terri commented that 25% of the patients come from Chester County. Do they get any from the Philadelphia courts? Scott answered that they have no connection to Philadelphia courts. Also he does not think it would be a good idea to have out patients and in patients in the same facility. They refer out patients to the Berwyn facility.

4. Lorraine Pierce, 4 Line Road – No screening on the east side of the property will impact her with the new pathway, meditation areas and the bridge. Adam understands that this area is very wooded. Lori commented that it has become very sparse over the years.

5. Lou Irvine, 2 Bookmont Dr. – The plans they displayed show nice landscaping, which is only in the summer. The other times of the year they can hear the noise and conversations.

6. Diane Weltman, 5 Line Road, Malvern – She understands that insurance restricts the length of a patient's stay. Since they aren't staying why does the number of patients in a room have to be decreased? Scott commented that this change would be the standard that hospitals have across the country. This will make them more competitive. She also does not feel this is a modest expansion.

7. Joanne Murphy, 20 Brookmont Dr., Malvern – She feels they are doing a lot to make this standard. Have they considered going to another location? Brian responded that the applicant has been here since the 1940's and is vested to run this business and are continuing to run it here. He knows there are concerns but it could also be viewed as an opportunity. He spoke about the character and other improvements that are being proposed.

8. Lisa O'Neill commented that your hardship becomes our hardship in decreasing home values and when a neighborhood is not safe. They also have a right to protect their neighborhood. Brian mentioned that at the end of the process some of their concerns can be addressed forever.

9. Paige Fenimore, 3 Treemont, Malvern – She referred to an old article that said there was 40 beds. So they have had extensive expansion since 1982 which had a very negative impact on the neighborhood.

1
2 Additional Comments

3 1. Brad pointed out to the applicant that there are some conflicts in the application on the square footage.
4 Also regarding outside noise, it might be helpful to contain the noise to specific areas not all outside.

5 2. Marty Shane, Chairman of Board of Supervisors – The BOS did ask for a long range plan and to be
6 sure they have a timeline for the 15 years. What they have in mind may not be what we want for the
7 residents. A concern is noise and unwanted conversations that can be heard by the neighbors. He can
8 hear noise from outside conversations and he isn't that close. Also, there needs to be a way to be sure that
9 the patients stay there and can't get out until permitted. He congratulates the Institute for attempting to let
10 people know what they want to do and trying to work with the township and residents. The Institute and
11 residents have to understand that they can't get everything they want. Conditions must be added in order
12 to answer some of the concerns.

13
14 Adam thanked everyone for coming. The next meeting is May 3, 2017 at 7:00 pm.
15

16 **C. ORDINANCE AMENDMENTS**

17 1. Medical Marijuana Draft Ordinance. Kristin Camp, Township Solicitor, reviewed the draft
18 ordinance with the Commission members. The law is very specific as to how the dispensary facility is to
19 be designed and secured and the PA Dept. of Health will enforce those issues. She explained the process
20 they have to go through to get PA approval. It starts with the Township giving them a letter stating that
21 their location is allowed by our ordinance. They have to include the letter with their PA application.
22 Kristin reviewed the proposed changes to the draft ordinance. The Commission agreed with the changes.
23 She will provide a revised draft for the next meeting.
24

25 **D. ANY OTHER MATTER**

26 1. Mark mentioned that Jason Lang is working on a \$500,000 DCNR grant for the Milltown
27 Dam. Jim made a motion to authorize Adam to sign the letter. Dan seconded the motion. The motion
28 passed unanimously.
29


30 **ADJOURNMENT**

31 There being no further business, Adam moved to adjourn the meeting. Brad seconded the
32 motion. The meeting adjourned at 10:30 pm. The next regular meeting will be held on Wednesday,
33 May 3, 2017 at 7:00 pm.
34

35
36 Respectfully submitted, _____
37 *Ruth Kiefer, Recording Secretary*

Memorandum

East Goshen Township
1580 Paoli Pike
West Chester, PA 19380
Voice: 610-692-7171
Fax: 610-692-8950
E-mail: mgordon@eastgoshen.org

Date: 4/28/2017
To: Planning Commission
From: Mark Gordon, Township Zoning Officer 
Re: 1506 Meadowbrook Dr. / SD and Variances / Sketch Plan

Dear Commissioners,

The Township has received a sketch plan submission for your review and comment for 1506 Meadowbrook Dr. This parcel is a 1.999 ac parcel that was subdivided and approved by the Board of Supervisors on 8/16/1977.

The applicant is seeking your input on their request for variances as outlined in their narrative submission in order to subdivide the parcel and create one more lot for a single family home.

They are aware that they will have to apply for variances and if granted submit a SD and LD application for review and approval.

This parcel has a single family home today and therefore they will have to present evidence of a hardship to the Zoning Hearing Board.



Guy Engineering Associates, Inc.

Civil/ Environmental Engineering

3508 Goshen Road Newtown Square, PA 19073

Tel: (610) 355-0862 Fax: (610) 355-0863 email: sg.guyeng@verizon.net

April 24, 2017

Mr. Mark Gordon - Zoning Officer
East Goshen Township
1580 Paoli Pike
West Chester, PA 19380-6199
email: mgordon@eastgoshen.org

Re: **Proposed Residential Minor Subdivision - Sketch Plan Presentation**
1506 Meadowbrook Lane, West Chester, PA 19380
East Goshen Township, Chester County, PA

Dear Mr. Gordon,

Joseph Willis of JMW Enterprises, LLC is proposing to subdivide the referenced property into 2 residential lots for the property owners, Mrs. and Mr. Legenstein. The property is located on the south side of Meadowbrook Lane, and is a flag lot, having a gross area of 2.009 ac and a net area of 1.999 ac, after deduction of the public right-of-way of Meadowbrook Lane. Access to the parcel is via the "flag pole", which is 25' wide, and which is joined and partially overlapped by a private street, Hemlock Hill Lane that provided access to 4 additional residential lots along its length. A joint use and service agreement exists between all 5 property owners for the use and maintenance of Hemlock Hill Lane. The property is zoned R-2 Low-Density Residential District. Its Tax Map Parcel No. is 53-4-23.

The property owners are requesting to subdivide the existing property into 2 residential properties, as shown on the Sketch Plan marked "Option 2 - Lot 2 Access Via Lot 1 Easement". This sketch plan shows the parcel divided into 2 lots, where proposed Lot # 1 covers the front portion of the existing parcel, having a net area of 43,582 sf. Proposed Lot # 2 is behind Lot # 1. In order to achieve the minimum required 1 acre of net area for Lot # 2, the Applicant proposes to purchase a narrow strip of land from the adjacent property to its west, TMP#53-4-7, owned by Ms. Gable, who is willing to sell this piece of land to the Applicant. As a result, Lot # 2's net area will exceed 1 acre. Access to Lot # 2 will be provided via an easement through Lot # 1 from the existing driveway currently leading to the existing property and to the proposed Lot # 1.

In order to be able to perform the subdivision as shown, the Applicant is requesting the following 3 variances:

1. From Section 240-9.G - Minimum Lot Width at the Street Line:

The Code requires a minimum width of 60 ft. The existing width of the "flag pole" at the street line is 25.05 ft, which is already non-conforming. As proposed Lot #

2 will not have a direct access to the public street, The Applicant is requesting approval of a 0 (zero) width at the street line for Lot # 2.

2. From Section 240-23.B(2)(a) - Street Frontage:

This variance is related to the previous one. Proposed Lot # 2 will have access through Lot # 1. The Applicant is requesting to approve no public street frontage for Lot # 2.

3. From Section 240-23.B(2)(b)[2][e] - Minimum Pole Width:

The Code requires a minimum width of 40 ft of the flag pole. The existing flag pole width that provided access to the existing parcel is 25 ft, and will remain the same for the access to proposed Lot # 1.

We believe that the proposed minor subdivision as shown will be compatible with the neighborhood and will even be beneficial to the existing properties along Hemlock Hill Lane, as it will add another participant to the maintenance agreement.

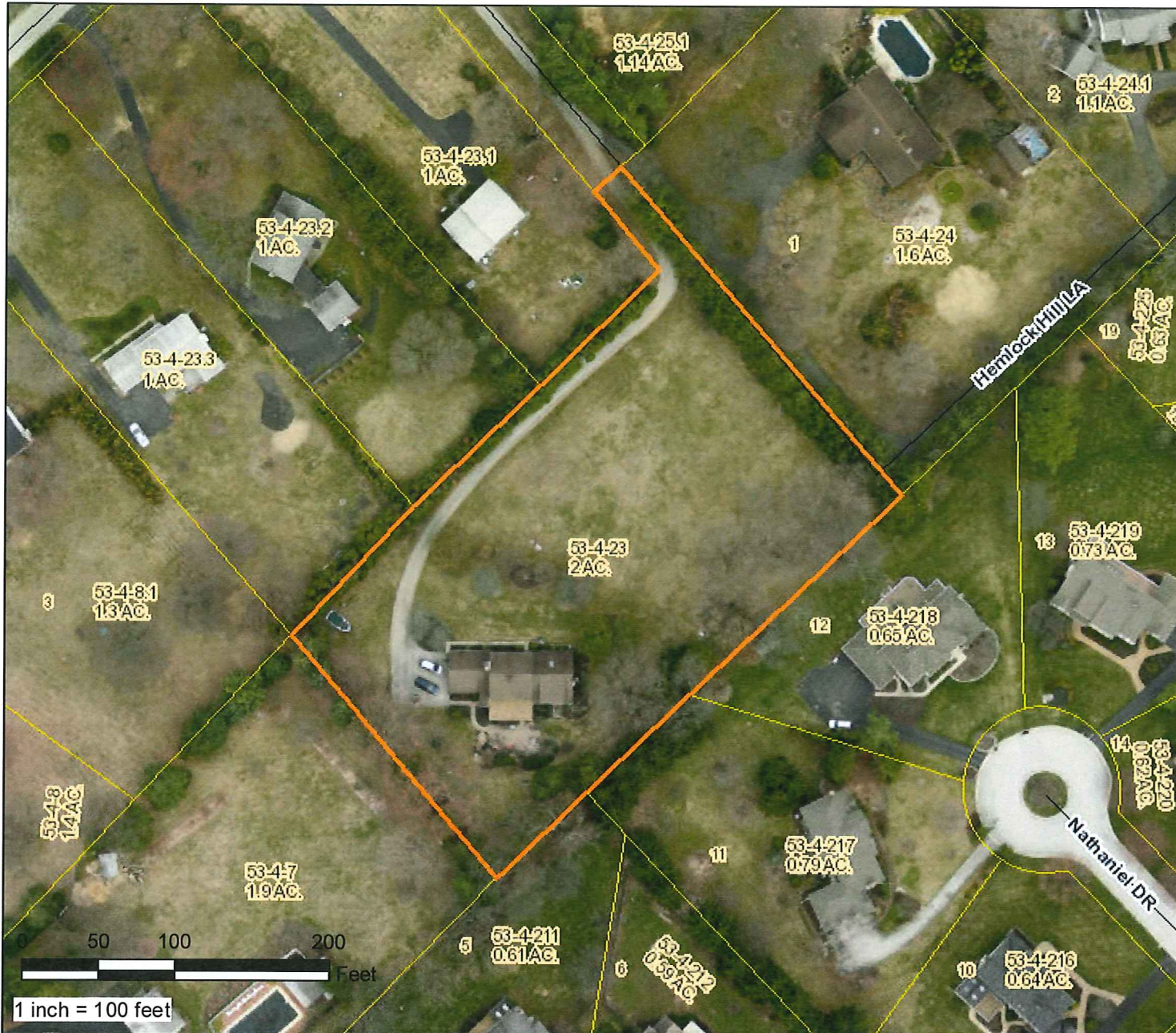
Please contact me if you have any questions. Thank you.

Sincerely,

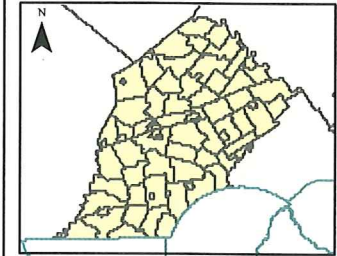
Shimon Guy

Shimon Guy
President

1506 Meadowbrook Drive



COUNTY OF CHESTER
PENNSYLVANIA



Find UPI Information

PARID: 5304 00230000
UPI: 53-4-23
Owner1: LEGENSTEIN STEPHEN
Owner2: DENISE
Mail Address 1: 1506 MEADOWBROOK LA
Mail Address 2: WEST CHESTER PA
Mail Address 3:
ZIP Code: 19380
Deed Book: 5051
Deed Page: 2296
Deed Recorded Date: 8/30/2001
Legal Desc 1: SS OF MEADOWBROOK LA
Legal Desc 2: 2 AC & DWG
Acres: 2
LUC: R-10
Lot Assessment: \$ 88,560
Property Assessment: \$ 126,840
Total Assessment: \$ 215,400
Assessment Date: 12/20/2016
Property Address: 1506 MEADOWBROOK LA
Municipality: EAST GOSHEN
School District: West Chester Area

Map Created:
Friday, April 28, 2017

County of Chester



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BOARD OF SUPERVISORS
EAST GOSHEN TOWNSHIP
CHESTER COUNTY
1580 PAOLI PIKE, WEST CHESTER, PA 19380-6199

April 28, 2017

Dear Property Owner:

The purpose of this letter is to inform you that the owner of 1506 Meadowbrook Dr., West Chester, PA 19380, has submitted a subdivision sketch plan for review and comment by the Township Planning Commission. The owners, Stephen and Denise Legenstein, propose a 2 lot subdivision of their property. The existing parcel has an area of approximately 1.999 acres and has an existing single family home. The sketch plan proposes to create one new 1 acre lot to the east of the existing home for a new residential single family use.

The property will need zoning variances due in order for the plan to be considered for subdivision. The Planning Commission will hear the application, ask questions and provide feedback so the applicant can decide on how to move forward. The public will also have an opportunity to ask questions of the applicant and the Planning Commission.

Pursuant to Township policy, property owners and residents within 1000 feet of the subject property are notified of sketch plan submissions.

The meeting date and time scheduled for the review and discussion of this sketch plan application is:

May 3, 2017 - Planning Commission meeting (7:00 PM) (Presentation of Sketch Plan)

All meetings are held at the Township Building and are open to the public. The plan is available for review at the Township building during normal business hours. Please give me a call at or email me at mgordon@eastgoshen.org if you have any questions or need additional information.

Sincerely,



Mark A. Gordon
Township Zoning Officer

Cc: All Township Authorities, Boards and Commissions

BOARD OF SUPERVISORS
EAST GOSHEN TOWNSHIP

CHESTER COUNTY
1580 PAOLI PIKE, WEST CHESTER, PA 19380-6199

FILE

September 20, 1999

Mr. Anthony D'Ambrosio
1506 Meadowbrook Lane
West Chester, PA 19380

Re: Property at 1506 Meadowbrook Lane
Tax Parcel 53-4-23

Dear Mr. D'Ambrosio:

I have reviewed the sketch plan you submitted depicting the proposed subdivision of your property and I have the following comments.

- 1) You are proposing to subdivide your existing 2.009 acre (87,512 square feet) property, which is located in the R-2 Zoning District, into two one acre lots.
- 2) Your existing lot is non-conforming with respect to minimum street frontage. You have 25.05 feet of frontage and the minimum required is 60 feet.
- 3) Under the proposed subdivision plan the lot containing your home would not have street frontage.
- 4) The title line for your existing lot runs to the center of Meadowbrook Lane.
- 5) The definition of "Lot Area" in the Township Code excludes any portion of the lot that is within the street right-of-way.
- 6) The right-of-way for Meadowbrook Lane is 33 ft wide and appears to comprise 413 square feet (16.5 X 25.05).
- 7) When you deduct the area within the right-of-way of Meadowbrook Lane from your present lot you are left with a net lot area of 87,098 square feet. This is less than two acres which means one of the proposed lots would be less than one acre in area.

Therefore, before the Township could consider a subdivision plan for your property you would need to obtain the following variances.

BOARD OF SUPERVISORS
EAST GOSHEN TOWNSHIP

A variance from § 240-9G Minimum Lot Size

A variance from § 240-23B(2)(a) which requires that a lot has street frontage.

Variances can only be granted by the East Goshen Township Zoning Hearing Board provided you can demonstrate that you meet the criteria outlined in §240-58.B of the Code. Once the variances were granted, you would then need to submit a subdivision plan.

If you wish to proceed, send a check payable to the East Goshen Township Zoning Hearing Board in the amount of \$300.00 along with a letter stating that you want to apply for the aforementioned variances to:

East Goshen Township Zoning Hearing Board
1580 Paoli Pike
West Chester, PA 19380

The Zoning Hearing Board will then schedule the hearing and notify you of the date and time.

You should be aware that the Board of Supervisors has the right to determine what the Township's position is with respect to variance requests. The Board refers these matters to the Planning Commission for review prior to determining what the Township's position on your application.

Accordingly, you would present your request to the Planning Commission who would make a recommendation to the Board of Supervisors who would then determine the Township's position on your application and make a recommendation to the Zoning Hearing Board who will make the final decision.

The relevant sections of the Township Code are enclosed for your information and use. Please give me a call if you have any questions.

Sincerely,



Louis F. Smith, Jr.
Township Manager

Enclosures

LOT — A separate parcel of land held in single and separate ownership that is recorded as a lot, or will be recorded after township final subdivision approval, in the office of the County Recorder of Deeds. (See Sketch A in the Appendix.)

- (1) CORNER LOT — A lot bounded on at least two sides by streets whenever the lines of such streets, extended, form an interior angle of 135° or less. A corner lot has a designated front lot line and a designated side street lot line.
- (2) INTERIOR LOT — A lot other than a corner lot.
- (3) FLAG LOT OR FLAG-SHAPED LOT — An irregularly-shaped lot characterized by an elongated extension providing access from a street to the principal part of the lot. Such lot is typically the shape of a flag on a flag pole. (See § 240-23B.)
- (4) LANDLOCKED LOT — A lot which is surrounded on all sides by one or more lots and does not have a street connection or does not abut a street.
- (5) PARENT LOT — A lot of record that exists at the time of application for approval of a particular subdivision and from which one or more new lots are proposed to be created.
- (6) THROUGH LOT — An interior lot having frontage on two streets. Also called a "double frontage lot."

LOT AREA — The horizontal area of land contained within the property lines bounding the lot, excluding any portions thereof within a street right-of-way. The calculation of impervious coverage, as herein defined, shall be applied to the total lot area, exclusive of the area of the lot lying within any street right-of-way.

LOT DEPTH — The distance along a straight line drawn from the midpoint of the front lot line to the midpoint of the rear lot line.

LOT LINES — The property lines bounding the lot. (See Sketch B in the Appendix.)

- (1) FRONT LOT LINE (STREET LINE) — The lot line separating the lot from the abutting street right-of-way.
- (2) REAR LOT LINE — A lot line opposite and most distant from the front lot line. (A three-sided lot has no rear lot line.) Every lot with four or more sides shall have a rear lot line and a rear yard.⁹
- (3) SIDE LOT LINE — Any lot line other than a front or rear lot line.
- (4) SIDE STREET LOT LINE — Exists on a corner lot and is a lot line separating a lot from a street.

LOT WIDTH — The horizontal distance between side lot lines and/or side street lines measured at the minimum prescribed building setback line set forth in this chapter. (See Sketch C in the Appendix.)

LOWEST FLOOR — The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building

⁹ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- E. Accessory uses. The following accessory uses shall be permitted in the R-2 District in accordance with the provisions of § 240-32 and/or such other section listed after each use:
- (1) Home occupation, which may include day care as an accessory use.
 - (2) Storage shed.
 - (3) Fence and wall.
 - (4) Garage.
 - (5) Recreational vehicle storage.
 - (6) Private greenhouse.
 - (7) Tennis court.
 - (8) Swimming pool.
 - (9) Horse barn.
 - (10) Solar energy systems.
 - (11) Signs. (See § 240-22.)
 - (12) Animal husbandry.
 - (13) Temporary structure or use.
 - (14) Home-related business.
 - (15) Seasonal sale of farm products. (See § 240-34B.)
 - (16) Apartment for care of a relative.
- F. Design and landscaping controls. The applicable design and landscaping controls in § 240-27D shall apply to residential development in this district.
- G. Lot area, width, building coverage, height and yard regulations. The following requirements apply to each use in the R-2 District, subject to further applicable provisions of this chapter:

R-2 Principal Uses

Requirements	Place of Worship and Religious Institution	School	All Other Uses ¹	Private Recreation Facility
Minimum lot area	2 acres	10 acres	1 acre	5 acres
Minimum lot width				
At building setback line	200 feet	300 feet	150 feet	300 feet
At street line	100 feet	150 feet	60 feet	150 feet

Requirements	Place of Worship and Religious Institution	School	All Other Uses ¹	Private Recreation Facility
Maximum lot coverage				
By buildings	25%	25%	25%	15%
By total impervious cover	35%	35%	35%	35%
Maximum building height.				
Stories	3	3	3	3
Feet	30 feet	30 feet	30 feet	30 feet
Minimum front yard*	55 feet	65 feet	45 feet	50 feet
Average front yard**	70 feet	80 feet	60 feet	50 feet
Minimum side yard	30 feet each	40 feet each	20 feet each	50 feet
Minimum rear yard	65 feet	75 feet	50 feet	50 feet

*The depth at which the minimum lot width shall be measured.

**To obtain more flexibility in placing buildings in all residential subdivisions of two or more lots, an average building setback line of 60 feet and a minimum building setback of 45 feet shall be required.

¹NOTE: See § 240-31 for conditional use regulations, § 240-34 for agricultural regulations and § 240-57 for special exception regulations. The most restrictive lot area, width, building coverage, height and yard regulations for each such use shall apply.

§ 240-10. R-3 Medium Density Residential District.

- A. Specific intent. In addition to the objectives stated in §§ 240-3 and 240-7, the R-3 District is intended to encourage residential development in those areas near major highways, commercial areas and/or centers of employment. Such areas are suitable for medium density residential development if centralized sewage disposal and centralized water supply systems and suitable open space and recreation areas are provided to create a suburban environment appropriate for family needs.
- B. Uses permitted by right. The following principal uses are permitted by right in the R-3 District if the area and bulk regulations and all other applicable requirements of this chapter are satisfied:
 - (1) Single-family detached dwelling.
 - (2) Semidetached dwelling.
 - (3) A lawfully permitted dwelling unit used as a group home, provided that the requirements of § 240-38 for such use are met.

The required land development plan shall comply with all the standards and improvements required by Chapter 205, Subdivision and Land Development.

(2) Street frontage required and flag lots.

- (a) Every principal building shall be built upon a lot with frontage upon a public or private street improved to meet township standards or for which such improvements have been ensured by the posting of a performance guaranty pursuant to Chapter 205, Subdivision and Land Development.

(b) Flag lots (also known as "pole lots").

- [1] A flag lot, as illustrated in the Appendix, is a lot that does not meet the minimum lot width requirement at the minimum (front yard) building setback line and/or at the street line, and which includes an elongated extension to connect the bulk of a lot to a street.
- [2] The creation of an individual flag lot shall be permitted by right, provided that all of the following conditions are met:
- [a] The lot shall meet the minimum lot width established in the applicable zoning district at the proposed building setback line.
- [b] The pole portion of the lot (which is the portion that does not meet the minimum lot width at the minimum building setback line) shall not exceed 400 feet in length as measured from the street right-of-way, and the pole portion shall be part of the lot (versus being an easement).
- [c] A maximum total of one flag lot may be created from each parent lot (see definition in § 240-6) that existed as a single and separate lot of record at the time of adoption of this chapter.
- [d] The applicant shall prove to the satisfaction of the township that the proposed driveway will have adequate access for emergency vehicles.
- [e] ~~The pole portion of the flag lot shall maintain an absolute minimum lot~~ width of 40 feet for its full length.
- [f] All lots, including but not limited to new and parent lots, shall meet the applicable minimum lot area and building setbacks.

(c) See Sketch G in the Appendix.

- C. Maximum height of buildings. No building shall exceed the maximum height of buildings specified in this chapter, except that regulations shall not apply to farm structures, silos, water towers, church spires, belfries, solar energy collectors and equipment used for the mounting or operation of such collectors, windmills, chimneys or other appurtenances usually required to be placed above the roof level and not intended for human occupancy. Although exempted from structural height limitations, these structures should not significantly impair solar access of buildings or solar collector locations.
- D. Lot and yard requirements and sight distance.

as it determines are necessary to ensure compliance with township ordinances and state and federal regulations; to protect the public health and safety; and to ensure compatibility and avoid nuisances among nearby uses.

§ 240-58. Variances.

- A. Applicant. Requests for a variance may be filed with the Zoning Hearing Board, in writing, on forms prescribed by the Zoning Hearing Board, by any landowner or any tenant with written permission of the landowner.
- B. Standards for a variance. The Zoning Hearing Board may grant a variance, provided that all of the following findings, where relevant, are made in a given case.
- (1) That there are unique physical circumstances or conditions (including irregularity, narrowness or shallowness of lot size or shape or exceptional topographical or other physical conditions peculiar to the particular property) and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this chapter in the neighborhood or district in which the property is located.
 - (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this chapter and a variance is therefore necessary to enable the reasonable use of the property.
 - (3) That such unnecessary hardship has not been created by the appellant.
 - (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially nor permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.
 - (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- C. Additional conditions and safeguards. In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter and the Pennsylvania Municipalities Planning Code, as amended.
- D. Time limit. If a zoning permit is not obtained and actual construction commenced within six months of the issuance of a variance, such variance shall lapse and be null and void.
- E. Persons with disabilities. After having received a complete written application, the Zoning Hearing Board may grant a variance to specific section(s) of this chapter if the applicant proves to the clear satisfaction of the Zoning Hearing Board that such modifications are necessary to provide a reasonable accommodation under the Americans With Disabilities Act, 42 U.S.C. § 12101 et seq., and/or the Federal Fair Housing Act and/or applicable state law, as amended, to serve persons who the applicant proves have disabilities as defined in and protected by such laws.

Memorandum

East Goshen Township

1580 Paoli Pike

West Chester, PA 19380

Voice: 610-692-7171

Fax: 610-692-8950

E-mail: mgordon@eastgoshen.org

Date: 4/28/2017

To: Planning Commission

From: Mark Gordon, Township Zoning Officer *mg*

Re: Medical Marijuana Uses / Draft Zoning Ordinance

Dear Commissioners,

The Township Solicitor has incorporated your comments into the draft before you. I have submitted this version to the CCPC for their review and comment so that we will have their review for your June meeting.

EAST GOSHEN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE EAST GOSHEN TOWNSHIP ZONING ORDINANCE OF 1997, AS AMENDED, SECTION 240-6 TO ADD DEFINITIONS FOR MEDICAL MARIJUANA DISPENSARY, MEDICAL MARIJUANA GROWER/PROCESSOR AND MEDICAL MARIJUANA; SECTION 240-14.B(4) TO ADD A NEW SUBPARAGRAPH (g) TO ALLOW RETAIL SALE OF LEGAL DRUGS IN THE C-1 COMMUNITY COMMERCIAL DISTRICT; SECTION 240-14.B TO ADD A NEW SUBPARAGRAPH (16) TO ALLOW A MEDICAL MARIJUANA DISPENSARY AS A BY RIGHT USE IN THE C-1 COMMUNITY COMMERCIAL DISTRICT; SECTION 240-15.B(2) TO REMOVE THE RETAIL SALE OF LEGAL DRUGS AS A BY RIGHT USE IN THE C-2 LOCAL CONVENIENCE COMMERCIAL DISTRICT; SECTION 240-16.B TO ADD A NEW SUBPARAGRAPH (19) TO ALLOW A MEDICAL MARIJUANA DISPENSARY AS A BY RIGHT USE IN THE C-4 PLANNED HIGHWAY COMMERCIAL DISTRICT; SECTION 240-19.C TO ADD A NEW SUBPARAGRAPH (32) TO ALLOW A MEDICAL MARIJUANA GROWER/PROCESSOR BY CONDITIONAL USE IN THE I-1 LIGHT INDUSTRIAL DISTRICT; SECTION 240-20 TO ADD A NEW SUBPARAGRAPH (28) TO ALLOW A MEDICAL MARIJUANA GROWER/PROCESSOR BY CONDITIONAL USE IN THE I-2 PLANNED BUSINESS, RESEARCH, AND LIMITED INDUSTRIAL DISTRICT; SECTION 240-21.C TO ADD A NEW SUBPARAGRAPH (26) TO ALLOW A MEDICAL MARIJUANA GROWER/PROCESSOR BY CONDITIONAL USE IN THE BUSINESS PARK DISTRICT; SECTION 240-33.A TO ADD PARKING REQUIREMENTS FOR A MEDICAL MARIJUANA DISPENSARY AND MEDICAL MARIJUANA GROWER/PROCESSOR.

BE IT ENACTED AND ORDAINED by the Board of Supervisors of East Goshen Township, that the East Goshen Township Zoning Ordinance of 1997, as amended, which is codified in Chapter 240 of the East Goshen Township Code, titled, "Zoning", shall be amended as follows:

SECTION 1. Section 240-6, titled, "Definitions", shall be amended to include the following definitions:

MEDICAL MARIJUANA DISPENSARY- A person, including a natural person,

corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit issued by the Commonwealth of Pennsylvania Department of Health (DOH) to dispense medical marijuana.

MEDICAL MARIJUANA GROWER/PROCESSOR- A person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit issued by the Commonwealth of Pennsylvania Department of Health (DOH) to grow and process medical marijuana.

MEDICAL MARIJUANA- Marijuana for certified medical use as legally permitted by the Commonwealth of Pennsylvania pursuant to the Pennsylvania Medical Marijuana Act, 35 P.S. § 10231.101 *et seq.*

SECTION 2. Section 240-14.B(4) shall be amended to add a new subparagraph (g) which shall provide as follows:

“(g). Legal drugs.”

SECTION 3. Section 240-14.B shall be amended to add a new subparagraph (16) which shall provide as follows:

“(16). Medical marijuana dispensary.”

SECTION 4. Section 240-15.B(2)(b) shall be amended as follows:

“(b). Gift items, newspapers, cameras, stationary, books, cigarettes, flowers, custom-made crafts, luggage and candy.”

SECTION 5. Section 240-16.B shall be amended to add a new subparagraph (19) which shall provide as follows:

“(19). Medical marijuana dispensary.”

SECTION 6. Section 240-19.C shall be amended to add a new subparagraph (32) which shall provide as follows:

“(32). Medical marijuana grower/processor.”

SECTION 7. Section 240-20.D shall be amended to add a new subparagraph (28) which shall provide as follows:

“(28). Medical marijuana grower/processor.”

SECTION 8. Section 240-21.C shall be amended to add a new subparagraph (26) which shall provide as follows:

“(26). Medical marijuana grower/processor.”

SECTION 9. The table of off street parking requirements in Section 240-33.A(1) shall be amended to add the following parking requirements:

Minimum Off-Street Parking Requirements

Use	Minimum Off-Street Parking Spaces	Plus the Following Minimum Off-Street Parking Spaces
E. 13. Medical Marijuana Dispensary	1 per 150 sq. ft.	1 space per 2 employees
F. 3. Medical Marijuana Grower/Processor	1 space per 1,000 sq. ft. gross floor area	1 space per employee

SECTION 10. Severability. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts hereof. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 11. Repealer. All ordinances or parts of ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 12. Effective Date. This Ordinance shall become effective in five (5) days from the date of adoption.

ENACTED AND ORDAINED this _____ day of _____, 2017.

ATTEST:

**EAST GOSHEN TOWNSHIP
BOARD OF SUPERVISORS**

Louis F. Smith, Secretary

E. Martin Shane, Chairman

Carmen Battavio, Vice-Chairman

Charles W. Proctor, III, Esquire, Member


Janet L. Emanuel, Member

Michael Lynch, Member

Memorandum

East Goshen Township
1580 Paoli Pike
West Chester, PA 19380

Voice: 610-692-7171
Fax: 610-692-8950
E-mail: mgordon@eastgoshen.org

Date: 4/28/2017
To: Planning Commission
From: Mark Gordon, Zoning Officer 
Re: Township Floodplain Ordinance

Dear Board Members,

The new FEMA Flood Insurance Rate Maps (FIRM) have been finalized and the Township needs to adopt them along with a new floodplain ordinance before the end of September, so we are shooting for July. Our FP ordinance needed to be updated because ours was missing some critical pieces that are now required by the PA DCED and FEMA. The draft ordinance has been in the works for over a year now, we started with the state model ordinance and tailored it to our needs. This version has been blessed by the DCED and we are ready to adopt.

In the interest of time I forwarded the draft ordinance to the CCPC for their review and comment, this way we will have their comments before you meet in June. At that time the PC can send a recommendation to the Board and the Board can review and adopt it in July.

EAST GOSHEN TOWNSHIP
ORDINANCE NO. _____

AN ORDINANCE REQUIRING ALL PERSONS, PARTNERSHIPS, BUSINESSES, AND CORPORATIONS TO OBTAIN A PERMIT FOR ANY CONSTRUCTION OR DEVELOPMENT; PROVIDING FOR THE ISSUANCE OF SUCH PERMITS; SETTING FORTH CERTAIN MINIMUM REQUIREMENTS FOR NEW CONSTRUCTION AND DEVELOPMENT WITHIN AREAS OF EAST GOSHEN TOWNSHIP WHICH ARE SUBJECT TO FLOODING; AND ESTABLISHING PENALTIES FOR ANY PERSONS WHO FAIL, OR REFUSE TO COMPLY WITH, THE REQUIREMENTS OR PROVISIONS OF THIS ORDINANCE.

ARTICLE I. STATUTORY AUTHORIZATION

The Legislature of the Commonwealth of Pennsylvania has, by the passage of the Pennsylvania Flood Plain Management Act of 1978, delegated the responsibility to local governmental units to adopt floodplain management regulations to promote public health, safety, and the general welfare of its citizenry. Therefore, the Board of Supervisors (the “Board”) of East Goshen Township (the “Township”) does hereby order as follows.

ARTICLE II. GENERAL PROVISIONS

Section 2.01 Intent

The intent of this Ordinance is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- C. Minimize danger to public health by protecting water supply and natural drainage.
- D. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing excessive development in areas subject to flooding.
- E. Comply with federal and state floodplain management requirements.

Section 2.02 Applicability

It shall be unlawful for any person, partnership, business or corporation to undertake, or cause to be undertaken, any construction or development anywhere within the Identified

Floodplain Area within the Township unless a Permit has been obtained from the Floodplain Administrator.

Section 2.03 Abrogation and Greater Restrictions

This ordinance supersedes any other conflicting provisions which may be in effect in identified floodplain areas. However, any other ordinance provisions shall remain in full force and effect to the extent that those provisions are more restrictive. If there is any conflict between any of the provisions of this Ordinance, the more restrictive shall apply.

Section 2.04 Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of the Ordinance, which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

Section 2.05 Warning and Disclaimer of Liability

The degree of flood protection sought by the provisions of this Ordinance is considered reasonable for regulatory purposes and is based on accepted engineering methods of study. Larger floods may occur or flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that areas outside any identified floodplain areas, or that land uses permitted within such areas will be free from flooding or flood damages.

This Ordinance shall not create liability on the part of the Township or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

ARTICLE III. ADMINISTRATION

Section 3.01 Designation of the Floodplain Administrator

The Township Zoning Officer is hereby appointed to administer and enforce this ordinance and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may: (A) Fulfill the duties and responsibilities set forth in these regulations, (B) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees, or (C) Enter into a written agreement or written contract with another agency or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

In the absence of a designated Floodplain Administrator, the Floodplain Administrator duties are to be fulfilled by the Township Manager.

Section 3.02 Permits Required

A Permit shall be required before any construction or development is undertaken within any area

of the Township.

Section 3.03 Duties and Responsibilities of the Floodplain Administrator

- A. The Floodplain Administrator shall issue a Permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable codes and ordinances.
- B. Prior to the issuance of any permit, the Floodplain Administrator shall review the application for the permit to determine if all other necessary government permits required by state and federal laws have been obtained, such as those required by the Pennsylvania Sewage Facilities Act (Act 1966-537, as amended); the Pennsylvania Dam Safety and Encroachments Act (Act 1978-325, as amended); the Pennsylvania Clean Streams Act (Act 1937-394, as amended); and the U.S. Clean Water Act, Section 404, 33, U.S.C. 1344. No permit shall be issued until this determination has been made.
- C. In the case of existing structures, prior to the issuance of any Development/Permit, the Floodplain Administrator shall review the proposed cost of improvements or repairs and the pre-improvement market value of the structure, so that a substantial improvement/substantial damage determination can be made, in accordance with FEMA's Substantial Improvement/Substantial Damage Desk Reference.
- D. In the case of existing structures, prior to the issuance of any Development/Permit, the Floodplain Administrator shall review the history of repairs to the subject building, so that any cumulative substantial damage concerns can be addressed before the permit is issued.
- E. During the construction period, the Floodplain Administrator or other authorized official shall inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable municipal laws and ordinances. He/she shall make as many inspections during and upon completion of the work as are necessary.
- F. In the discharge of his/her duties, the Floodplain Administrator shall have the authority to enter any building, structure, premises or development in the identified floodplain area, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of this ordinance.
- G. In the event the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the Permit and report such fact to the Board of Supervisors for whatever action it considers necessary.
- H. The Floodplain Administrator shall maintain in perpetuity, or for the lifetime of the structure, all records associated with the requirements of this ordinance including, but not limited to, finished construction elevation data, permitting, inspection and enforcement.

- I. The Floodplain Administrator is the official responsible for submitting a biennial report to FEMA concerning community participation in the National Flood Insurance Program as requested.
- J. The responsibility, authority and means to implement the commitments of the Floodplain Administrator can be delegated from the person identified. However, the ultimate responsibility lies with the person identified in the floodplain ordinance as the floodplain administrator/manager.
- K. The Floodplain Administrator shall consider the requirements of the 34 PA Code and the 2009 IBC and the 2009 IRC, or the latest revision thereof as adopted by the Commonwealth of Pennsylvania.

Section 3.04 Application Procedures and Requirements

- A. Application for such a Permit shall be made, in writing, to the Floodplain Administrator on forms supplied by the Township. Such application shall contain the following:
 - 1. Name and address of applicant.
 - 2. Name and address of owner of land on which proposed construction is to occur.
 - 3. Name and address of contractor.
 - 4. Site location including address.
 - 5. Listing of other permits required.
 - 6. Brief description of proposed work and estimated cost, including a breakout of flood-related cost and the market value of the building before the flood damage occurred where appropriate.
 - 7. A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.
- B. If any proposed construction or development is located entirely or partially within any identified floodplain area, applicants for Permits shall provide all the necessary information in sufficient detail and clarity to enable the Floodplain Administrator to determine that:
 - 1. all such proposals are consistent with the need to minimize flood damage and conform with the requirements of this and all other applicable codes and ordinances;
 - 2. all utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage;
 - 3. adequate drainage is provided so as to reduce exposure to flood hazards;

4. structures will be anchored to prevent floatation, collapse, or lateral movement;
 5. building materials are flood-resistant;
 6. appropriate practices that minimize flood damage have been used; and
 7. electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities have been designed and located to prevent water entry or accumulation.
- C. Applicants shall file the following minimum information plus any other pertinent information as may be required by the Floodplain Administrator to make the above determination:
1. A completed Permit Application Form.
 2. A plan of the entire site, clearly and legibly drawn at a scale of one (1) inch being equal to one hundred (100) feet or less, showing the following:
 - a. north arrow, scale, and date;
 - b. topographic contour lines, if available;
 - c. the location of all existing and proposed buildings, structures, and other improvements, including the location of any existing or proposed subdivision and development;
 - d. the location of all existing streets, drives, and other access ways; and
 - e. the location of any existing bodies of water or watercourses, identified floodplain areas, and, if available, information pertaining to the floodway, and the flow of water including direction and velocities.
 3. Plans of all proposed buildings, structures and other improvements, drawn at suitable scale showing the following:
 - a. the proposed lowest floor elevation of any proposed building based upon North American Vertical Datum of 1988;
 - b. the elevation of the base flood;
 - c. supplemental information as may be necessary under 34 PA Code, the 2009 IBC or the 2009 IRC, or the latest revision thereof as adopted by the Commonwealth of Pennsylvania.
 4. The following data and documentation:
 - a. detailed information concerning any proposed floodproofing measures

and corresponding elevations.

- b. if available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a base flood.
- c. documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within any Identified Floodplain Area (See Section 4.01) when combined with all other existing and anticipated development, will not cause any increase in the base flood elevation.
- d. a document, certified by a registered professional engineer or architect, which states that the proposed construction or development has been adequately designed to withstand the pressures, velocities, impact and uplift forces associated with the base flood.

Such statement shall include a description of the type and extent of flood proofing measures which have been incorporated into the design of the structure and/or the development.

- e. detailed information needed to determine compliance with Section 5.03 F., Storage, and Section 5.04, Development Which May Endanger Human Life, including:
 - i. the amount, location and purpose of any materials or substances referred to in Sections 5.03 F. and 5.04 which are intended to be used, produced, stored or otherwise maintained on site.
 - ii. a description of the safeguards incorporated into the design of the proposed structure to prevent leaks or spills of the dangerous materials or substances listed in Section 5.04 during a base flood.
- f. the appropriate component of the Department of Environmental Protection's "Planning Module for Land Development."
- g. where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection, to implement and maintain erosion and sedimentation control.

D. Applications for Permits shall be accompanied by a fee, payable to the municipality based upon the estimated cost of the proposed construction as determined by the Floodplain Administrator.

Section 3.05 Review of Application by Others

A copy of all plans and applications for any proposed construction or development in any identified floodplain area to be considered for approval may be submitted by the Floodplain Administrator to any other appropriate agencies and/or individuals (e.g. planning commission,

municipal engineer, etc.) for review and comment.

Section 3.06 Changes

After the issuance of a Permit by the Floodplain Administrator, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Floodplain Administrator. Requests for any such change shall be in writing, and shall be submitted by the applicant to Floodplain Administrator for consideration.

Section 3.07 Placards

In addition to the Permit, the Floodplain Administrator shall issue a placard, or similar document, which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the Permit, the date of its issuance, and be signed by the Floodplain Administrator.

Section 3.08 Start of Construction

Work on the proposed construction or development shall begin within 180 days after the date of issuance of the development permit. Work shall also be completed within twelve (12) months after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. The issuance of development permit does not refer to the zoning approval.

The actual start of construction means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first, alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Time extensions shall be granted only if a written request is submitted by the applicant, who sets forth sufficient and reasonable cause for the Floodplain Administrator to approve such a request and the original permit is compliant with the ordinance & FIRM/FIS in effect at the time the extension is granted.

Section 3.09 Enforcement and Penalties

Any person who fails to comply with any or all of the requirements or provisions of this Ordinance or who fails or refuses to comply with any notice, order of direction of the Floodplain Administrator or any other authorized employee of the Township shall be subject to the administrative processes, enforcement action, fines and/or penalties as set

forth within Article VIII. Administration and Enforcement section of the Township's Zoning Ordinance.

Section 3.10 Appeals

- A. Any person aggrieved by any action or decision of the Floodplain Administrator concerning the administration of the provisions of this Ordinance, may appeal to the Zoning Hearing Board. Such appeal must be filed, in writing, within thirty (30) days after the decision, determination or action of the Floodplain Administrator.
- B. Upon receipt of such appeal the Zoning Hearing Board shall consider the appeal in accordance with the applicable sections of the Township Zoning Ordinance and the Municipalities Planning Code and any other applicable local ordinance.
- C. Any person aggrieved by any decision of the Zoning Hearing Board may seek relief therefrom by appeal to court, as provided by the laws of this State including the Pennsylvania Flood Plain Management Act.

ARTICLE IV. IDENTIFICATION OF FLOODPLAIN AREAS

Section 4.01 Identification

The identified floodplain area shall be:

- A. any areas of the Township, classified as Special Flood Hazard Areas (SFHAs) in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) dated September 29, 2017 and issued by the Federal Emergency Management Agency (FEMA) or the most recent revision thereof, including all digital data developed as part of the Flood Insurance Study.
- B. The above referenced FIS and FIRMs, and any subsequent revisions and amendments are hereby adopted by the Township and declared to be a part of this ordinance.

Section 4.02 Description and Special Requirements of Identified Floodplain Areas

The identified floodplain area shall consist of the following specific areas:

- A. The Floodway Area shall be those areas identified in the FIS and the FIRM as floodway and which represent the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation by more than one (1) foot at any point. This term shall also include floodway areas which have been identified in other available studies or sources of information for those Special Flood Hazard Areas where no floodway has been identified in the FIS and FIRM.
 - 1. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in

accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

2. Within any floodway area, no new construction or development shall be allowed, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.
- B. The AE Area/District shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided.
1. The AE Area adjacent to the floodway shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided and a floodway has been delineated.
 2. AE Area without floodway shall be those areas identified as an AE zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided but no floodway has been determined.
 - i. No encroachments, including fill, new construction, substantial improvements, or other development shall be permitted in an AE Zone without floodway, unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed development together with all other existing and anticipated development, would not result in an increase in flood levels within the entire community during the occurrence of the base flood discharge.
 - ii. No new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.

- C. The A Area/District shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no base flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable sources shall be used when available. Where other acceptable information is not available, the base flood elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site.

In lieu of the above, the municipality may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the municipality. In the absence

of any of the above data or documentation, the community may require elevation of the lowest floor to be at least three feet above the highest adjacent grade.

- D. The AO and AH Area/ District shall be those areas identified as Zones AO and AH on the FIRM and in the FIS. These areas are subject to inundation by 1-percent-annual-chance shallow flooding where average depths are between one and three feet. In Zones AO and AH, drainage paths shall be established to guide floodwaters around and away from structures on slopes.

Section 4.03 Changes in Identification of Area

The Identified Floodplain Area may be revised or modified by the Board of Supervisors where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change to the Special Flood Hazard Area, approval must be obtained from FEMA. Additionally, as soon as practicable, but not later than six (6) months after the date such information becomes available, a community shall notify FEMA of the changes to the Special Flood Hazard Area by submitting technical or scientific data. See 5.01 (B) for situations where FEMA notification is required.

Section 4.04 Boundary Disputes

Should a dispute concerning any identified floodplain boundary arise, an initial determination shall be made by the Township and any party aggrieved by this decision or determination may appeal to the Zoning Hearing Board. The burden of proof shall be on the appellant.

Section 4.05 Jurisdictional Boundary Changes

Prior to development occurring in areas where annexation or other corporate boundary changes are proposed or have occurred, the community shall review flood hazard data affecting the lands subject to boundary changes. The community shall adopt and enforce floodplain regulations in areas subject to annexation or corporate boundary changes which meet or exceed those in CFR 44 60.3.

ARTICLE V. TECHNICAL PROVISIONS

Section 5.01 General

A. Alteration or Relocation of Watercourse

1. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the municipality, and until all required permits or approvals have first been obtained from the Department of Environmental Protection Regional Office.
2. No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity will not reduce or impede the flood carrying capacity of the watercourse in any way.

3. In addition, FEMA and the Pennsylvania Department of Community and Economic Development, shall be notified prior to any alteration or relocation of any watercourse.

B. When the Township proposes to permit the following encroachments:

- any development that causes a rise in the base flood elevations within the floodway; or
- any development occurring in Zones A1-30 and Zone AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation; or
- alteration or relocation of a stream (including but not limited to installing culverts and bridges)

the applicant shall (as per 44 CFR Part 65.12):

1. apply to FEMA for conditional approval of such action prior to permitting the encroachments to occur.
2. Upon receipt of the FEMA Administrator's conditional approval of map change and prior to approving the proposed encroachments, a community shall provide evidence to FEMA of the adoption of floodplain management ordinances incorporating the increased base flood elevations and / or revised floodway reflecting the post-project condition.
3. Upon completion of the proposed encroachments, applicant shall provide as-built certifications. FEMA will initiate a final map revision upon receipt of such certifications in accordance with 44 CFR Part 67.

C. Any new construction, development, uses or activities allowed within any identified floodplain area shall be undertaken in strict compliance with the provisions contained in this Ordinance and any other applicable codes, ordinances and regulations.

D. Within any Identified Floodplain Area, no new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.

E. Uses permitted. The following uses and no others are permitted within the Identified Floodplain Area, provided they are conducted in accordance with the Clean Stream Law of Pennsylvania, Act 347 of 1937, as amended, the Rules and Regulations of the Pennsylvania Department of Environmental Protection, all other applicable provisions of the Zoning Ordinance, and other local, state and federal regulations:

1. Customary agricultural operations, exclusive of buildings as defined in this Article.

2. Parks, playgrounds and recreational uses.
3. Forestry and wood production, excluding storage and mill structures.
4. Outdoor plant nurseries.

Section 5.02 Elevation and Floodproofing Requirements

Within any Identified Floodplain Area any new construction or substantial improvements shall be prohibited. If a variance is obtained for new construction or substantial improvements in the Identified Floodplain Area in accordance with the criteria in Article VIII, then the following provisions apply:

A. Residential Structures

1. In AE, A1-30, and AH Zones, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the Regulatory Flood Elevation.
2. In A Zones, where there are no Base Flood Elevations specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the Regulatory Flood Elevation determined in accordance with Section 4.02.C of this ordinance.
3. In AO Zones, any new construction or substantial improvement shall have the lowest floor (including basement) at or above the highest adjacent grade at least as high as the depth number specified on the FIRM.
4. The design and construction standards and specifications contained in the 2009 International Building Code (IBC) and in the 2009 International Residential Code (IRC) or the latest edition thereof adopted by the Commonwealth of Pennsylvania, and ASCE 24 and 34 PA Code (Chapters 401-405 as amended) shall be utilized, where they are more restrictive.

B. Non-residential Structures

1. In AE, A1-30 and AH Zones, any new construction or substantial improvement of a non-residential structure shall have the lowest floor (including basement) elevated up to, or above, the Regulatory Flood Elevation, or be designed and constructed so that the space enclosed below the Regulatory Flood Elevation:
 - a. is floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and,
 - b. has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy:

2. In A Zones, where no Base Flood Elevations are specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated or completely floodproofed up to, or above, the Regulatory Flood Elevation determined in accordance with Section 4.02.C of this ordinance.
3. In AO Zones, any new construction or substantial improvement shall have their lowest floor elevated or completely floodproofed above the highest adjacent grade to at least as high as the depth number specified on the FIRM.
4. Any non-residential structure, or part thereof, made watertight below the Regulatory Flood Elevation shall be floodproofed in accordance with the W1 or W2 space classification standards contained in the publication entitled "Flood-Proofing Regulations" published by the U.S. Army Corps of Engineers (June 1972, as amended March 1992) or with some other equivalent standard. All plans and specifications for such floodproofing shall be accompanied by a statement certified by a registered professional engineer or architect which states that the proposed design and methods of construction are in conformance with the above referenced standards. There should be a statement submitted with the permit application and a statement submitted with the as-built Floodproofing Certificate prior to the issuance of the Certificate of Occupancy.
5. Any non-residential structure that will be floodproofed must submit the following to the Floodplain Administrator along with the non-residential Floodproofing Certificate and prior to the issuance of the Certificate of Occupancy:
 - a. An Inspection and Maintenance Plan detailing the annual maintenance of floodproofed components ensuring that all components will operate properly under flood conditions. Components that must be inspected include at a minimum:
 1. Mechanical equipment such as sump pumps and generators,
 2. Flood shields and closures,
 3. Walls and wall penetrations, and
 4. Levees and berms (as applicable)
 - b. Flood Emergency Operation Plan detailing the procedures to be followed during a flooding event, and must include information pertaining to how all components will operate properly under all conditions, including power failures. The design professional must produce the plan. An adequate plan must include the following:
 1. An established chain of command and responsibility with leadership responsibilities clearly defined for all aspects of the plan.

2. A procedure for notification of necessary parties when flooding threatens and flood warnings are issued. Personnel required to be at the building should have a planned and safe means of ingress and should have no other emergency response duties during a flood event. Alternates should be assigned in the event that the primary persons responsible are unable to complete their assigned duties under the plan.
3. A list of specific duties assigned to ensure that all responsibilities are addressed expeditiously. The locations of materials necessary to properly install all floodproofing components must be included in the list.
4. An evacuation plan for all personnel or occupants; those without duties for the flood emergency as well as those with duties for implementing the plan. All possible ingress and egress routes must be identified.
5. A periodic training and exercise program to keep personnel and occupants aware of their duties and responsibilities. Training drills should be held at least once a year and should be coordinated with community officials.
6. The design and construction standards and specifications contained in the 2009 International Building Code (IBC) and in the 2009 International Residential Code (IRC) or the latest revision thereof as adopted by the Commonwealth of Pennsylvania, and ASCE 24 and 34 PA Code (Chapters 401-405 as amended) shall be utilized, where they are more restrictive.

C. Space below the lowest floor

1. Fully enclosed space below the lowest floor (excluding basements) which will be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, shall be designed and constructed to allow for the automatic entry and exit of flood waters for the purpose of equalizing hydrostatic forces on exterior walls. The term "fully enclosed space" also includes crawl spaces.
2. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
 - a. a minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space installed on two (2) separate walls
 - b. the bottom of all openings shall be no higher than one (1) foot above grade.

- c. openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

D. Historic Structures

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined in this ordinance, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

E. Accessory structures

Structures accessory to a principal building need not be elevated or floodproofed to remain dry, but shall comply, at a minimum, with the following requirements:

1. the structure shall not be designed or used for human habitation, but shall be limited to the parking of vehicles, or to the storage of tools, material, and equipment related to the principal use or activity.
2. floor area shall not exceed 200 square feet.
3. The structure will have a low damage potential.
4. the structure will be located on the site so as to cause the least obstruction to the flow of flood waters.
5. power lines, wiring, and outlets will be elevated to the Regulatory Flood Elevation.
6. permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc. are prohibited.
7. sanitary facilities are prohibited.
8. the structure shall be adequately anchored to prevent flotation, collapse, and lateral movement and shall be designed to automatically provide for the entry and exit of floodwater for the purpose of equalizing hydrostatic forces on the walls. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
 - a. a minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space.

- b. the bottom of all openings shall be no higher than one (1) foot above grade.
 - c. openings may be equipped with screens, louvers, etc. or other coverings or devices provided that they permit the automatic entry and exit of flood waters.
- 9. For accessory structures that exceed 200 square feet in area (footprint) and that are below the base flood elevation, a variance is required as set forth in Article VIII. If a variance is granted, a signed Declaration of Land Restriction (Nonconversion Agreement) shall be recorded on the property deed prior to issuance of the Certificate of Occupancy.
- 10. Prohibit the storage of Hazardous Materials in accessory structures.

Section 5.03 Design and Construction Standards

The following minimum standards shall apply for all construction and development proposed within any identified floodplain area:

A. Fill

Within any Identified Floodplain Area the use of fill shall be prohibited. No variance shall be granted.

B. Drainage Facilities

Storm drainage facilities shall be designed to convey the flow of storm water runoff in a safe and efficient manner. The system shall ensure proper drainage along streets, and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.

C. Water and Sanitary Sewer Facilities and Systems

- 1. All new or replacement water supply and sanitary sewer facilities and systems shall be located, designed and constructed to minimize or eliminate flood damages and the infiltration of flood waters.
- 2. Sanitary sewer facilities and systems shall be designed to prevent the discharge of untreated sewage into flood waters.
- 3. No part of any on-site waste disposal system shall be located within any identified floodplain area except in strict compliance with all State and local regulations for such systems. If any such system is permitted, it shall be located so as to avoid impairment to it, or contamination from it, during a flood.
- 4. The design and construction provisions of the UCC and FEMA #348, "Protecting

Building Utilities From Flood Damages” and “The International Private Sewage Disposal Code” shall be utilized.

D. Other Utilities

All other utilities such as gas lines, electrical and telephone systems shall be located, elevated (where possible) and constructed to minimize the chance of impairment during a flood.

E. Streets

The finished elevation of all new streets shall be no more than one (1) foot below the Regulatory Flood Elevation.

F. Storage

All materials that are buoyant, flammable, explosive, or in times of flooding, could be injurious to human, animal, or plant life, and not listed in Section 5.04, Development Which May Endanger Human Life, shall be stored at or above the Regulatory Flood Elevation or floodproofed to the maximum extent possible.

G. Placement of Buildings and Structures

All buildings and structures shall be designed, located, and constructed so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum effect upon the flow and height of flood water.

H. Anchoring

1. All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.
2. All air ducts, large pipes, storage tanks, and other similar objects or components located below the Regulatory Flood Elevation shall be securely anchored or affixed to prevent flotation.

I. Floors, Walls and Ceilings

1. Wood flooring used at or below the Regulatory Flood Elevation shall be installed to accommodate a lateral expansion of the flooring, perpendicular to the flooring grain without causing structural damage to the building.
2. Plywood used at or below the Regulatory Flood Elevation shall be of a "marine" or "water-resistant" variety.
3. Walls and ceilings at or below the Regulatory Flood Elevation shall be designed and constructed of materials that are "water-resistant" and will withstand inundation.

4. Windows, doors, and other components at or below the Regulatory Flood Elevation shall be made of metal or other "water-resistant" material.

J. Paints and Adhesives

1. Paints and other finishes used at or below the Regulatory Flood Elevation shall be of "marine" or "water-resistant" quality.
2. Adhesives used at or below the Regulatory Flood Elevation shall be of a "marine" or "water-resistant" variety.
3. All wooden components (doors, trim, cabinets, etc.) used at or below the Regulatory Flood Elevation shall be finished with a "marine" or "water-resistant" paint or other finishing material.

K. Electrical Components

1. Electrical distribution panels shall be at least three (3) feet above the base flood elevation.
2. Separate electrical circuits shall serve lower levels and shall be dropped from above.

L. Equipment

1. Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the Regulatory Flood Elevation and shall be anchored to resist floatation, collapse, and lateral movement
2. Ductwork shall be elevated to or above the Regulatory Flood Elevation or floodproofed to remain water resistant.

M. Fuel Supply Systems

All gas and oil supply systems shall be designed to prevent the infiltration of flood waters into the system and discharges from the system into flood waters. Additional provisions shall be made for the drainage of these systems in the event that flood water infiltration occurs.

N. Uniform Construction Code Coordination

The Standards and Specifications contained in 34 PA Code (Chapters 401-405), as amended and not limited to the following provisions shall apply to the above and other sections and sub-sections of this ordinance, to the extent that they are more restrictive and supplement the requirements of this ordinance.

International Building Code (IBC) 2009 or the latest revision thereof as adopted by the

Commonwealth of Pennsylvania:

Secs. 801, 1202, 1403, 1603, 1605, 1612, 3402, and Appendix G.

International Residential Building Code (IRC) 2009 or the latest revision thereof as adopted by the Commonwealth of Pennsylvania:

Secs. R104, R105, R109, R322, Appendix E, and Appendix J.

Section 5.04 Development Which May Endanger Human Life

Within any Identified Floodplain Area, any structure of the kind described in Subsection A., below, shall be prohibited. If a variance is obtained in accordance with the criteria in Article VIII, then the following provisions apply: (5.04 B, C, & D)

A. In accordance with the Pennsylvania Flood Plain Management Act, and the regulations adopted by the Department of Community and Economic Development as required by the Act, any new or substantially improved structure which:

1. will be used for the production or storage of any of the following dangerous materials or substances; or,
2. will be used for any activity requiring the maintenance of a supply of more than 550 gallons, or other comparable volume, of any of the following dangerous materials or substances on the premises; or,
3. will involve the production, storage, or use of any amount of radioactive substances;

shall be subject to the provisions of this section, in addition to all other applicable provisions. The following list of materials and substances are considered dangerous to human life:

- Acetone
- Ammonia
- Benzene
- Calcium carbide
- Carbon disulfide
- Celluloid
- Chlorine
- Hydrochloric acid
- Hydrocyanic acid
- Magnesium
- Nitric acid and oxides of nitrogen
- Petroleum products (gasoline, fuel oil, etc.)
- Phosphorus
- Potassium
- Sodium
- Sulphur and sulphur products

- Pesticides (including insecticides, fungicides, and rodenticides)
 - Radioactive substances, insofar as such substances are not otherwise regulated.
- B. Within any Identified Floodplain Area, any new or substantially improved structure of the kind described in Subsection A., above, shall be prohibited within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.
- C. Within any Floodway Area, any structure of the kind described in Subsection A., above, shall be prohibited. Where permitted within any Identified Floodplain Area, any new or substantially improved residential structure of the kind described in Section 5.04 (A), above, shall be elevated to remain completely dry up to at least one and one half (1 ½) feet above base flood elevation and built in accordance with Sections 5.01, 5.02 and 5.03.
- D. Where permitted within any Identified Floodplain Area, any new or substantially improved non-residential structure of the kind described in Section 5.04 (A) above, shall be built in accordance with Sections 5.01, 5.02 and 5.03 including:
1. elevated, or designed and constructed to remain completely dry up to at least one and one half (1 ½) feet above base flood elevation, and
 2. designed to prevent pollution from the structure or activity during the course of a base flood.

Any such structure, or part thereof, that will be built below the Regulatory Flood Elevation shall be designed and constructed in accordance with the standards for completely dry floodproofing contained in the publication "Flood-Proofing Regulations (U.S. Army Corps of Engineers, June 1972 as amended March 1992), or with some other equivalent watertight standard.

Section 5.05 Special Requirements for Subdivisions and Development

All subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, in Identified Floodplain Areas where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision (CLOMR) and Letter of Map Revision (LOMR). Submittal requirements and processing fees shall be the responsibility of the applicant.

Section 5.06 Special Requirements for Manufactured Homes

Within any Identified Floodplain Area manufactured homes shall be prohibited. If a variance is obtained in accordance with the criteria in Article VIII, then the following provisions apply:

- A. Within any Identified Floodplain Area manufactured homes shall be prohibited within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.
- B. Where permitted within any Identified Floodplain Area, all manufactured homes, and any improvements thereto, shall be:

1. placed on a permanent foundation;
2. elevated so that the lowest floor of the manufactured home is at least one and one half (1 ½) feet above base flood elevation;
3. and anchored to resist flotation, collapse, or lateral movement.

C. Equipment requirement:

1. Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the Regulatory Flood Elevation and shall be anchored to resist flotation, collapse, and lateral improvement.
2. Ductwork shall be elevated to or above the Regulatory Flood Elevation or floodproofed to remain water resistant.

D. Installation of manufactured homes shall be done in accordance with the manufacturers' installation instructions as provided by the manufacturer. Where the applicant cannot provide the above information, the requirements of Appendix E of the 2009 "International Residential Building Code" or the "U.S. Department of Housing and Urban Development's Permanent Foundations for Manufactured Housing," 1984 Edition, draft or latest revision thereto and 34 PA Code Chapter 401-405 shall apply.

E. Consideration shall be given to the installation requirements of the 2009 IBC, and the 2009 IRC or the latest revision thereto as adopted by the Commonwealth of Pennsylvania, and 34 PA Code, as amended where appropriate and/or applicable to units where the manufacturers' standards for anchoring cannot be provided or were not established for the proposed unit(s) installation.

Section 5.07 Special Requirements for Recreational Vehicles

Within [LR1][KPV2] any Identified Floodplain Area recreational vehicles shall be prohibited. If a variance is obtained in accordance with the criteria in Article VIII, then the following provisions apply:

A. Recreational vehicles in Zones A, A1-30, AH and AE must either:

1. be on the site for fewer than 180 consecutive days, and
 2. be fully licensed and ready for highway use,
- or
3. meet the permit requirements for manufactured homes in Section 5.06.

ARTICLE VI. PROHIBITED ACTIVITIES^[LR3]^[KPV4]

Section 6.01 General

In accordance with the administrative regulations promulgated by the Department of Community and Economic Development to implement the Pennsylvania Flood Plain Management Act, the following activities shall be prohibited within any Identified Floodplain Area:

- A. The commencement of any of the following activities; or the construction, enlargement, or expansion of any structure used, or intended to be used, for any of the following activities:
 - 1. Hospitals
 - 2. Nursing homes
 - 3. Jails or prisons
- B. The commencement of, or any construction of, a new manufactured home park or manufactured home subdivision, or substantial improvement to an existing manufactured home park or manufactured home subdivision.

ARTICLE VII EXISTING STRUCTURES IN IDENTIFIED FLOODPLAIN AREAS

Section 7.01 Existing Structures

The provisions of this Ordinance do not require any changes or improvements to be made to lawfully existing structures. However, when an improvement is made to any existing structure, the provisions of Section 7.02 shall apply.

Section 7.02 Improvements

The following provisions shall apply whenever any improvement is made to an existing structure located within any Identified Floodplain Area:

- A. No expansion^[LR5]^[KPV6] or enlargement of an existing structure shall be allowed within any Identified Floodplain Area that would cause any increase in BFE. In A Area/District(s), BFEs are determined using the methodology in Section 4.02 C.
- B. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure to an extent or amount of fifty (50) percent or more of its market value, shall constitute a substantial improvement and shall be undertaken only in full compliance with the provisions of this Ordinance.
- C. The above activity shall also address the requirements of the 34 PA Code, as amended and the 2009 IBC and the 2009 IRC or most recent revision thereof as adopted by the Commonwealth of Pennsylvania.

- D. Within any Floodway Area/District (See Section 4.02 A), no new construction or development shall be allowed, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office
- E. Within any AE Area/District without Floodway (See Section 4.02 B), no new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.
- F. Any modification, alteration, reconstruction, or improvement of any kind that meets the definition of “cumulative substantial damage” shall be undertaken only in full compliance with the provisions of this ordinance.

ARTICLE VIII VARIANCES

Section 8.01 General

If compliance with any of the requirements of this Ordinance would result in an exceptional hardship to a prospective builder, developer or landowner, the Township Zoning Hearing Board may, upon request, grant relief from the strict application of the requirements.

Section 8.02 Variance Procedures and Conditions

Requests for variances shall be considered by the Township Zoning Hearing Board in accordance with the procedures contained within the existing Zoning Hearing Board review procedures contained within the Zoning Ordinance and in addition to the following:

- A. No variance shall be granted within any Identified Floodplain Area that would cause any increase in BFE. In A Area/District, BFEs are determined using the methodology in Section 4.02 C.
- B. No variances shall be granted for a proposed accessory structure that exceeds 600 square feet in size. A signed Non-Conversion Agreement is required as a condition of receiving the variance.
- C. Except for a possible modification of the Regulatory Flood Elevation requirement involved, no variance shall be granted for any of the other requirements pertaining specifically to development regulated by Development Which May Endanger Human Life (Section 5.04).
- D. No variance shall be granted for Prohibited Activities (Article VI).
- E. If granted, a variance shall involve only the least modification necessary to provide relief.
- F. In granting any variance, the Township Zoning Hearing Board shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this Ordinance.

G. Whenever a variance is granted, the Township Zoning Hearing Board shall notify the applicant in writing that:

1. The granting of the variance may result in increased premium rates for flood insurance.
2. Such variances may increase the risks to life and property.

H. In reviewing any request for a variance, the Township Zoning Hearing Board shall consider, at a minimum, the following:

1. That there is good and sufficient cause.
2. That failure to grant the variance would result in exceptional hardship to the applicant.
3. That the granting of the variance will
 - a. neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense,
 - b. nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances and regulations.

I. A complete record of all variance requests and related actions shall be maintained by the Township Zoning Hearing Board. In addition, a report of all variances granted during the year shall be included in the annual report to the FEMA.

Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one-percent (1%) annual chance flood.

ARTICLE IX. DEFINITIONS

Section 9.01 General

Unless specifically defined below, words and phrases used in this Ordinance shall be interpreted so as to give this Ordinance its' most reasonable application.

Section 9.02 Specific Definitions

1. Accessory use or structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
2. Base flood - a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" or one-percent (1%) annual chance flood).
3. Base flood discharge - the volume of water resulting from a Base Flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).

4. Base flood elevation (BFE) - the elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.
5. Basement - any area of the building having its floor below ground level on all sides.
6. Building - a combination of materials to form a permanent structure having walls and a roof. Included shall be all manufactured homes and trailers to be used for human habitation.
7. Cumulative substantial damage – flood related damages sustained by a structure on two or more separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.
8. Declaration of Land Restriction (Non-Conversion Agreement) - A form signed by the property owner to agree not to convert or modify in any manner that is inconsistent with the terms of the permit and these regulations, certain enclosures below the lowest floor of elevated buildings and certain accessory structures. The form requires the owner to record it on the property deed to inform future owners of the restrictions.
9. Development - any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures; the placement of manufactured homes; streets, and other paving; utilities; filling, grading and excavation; mining; dredging; drilling operations; storage of equipment or materials; and the subdivision of land.
10. Existing manufactured home park or subdivision – a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.
11. Expansion to an existing manufactured home park or subdivision – the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
12. Flood - a temporary inundation of normally dry land areas.
13. Flood Insurance Rate Map (FIRM) - the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
14. Flood Insurance Study (FIS) - the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, the

Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

15. Floodplain area - a relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source.
16. Floodproofing - any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
17. Floodway - the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
18. Highest Adjacent Grade - The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
19. Historic structures – any structure that is:
 - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - c. Individually listed on a state inventory of historic places in states which have been approved by the Secretary of the Interior; or
 - d. Individually listed on a local inventory of historic places in communities with historic preservation that have been certified either:
 - i. By an approved state program as determined by the Secretary of the Interior or
 - ii. Directly by the Secretary of the Interior in states without approved programs.
20. Identified Floodplain Area- this term is an umbrella term that includes all of the areas within which the community has selected to enforce floodplain regulations. It will always include the area identified as the Special Flood Hazard Area on the Flood Insurance Rate Maps and Flood Insurance Study, but may include additional areas identified by the community. See Sections 4.01 and 4.02 for the specifics on what areas the community has included in the Identified Floodplain Area.

21. Lowest floor - the lowest floor of the lowest fully enclosed area (including basement). An unfinished, flood resistant partially enclosed area, used solely for parking of vehicles, building access, and incidental storage, in an area other than a basement area is not considered the lowest floor of a building, provided that such space is not designed and built so that the structure is in violation of the applicable non-elevation design requirements of this ordinance.
22. Manufactured home - a structure, transportable in one or more sections, which is built on a permanent chassis, and is designed for use with or without a permanent foundation when attached to the required utilities. The term includes park trailers, travel trailers, recreational and other similar vehicles which are placed on a site for more than 180 consecutive days.
23. Manufactured home park or subdivision – a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
24. New construction - structures for which the start of construction commenced on or after the effective start date of this floodplain management ordinance and includes any subsequent improvements to such structures. Any construction started after July 5, 1977 and before the effective start date of this floodplain management ordinance is subject to the ordinance in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance.
25. New manufactured home park or subdivision – a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.
26. Person - an individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity whatsoever, which is recognized by law as the subject of rights and duties.
27. Post-FIRM Structure - is a structure for which construction or substantial improvement occurred after December 31, 1974 or on or after the community's initial Flood Insurance Rate Map (FIRM) dated July 5, 1977, whichever is later, and, as such, would be required to be compliant with the regulations of the National Flood Insurance Program.
28. Pre-FIRM Structure - is a structure for which construction or substantial improvement occurred on or before December 31, 1974 or before the community's initial Flood Insurance Rate Map (FIRM) dated July 5, 1977, whichever is later, and, as such, would not be required to be compliant with the regulations of the National Flood Insurance Program.
29. Recreational vehicle - a vehicle which is:
 - a. built on a single chassis;

- b. not more than 400 square feet, measured at the largest horizontal projections;
 - c. designed to be self-propelled or permanently towable by a light-duty truck,
 - d. not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
30. Regulatory Flood Elevation - the base flood elevation (BFE) or estimated flood height as determined using simplified methods plus a freeboard safety factor of one and one-half (1 ½) feet. The freeboard safety factor also applies to utilities and ductwork.
31. Special flood hazard area (SFHA) - means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, A1-A30, AE, A99, or, AH.
32. Start of construction - includes substantial improvement and other proposed new development and means the date the Permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days after the date of the permit and shall be completed within twelve (12) months after the date of issuance of the permit unless a time extension is granted, in writing, by the Floodplain Administrator. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufacture home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
33. Structure – a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
34. Subdivision - the division or re-division of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devisees, transfer of ownership or building or lot development: Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.
35. Substantial damage - damage from any cause sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent or more of the market value of the structure before the damage occurred.

36. Substantial improvement - any reconstruction, rehabilitation, addition, or other improvement of a structure, of which the cost equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" or "cumulative substantial damage" regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
37. Uniform Construction Code (UCC) – The statewide building code adopted by The Pennsylvania General Assembly in 1999 applicable to new construction in all municipalities whether administered by the municipality, a third party or the Department of Labor and Industry. Applicable to residential and commercial buildings, The Code adopted The International Residential Code (IRC) and the International Building Code (IBC), by reference, as the construction standard applicable with the State floodplain construction. For coordination purposes, references to the above are made specifically to various sections of the IRC and the IBC.
38. Variance- A grant of relief by a community from the terms of a floodplain management regulation.
39. Violation - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

ARTICLE X. ENACTMENT

Section 10.01 Adoption

This Ordinance shall be effective on September 29, 2017 and shall remain in force until modified, amended or rescinded by East Goshen Township, Chester County, Pennsylvania.

ENACTED AND ADOPTED by the Board of Supervisors this ____ day of _____,
2017.

ATTEST:

BOARD OF SUPERVISORS OF EAST GOSHEN
TOWNSHIP

Township Secretary

By:_____

In the Zone

Pennsylvania Commonwealth Court Deems Natural Expansion Doctrine Inapplicable to Expansion of Nonconforming Recycling Center

By Stephen H. Kalis

In *TGR Warehousing, LLC v. Borough of Berwick Zoning Hearing Board*, No. 473 C.D. (Filed: January 9, 2015), the Commonwealth Court of Pennsylvania refused to apply the natural expansion doctrine to permit the operator of a nonconforming recycling center to expand its operations for the storage and transfer of solid municipal waste.

Under the natural expansion doctrine, certain nonconforming uses may be expanded in scope, as a matter of right, to accommodate a business' increase in magnitude, provided the expansion is over property previously occupied by the owner at the time the ordinance was enacted. See *Township of Chartiers v. William H. Martin, Inc.*, 542 A.2d 985, 988 (Pa. 1988). Generally speaking, a municipality may not prohibit the natural expansion of a nonconforming use. However, the Supreme Court of Pennsylvania has held that a property owner's right to expand a nonconforming use may be restricted if the proposed use would have an adverse impact on public health, safety and welfare. See *Gilfillan's Permit*, 140 A. 136, 138 (Pa. 1927); *Silver v. Zoning Board of Adjustment*, 255 A.2d 506, 507 (Pa. 1969).

In the instant case, the plaintiff, TGR Warehousing, LLC, which operates a nonconforming recycling center in Berwick, Pennsylvania, requested a special exception to expand the recycling center and add a station for the storage and transfer of solid municipal waste. According to TGR, the waste would be stored at the station for a maximum of 72 hours and then transported to a landfill.

TGR argued that the enlargement and expansion of its nonconforming structure was permissible under the Borough of Berwick's Zoning Ordinance and the natural expansion doctrine.

After a hearing, the Borough of Berwick Zoning Hearing Board denied TGR's application for a special exception, holding that the proposed transfer station would be more objectionable in its operations with the addition of solid waste. The board cited increased noise, fumes and odors as reasons for the denial, holding that the use would be incompatible with the "present character" of the zoning district and the adjoining properties, which include a school and football field. The board also noted that TGR had previously obtained a special exception for a structure expansion and that only one was permissible under the ordinance.

TGR appealed to the trial court, which upheld the Board's decision. The court rejected TGR's arguments under the natural expansion doctrine and disagreed that the transfer station would be a natural expansion of an existing, nonconforming use. The court noted that the natural expansion doctrine deals primarily with a change in the volume, rather than the character, of a business' expansion. The change from "clean recycling materials" to solid municipal waste rendered the natural expansion doctrine inapplicable.

On appeal to the Commonwealth Court, TGR asserted that the trial court erred in failing to apply the natural expansion doctrine. It noted that the ordinance's

definition of "solid waste facility" includes both recycling facilities and transfer facilities, as well as landfills, and therefore, TGR was not changing the intended use of the property. TGR maintained that the proposed modification was a natural expansion of an existing, nonconforming use under the *Chartiers* decision.

The Commonwealth Court disagreed, stating that TGR's reliance on *Chartiers* was misplaced. In *Chartiers*, a landfill operator was permitted to increase its daily volume under the natural expansion doctrine where the operator was not "changing the intended use of the property." See 542 A.2d at 989. Here, according to the court, the change in the type of materials, from clean recyclable materials to solid waste, was dispositive, notwithstanding the definition of the term "solid waste facility" under the ordinance. The board's determination that the proposed change in use would be incompatible with the adjoining properties and character of the zoning district was not an abuse of discretion, and the board properly found that TGR was not entitled to a second special exception to expand the nonconforming use under Section 906(d) of the ordinance. Therefore, the court refused to overturn the ruling of the trial court.

Author



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skalis@foxrothschild.com

The NJ Appellate Division Finds Governing Body Is Not Required to Affirmatively Act in Response to Master Plan Recommendation

By Jack Plackter

In this case, *John E. Myers & Diane D. Myers, Trustees v. Ocean City Zoning Board of Adjustment and City of Ocean City* 2014 W.L. 7565888 N.J. Super. (App. Div. 2015), the City of Ocean City appeals from the trial court's order compelling it to respond to a proposed

zoning change recommended by the Ocean City Planning Board in its Master Plan Reexamination Report.

Interpreting *N.J.S.A. 40:55D-62(a)*, the trial court concluded that a governing body must adopt an ordinance consistent with a proposed change in a re-

examination report, or the governing body may affirmatively reject the recommended change after a hearing.

The Appellate Division agreed with the city that the statute does not require the governing body to affirmatively act in response to a master plan

Wolf, Baldwin & Associates PC

April 19, 2017

Pre-Existing Non-Conforming Uses.

Virtually every city, borough and township in Pennsylvania has its own comprehensive zoning ordinance, dividing the municipality into districts where some uses are permitted as of right, and others are prohibited, while still others are permitted as special exceptions or conditional uses. If a PA business is located within a district where the business is permitted as of right, the primary zoning issue arising out of a planned outward expansion of the business premises will be whether the new building or addition fits within the municipality's height restrictions and property line set back limitations, commonly referred to as the building envelope.

The problem becomes more complex, however, when the particular business was a permitted use when it began but has since been overtaken by changes in the municipal zoning ordinance. Assume, for example, that XYZ Tool & Die Company first opened its doors on a large plot of former farm land in rural No Name Township in 1952. Like many rural townships of the time, No Name Township had no zoning ordinance in 1952. Therefore, XYZ's manufacturing operations were, by default, a permitted use. Assume further that in 1965 No Name Township sought to preserve its rural character by adopting a Pennsylvania zoning ordinance placing the XYZ Tool and Die Company squarely within the R-1 residential zoning district. XYZ is, as they say, "grandfathered" as a pre-existing non-conforming use. As a result, XYZ is able to continue its tool and die operations so long as those operations are not discontinued and abandoned for a prescribed period of time (12 months under many ordinances).

But what happens when the business finally outgrows its original space? The right to *continue* a pre-existing, non-conforming use is not just a matter of municipal ordinance. It is a right guaranteed by Pennsylvania law, and a right which zoning ordinances must respect. Likewise, the right of a property owner to *expand* a non-conforming use is itself protected by Pennsylvania's Doctrine of Natural Expansion. Under this Doctrine, a non-conforming use may be extended in scope, as a business increases in magnitude, over ground used for that business purpose at the time of the enactment of the zoning ordinance. *Chartiers Township v. William H. Martin, Inc.*, 518 Pa. 181, 542 A.2d 985 (1988). However, the right of natural expansion is not unlimited, and a PA municipality has the power to impose reasonable restrictions on the extension of a non-conforming use. *R.K. Kibblehouse Quarries v. Marlborough Township Zoning Hearing Board*, 157 Pa.Cmwlth. 630, 630 A.2d 937 (1993).

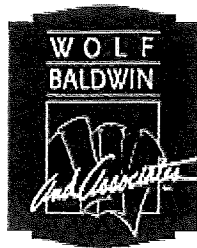
Typically, PA zoning ordinances provide that if a landowner wishes to expand a non-conforming use, he or she must appear before the zoning hearing board and apply for either a special exception or a variance, depending upon the structure of the particular ordinance. The burden of proving the existence and extent of the pre-existing non-conforming use will fall upon the property owner who seeks to expand the use. *Overstreet v. Zoning Hearing Board of Schuylkill Township*, 49 Pa.Cmwlth. 397, 412 A.2d 169 (1980). Using our example then, if XYZ Tool & Die can produce documentation or witnesses establishing its manufacturing use only as far back

as 1968, as opposed to 1952, XYZ would be unable to satisfy its burden of proving that the use pre-existed the 1965 zoning ordinance.

Even when it can be proved that the use pre-dated the ordinance, the right of natural expansion is not unlimited. First, there is no right to expand a non-conforming use onto adjoining properties. Second, and a more common problem, most PA zoning ordinances will limit expansion to a total cumulative area not greater than 25% to 50% of the size of the non-conforming use as of the time it first became non-conforming. Assume for example that No Name Township has an ordinance limiting expansion to 25% beyond the size of the pre-existing non-conforming use, and assume further that XYZ Tool & Die had a use involving 10,000 square feet of floor area as of 1965. XYZ's total cumulative expansion could not exceed 2,500 square feet. Further, once XYZ has expanded to a total of 12,500 square feet, it cannot then treat that 12,500 square feet of floor area as the lawful non-conforming use and thereafter return to the zoning hearing board to request a further 25% expansion. The expansion right will be strictly limited based upon the square footage that pre-existed the enactment of the ordinance.

Many Pennsylvania municipalities have undertaken to register non-conforming uses within their borders, thereby eliminating or at least reducing later proof problems as well as the potential for false assertions that an unlawful use is grandfathered. To that end, it is customary that when a zoning hearing board recognizes and allows for the expansion of a non-conforming use, it will also require that the property owner pay to have the hearing testimony transcribed, thereby providing a permanent record of the nature and size of the pre-existing use, and the extent of the post-ordinance expansion.

It must be noted too that the right of natural expansion of a non-conforming use extends only to use non-conformities, not dimensional non-conformities. ***Rennerdale Volunteer Fire Dept. v. Zoning Hearing Board of Collier Township***, 90 Pa.Cmwlth. 635, 496 A.2d 431 (2000). That is, XYZ Tool & Die Company might have a right to expand a non-conforming manufacturing operation in a residential district, but not if its existing operations have already been stretched to the edges of the building envelope prescribed by the current zoning ordinance. If the rule were otherwise, and if businesses were permitted to expand beyond the building envelope, the building setback restrictions and maximum building coverage regulations of nearly every ordinance would be rendered all but meaningless.



WOLF, BALDWIN

And Associates, P.C.

Attorneys-At-Law

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CAN I EXPAND MY BUSINESS UNDER PENNSYLVANIA ZONING LAW?

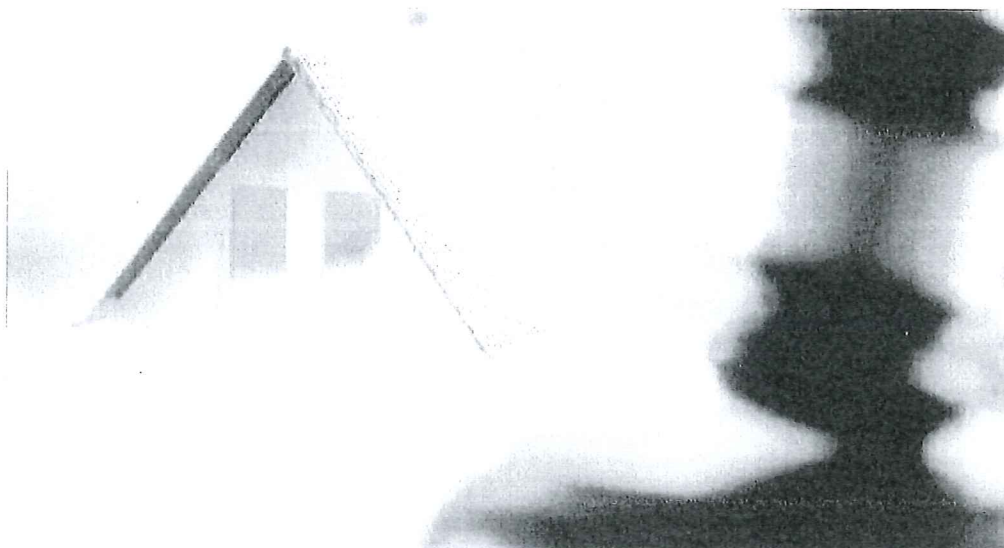
It is a clear sign of success when a business outgrows its current space. It is a problem many businesses would love to solve. When a business needs to expand, the first decision a business must confront is whether to stay in the existing location or to instead relocate to larger premises. This decision will be influenced as much by the local code enforcement as by the wishes of the business owner.

Pre-Existing Non-Conforming Uses.

Virtually every city, borough and township in Pennsylvania has a zoning ordinance, dividing the municipality into districts with certain uses as of right, and others are prohibited, while still others are allowed as exceptions or conditional uses. If a PA business is located in a district where its use is not permitted as of right, it may be a pre-existing non-conforming use.

CLIENT ALERT

REAL ESTATE



June 29, 2015

Questions and Answers About Nonconforming Uses Under Pennsylvania Zoning Law

David J. Tshudy | tshudyd@pepperlaw.com

**A NONCONFORMING USE MAY CONTINUE, AND A NONCONFORMING STRUCTURE
MAY STAND, DESPITE THEIR CURRENT STATUS OF BEING IN VIOLATION OF A ZONING
ORDINANCE.**

THIS PUBLICATION MAY CONTAIN ATTORNEY ADVERTISING

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What is a nonconforming use?

A nonconforming use is a land use or structure that was legal prior to the adoption of a zoning ordinance that renders the use or structure illegal. Examples include:

- A gas station established prior to a municipality's adoption of any zoning ordinance, but, as a result of the enactment of a zoning ordinance, the gas station property is located in a zoning district (such as a residential district) that does not permit gas stations.
- An office building legally established under the then-applicable zoning ordinance, but, as a result of a comprehensive rezoning and adoption of an amended zoning ordinance, the office building use is no longer permitted at its location.
- A junk yard legally established in a commercial district prior to a text amendment to a zoning ordinance removing junk yards as a permitted use in a commercial district.
- A building erected within 10 feet of its front boundary line before the enactment of a zoning ordinance in the municipality requiring a 50-foot front yard setback.

May I continue a nonconforming use legally?

Yes. A nonconforming use may continue, and a nonconforming structure may stand, despite their current status of being in violation of a zoning ordinance. This is justified by constitutional principles. Zoning regulations are, in effect, takings of private property, and, although governments have broad powers to take private property for a public purpose, individual property owners must be compensated for the property taken. Additionally, to be enforceable without the payment of compensation, a municipality's zoning power must be exercised in a reasonable and proper manner. Accordingly, a zoning restriction that requires a landowner to discontinue a previously legal use of his or her land or remove from the property a nonconforming building or other structure without compensation would be of dubious constitutionality. Based on these principles, a survey of Pennsylvania case law over the last half-century demonstrates that courts have exhibited a sympathetic attitude toward nonconforming uses and structures.

May I expand a nonconforming use on my property?

Generally, yes. Pennsylvania appellate courts have adopted a "doctrine of natural expansion" with respect to a landowner's right to expand a nonconforming use on his or her own property. As stated by the Pennsylvania Supreme Court:

a nonconforming use cannot be limited by a zoning ordinance to the precise magnitude thereof which existed at the date of the ordinance; it may be increased in extent by natural expansion and growth of trade, neither is it essential that its exercise at the time the ordinance was enacted should have utilized the entire tract upon which the business was being conducted.

Peirce Appeal, 119 A.2d 506, 509 (Pa. 1956).

A classic example of the doctrine of natural expansion of a nonconforming use is a manufacturing facility, the establishment of which predates zoning and which is currently located in a district where such a use is not permitted. As the manufacturing industry and related technologies evolve since the establishment of the facility, additional space and buildings must be erected on the property to house new equipment for the owner or lessee of the facility to remain competitive. Under Pennsylvania law, the property owner will be allowed to expand the use on the property to install the necessary equipment to stay economically viable.

Many zoning ordinances permit by right, special exception or conditional use the expansion of a nonconforming use up to a percentage limit (usually 25 percent or 50 percent). Although these ordinance provisions have generally been upheld, courts have at times allowed greater expansion than otherwise permitted under the ordinance by virtue of the doctrine of natural expansion.

Note, however, that any expansion must be in compliance with the current zoning ordinance's dimensional regulations applicable to the property (e.g., setbacks, building coverage, parking, signage), and there is no similar right to expand a nonconforming structure that would exacerbate the structure's dimensional nonconformity.

May I change the use of my property from a nonconforming use to another nonconforming use or add a nonconforming use to the property?

Generally, no. Although Pennsylvania law protects a property owner's right to continue using a property for a use established prior to the use's prohibition by ordinance and to naturally expand that use, no protection is provided to the property owner who desires to use the property for an additional or different nonconforming use. An additional use or change of use that is not otherwise permitted in the property's respective zoning district would require a use variance granted by the zoning hearing board before its establishment.

That said, in determining whether a desired use is a change in use or an additional use, or merely just a continuation of the existing nonconforming use, Pennsylvania appellate courts have ruled that a new activity may be a permitted continuation of a nonconforming use if it is similar to the existing use. The proposed use need not be identical to the existing nonconforming use; rather, similarity is all that is required. For example, a pizza restaurant with seating was found to be similar to an existing use as a sandwich shop that had limited seating and sold primarily take-out food. Likewise, a proposed day camp and swim club were found to be similar to an existing use as an amusement park. However, a use centered on entertainment by dancers was not sufficiently similar to a restaurant to be deemed a continuation of the restaurant's legal nonconforming use.

Further, many municipalities permit by special exception or conditional use a use change on a property from one nonconforming use to another nonconforming use. Such permission is specific to the municipality and subject to the specific criteria for the grant of such special exception or conditional use set forth in the zoning ordinance.

If the building housing my nonconforming use burns down, may I reconstruct and continue the use?

This depends on the applicable zoning ordinance. Although normal repairs and maintenance to buildings and equipment are intrinsic in the continuation of a nonconforming use, many municipalities' zoning ordinances prohibit the restoration of a nonconforming use or building that has been entirely or nearly entirely damaged or destroyed by fire or casualty. For example, if a nonconforming factory located in a residential district is entirely or mostly destroyed by fire, the zoning ordinance may prohibit the reconstruction of the factory building, in effect terminating the nonconforming use. However, ordinance provisions that do not allow for the reconstruction of nonconforming uses where less than a majority of the building has been destroyed have been ruled constitutionally invalid by Pennsylvania courts.

In addition, where the zoning ordinance is silent on the topic of reconstruction of nonconforming uses, courts have generally sided with property owners who desire to continue the nonconforming use so long as such use has not been abandoned.

When is a nonconforming use abandoned by the property owner?

A use entitled to the legal recognition and protection as a nonconforming use does not lose such status unless the use is "abandoned." The concept of abandonment is best illustrated through the facts of the seminal Pennsylvania Supreme Court case on the topic,

Latrobe Speedway, Inc. v. Zoning Hearing Board of Unity Township, 686 A.2d 888 (Pa. 1996).

From 1977 to 1982, the subject property was used as an automobile race track. In 1982, the race track operations ended, but the structures were not dismantled; however, they did fall into disrepair, and the property was overgrown with weeds. In 1991, the zoning map was amended to place the property in an agricultural district, which did not permit the race track operations. In 1994, the property was leased for use as a race track, but the use was challenged by the township. Following proceedings before the township's zoning hearing board, the Court of Common Pleas and the Pennsylvania Commonwealth Court, the Pennsylvania Supreme Court ultimately ruled that the race track use could continue as a nonconforming use, despite its dormant state at the time of the ordinance adoption. Instead, the nonconforming use continues until abandonment, which requires proof of (1) an intent to abandon and (2) actual abandonment. The property owner in Latrobe did not intend to abandon the use because he allowed for and paid taxes based on the property being assessed as a race track and continuously negotiated for the sale or lease of the property as a race track.

Many municipalities have adopted zoning ordinances with provisions that deem a discontinued use to be abandoned after a set period of time (typically one year). Courts have ruled, however, that those ordinance sections do not independently determine abandonment. Instead, they are to be interpreted as creating a presumption that the use has been abandoned, which may be rebutted by a property owner with evidence that he or she did not intend to abandon the use.

How can I be sure that a use is a nonconforming use permitted to continue?

Potential buyers and lenders, during their due diligence, often desire comfort that the current use of a property is recognized by the municipality as a nonconforming use permitted to continue. To facilitate such requests, many, but not all, municipalities keep registries of legal nonconforming uses. A property owner — upon recognizing that his or her use is not permitted under the current zoning ordinance, but is allowed to continue as a nonconforming use — may register such a use. The registration, once confirmed by the zoning officer, is then used as evidence of the use's legal nonconforming status.

Although many such ordinances require property owners to register their nonconformities, Pennsylvania courts have recently ruled that the failure of a property owner to register a nonconforming use does not affect the nonconforming use's protection to continue.

BOARD OF SUPERVISORS
EAST GOSHEN TOWNSHIP

CHESTER COUNTY
1580 PAOLI PIKE, WEST CHESTER, PA 19380-6199

FYI

April 20, 2017

Mr. Matthew Gordon
Sunoco Pipeline, L.P.
535 Fritztown Road
Sinking Spring, PA 19608

Re: Erosion and Sediment Control (E&S) Permit
Pennsylvania Pipeline Project

Dear Mr. Gordon:

East Goshen has reviewed your Erosion and Sediment Control plan for the Pennsylvania Pipeline Project and determined that it is in compliance with the requirements of the East Goshen Township Act 167 Ordinance, §195 of the East Goshen Township Code.

Accordingly, the Erosion and Sedimentation Control permit for the earth disturbance proposed for the pipeline project areas within East Goshen Township has been issued with the following conditions:

1. The permit fee of \$100 shall be submitted and payable to East Goshen Township.
2. A pre-construction meeting shall be scheduled at the first project area prior to any type of clearing or construction activity.
3. Once the E&S controls have been installed and inspected the earth disturbance activities (i.e. drilling operation or excavation) can begin.
4. We will repeat this process for each new work area as the project progresses.

The Township Engineer's review letter dated April 20, 2017 is enclosed for your use.

Please contact me with any questions and to schedule the pre-construction meeting

Sincerely,



Mark A. Gordon
Township Zoning Officer

Enclosure

CC: Nathan Cline, Township Engineer (via email only)
Ivana Wolf, Sunoco Logistics (via email only)
Rick Smith, Township Manager



One South Church Street
Second Floor
West Chester, PA 19382
T: 610-429-8907
F: 610-429-8918

www.pennoni.com

April 20, 2017

EGOS 0730

Mark Gordon, Zoning Officer
East Goshen Township
1580 Paoli Pike
West Chester, PA 19380

RE: Sunoco Pennsylvania Pipeline Project – 2nd Submission

Dear Mark:

As requested, we have reviewed the following information, prepared by Tetra Tech, in connection with the referenced project:

- “*Pennsylvania Pipeline Construction Spread 6, Chester County Conservation District, E&S Control & Site Restoration Plan*”, dated March 18, 2016, last revised February 6, 2017, Sheets ES-0.01 to 0.11 and ES-6.56 to ES-6.69 and supplemental information including March 9, 2017 and April 17, 2017 response letters.

The plans propose six (6) separate boring pit/staging area locations associated with the pipeline installation within the Township; no wetland or stream crossings are proposed. Per correspondence from Tetra Tech dated July 22, 2016, they are seeking confirmation from the Township that the noted plan submission conforms to the *Chester Creek Act 167 Plan* and the subsequent County-wide update, which has been adopted as the Township’s Stormwater Management Ordinance (§195). The Chester County Conservation District requires this confirmation as part of their permit review process.

We offer the following comments (new comments in ***bold/italics***):

STORMWATER MANAGEMENT (§195)

1. An East Goshen Township Stormwater Management (SWM) Permit is required, as this project meets the definition of “*regulated activity*”. (§195-15.A)
RESOLVED.
2. Persons proposing to construct regulated activities with one (1) acre or more of proposed earth disturbance that do not discharge directly to waters of the Commonwealth shall provide the Township with a copy of the easements authorizing such discharge or confirmation from PaDEP that an easement is not required. (§195.15.G) Based on the plans provided, it is unclear if this situation occurs; additional plan information is necessary, addressed further below.
RESOLVED. The applicant has indicated there are no areas of concentrated flow in the Township.
3. In the referenced correspondence, it is indicated that “*the project limits of disturbance will be restored to meadow...*”. However, some of the areas proposed to be disturbed (and returned to meadow) are currently heavily vegetated or wooded. Furthermore, it is unclear how each area is intended to be restored; no meadow plantings or seed mixes are proposed, and it is more likely a ‘lawn’ condition would be established. Therefore, different runoff coefficients may be applicable, possibly causing the

total post-construction runoff volume to exceed that of predevelopment. Further analysis may be warranted to confirm that the requirements of §195-19 through §195-24 are being met.

RESOLVED. The applicant has indicated all areas within the LOD will be restored to pre-construction conditions. Clarification regarding the scope of work and site visits confirm no wooded areas are affected.

4. Any facility located within a PennDOT right-of-way shall comply with PennDOT minimum design standards and permit submission and approval requirements. Copies of approved Highway Occupancy Permits and associated detour plans, where applicable, shall be provide with the SWM Permit submission. (§195-24.F)

RESOLVED. The applicant has provided all approved PennDOT permits.

5. Regarding the SWM site plan contents, the following shall be provided:
 - a. A listing of all regulatory approvals required and the status for each. Proof of application or documentation of approval for each shall be part of the SWM site plan. (§195-27.A.(2))
RESOLVED. The applicant has provided a list of all regulatory approvals and clearances.
 - b. The statement and signature block signed and/or sealed by the applicant and/or engineer per §195-27.A.(3) & (4).
RESOLVED.
 - c. Plans shall be provided in 24-inch by 36-inch format. (§195-27.B)
RESOLVED.
 - d. Tax parcel numbers, names, address and phone numbers of the owners of the subject properties. (§195-27.B)
RESOLVED. A "Land Owner Table" has been provided
 - e. Additional detail regarding the legal property boundaries, per §195-27.B.(7).
RESOLVED. A "Land Owner Table" has been provided.
 - f. A list of potential PNDI impacts and clearances, if the total earth disturbance exceeds one acre. (§195-27.B.(8)(g)).
RESOLVED. The applicant has provided the PNDI clearance letters.
 - g. Any steep slope areas. (§195-27.B.(8)(j))
RESOLVED. The applicant has indicated there are no steep slope areas.
 - h. Soil names and boundaries, hydrologic soil groups. (§195-27.B.(8)(k))
RESOLVED.
 - i. Any contaminated subsurface areas. Note the Sunoco gas station at the northwest corner of the intersection of North Chester Road and Paoli Pike is currently subject to a PaDEP Remedial Action Plan (DEP Facility ID No. 15-20353). (§195-27.B.(8)(m))
RESOLVED. The Sunoco gas station is now indicated on the plans. The applicant notes the pipeline will be installed via HDD approximately 45-50 feet below ground surface.
 - j. Location of existing wells and recharge areas on the project properties. (§195-27.B.(8)(n))
RESOLVED. A "Water Supply Assessment, Preparedness, Prevention and Contingency Plan" was provided. However, they note "The locations of these wells are kept within the Project files and are not displayed here to protect the rights of the individual owners. Although the PAGWIS data is made available to the public, the accuracy as stated within the metadata is not reliable and what SPLP has or will obtain represents exact well locations." (Section 4.1) Per discussions with Tetra Tech representatives, it is our understanding all well testing is being coordinated with individual property owners and DEP in accordance with this Plan.
 - k. Description of existing and proposed ground cover and land use, including the type and total area. (§195-27-B.(10)).
RESOLVED.

- l. The location of all existing utilities within the site and with 50 feet of the proposed limits of disturbance. (§195-27.B.(15))
RESOLVED. Note continued utility coordination with PA One Call will run concurrently with the project.
 - m. The total disturbed area in square feet and acres. (§195-27.B(16)) We recommend it be provided for each separate area.
RESOLVED. The total disturbed area is 551,969.13 square feet.
 - n. A written description of the information required within §195-27.C shall be included in SWM site plan, notably: existing conditions (C).(1); the effect of the project on various features (C).(5); proposed nonpoint source pollution controls (C).(6); project time schedule (C).(7); and construction stages/phases, if applicable (C).(8).
RESOLVED. The applicant has indicated the information is provided within the narrative of the E&S and PCSM reports.
6. As there are no permanent BMPs currently proposed, nor any changes to existing elevations, it does not appear plan recording, an O&M plan/agreement, nor as-built plans would be warranted.
RESOLVED.
7. The Township should confirm anticipated fees and expenses will be covered by the applicant. (§195-35)
RESOLVED. The applicant has agreed to cover anticipated fees and expenses.
8. It is unclear if the Township will have right of entry to the multiple properties involved with the project. (§195-46)
RESOLVED. The applicant has indicated the Township will have the right of entry.

E&S PLANS

9. General:
 - a. Are the proposed limits of disturbance sufficient for all construction activities, including material storage, deliveries, equipment and parking?
RESOLVED. The applicant has indicated the area is sufficient for construction.
 - b. It is unclear why Note 18, Sheet ES-0.01 indicates Uwchland Township only.
RESOLVED. The note has been removed from the plans.
 - c. Please confirm the proposed infiltration berm referenced on Sheet ES-0.02 (amongst other sheets) is not located within East Goshen Township; it was not apparent on the design plans.
RESOLVED. The applicant has confirmed the infiltration berm is not located within the Township.
 - d. Please clarify what specific seed mix is intended for the disturbed areas within East Goshen Township, as 'lawn' areas are not indicated on the provided tables (Sheet ES-0.07).
RESOLVED. The seed mixture to be used is indicated on Sheet ES-0.04.
 - e. What is the method for replacing existing vegetation? For example, along Boot Road in front of the shopping center where the pipeline is to be excavated. Decorative screening including mature trees and shrubs extend throughout this entire area. Other areas present similar concerns.
RESOLVED. The applicant has indicated the existing vegetation will be removed. It will be the responsibility of the property owner to plant decorative shrubs once construction is complete if they'd like. Note, mature trees cannot be planted within the pipeline ROW.
 - f. Do the plans provided to the Township reflect the changes documented in the March 2016 "Workspace Changes" plan set?

RESOLVED. The applicant has indicated the plans reflect these changes.

- g. Various boring locations include monument signs for business or neighborhoods; these potential conflicts do not appear on the plans.

RESOLVED. The applicant has indicated the signs are to be bored under and will not be affected.

- h. Inlet protection is not provided.

RESOLVED. The applicant has indicated it will be implemented where needed.

10. Regarding Sheets ES-6.56/ES-6.57:

Note: Though located within West Goshen Township, the staging area in this location drains to East Goshen Township.

- a. The proposed access location for this staging area is a very challenging location of a four lane cross section of North Chester Road between the SR 202 on-ramp and Greenhill Road intersection.

RESOLVED.

- b. It is unclear what is proposed by the "Riparian Forest Buffer"; no detail is provided.

RESOLVED.

- c. No E&S controls are proposed on the south side of the tributary to Ridley Creek, a High Quality (HQ) stream that drains to East Goshen Township. However, E&S controls are proposed on the north side of the same tributary; it's unclear why the limit of disturbance extends to the opposite side of the stream.

RESOLVED. Additional E&S controls have been added south of the stream. Note the LOD no longer crosses the stream.

- d. It is unclear what material is proposed for the "Proposed Parking Area"; the limits of this area are unclear. Stormwater management controls may be required.

RESOLVED. The applicant has indicated the proposed parking area is temporary and no surface coverage change is planned. Timber mats will be used if necessary.

11. Regarding Sheets ES-6.58/ES-6.59:

- a. The limit of disturbance extends much further north than the boring pit area; it's unclear why the LOD is so large and if no excavation proposed, why the E&S controls are proposed in these areas. Further, the LOD appears to include driveways and parking of the adjacent sites; it's unclear why the LOD extends into these areas. Further information should be provided if access between these adjacent sites it be impeded or limited and if parking spaces, drive aisles and/or driveways are to be unavailable for users and emergency services.

RESOLVED. The applicant has indicated the area will be used for a HDD work space pullback and vehicle parking. A portion of the road will be vehicle and equipment accessing the workspace however will not block the parking lot. The other area of the road is designated as temporary workspace and will be fenced off and used for the HDD and open cut construction activities.

- b. The plans do not indicate an existing concrete median in the shopping center driveway, limiting ingress/egress. We recommend the proposed construction entrance location be reviewed due to the presence of the median and its location immediately adjacent to an existing traffic signal.

RESOLVED. The construction entrance has been relocated and the median indicated on the plans.

- c. The compost filter sock and aggregate stockpile leaders are incorrect.

RESOLVED. The leaders have been corrected.

12. Regarding Sheet ES-6.60:

- a. Silt fence and the LOD are shown within the cartway.

RESOLVED.

13. Regarding ES-6.61/ES-6.62:

- a. The plans do not indicate an existing concrete median within Enterprise Drive, limiting vehicle ingress/egress. This staging area proposes four (4) construction entrances. We recommend the proposed entrances be reviewed and consolidated to the most appropriate location(s).
RESOLVED. The median is now indicated on the plans. The applicant has indicated this location will primarily be used as an exit point with right in/right out traffic flow.
- b. The purpose of the proposed LOD area extending south towards Paoli Pike is unclear. Currently it's a stormwater management basin and does not appear to be an appropriate location for material storage, parking or similar activities.
RESOLVED. The applicant has indicated this area will be used for temporarily string out for pullback of the HDD. The area will be covered in timber or composite mats to protect the basin.
- c. It appears the compost sock filter leader should state silt fence.
RESOLVED. The leader has been corrected.
- d. A portion of the LOD appears to extend into the cartway of North Chester Road.
RESOLVED. The LOD has been removed from the cartway.

14. Regarding Sheet ES-6.64:

- a. Multiple buildings are not indicated on the east side of North Chester Road.
RESOLVED.
- b. We recommend the proposed construction access at the intersection of East Boot Road and North Chester Road be reviewed due to its close proximity to an existing signal.
RESOLVED. The applicant has indicated a traffic study was conducted and prepared a traffic control plan which was submitted to PennDOT.
- c. The plans do not indicate an existing concrete median within Eldridge Drive, limiting vehicle ingress/egress. We recommend the proposed construction entrance location be reviewed.
RESOLVED. The concrete median has been indicated on the plans.
- d. The limit of disturbance extends much further north than the boring pit area; it's unclear why the LOD is so large and if no excavation proposed, why the E&S controls are proposed in these areas.
RESOLVED. The applicant has indicated the areas are HDD pullback and staging areas required for construction.

15. Regarding Sheet ES-6.66:

- a. An existing residence at the northeast corner of the intersection of North Chester Road and Bow Tree Drive is not indicated.
RESOLVED.
- b. The plans do not indicate an existing concrete median within Bow Tree Drive, limiting vehicle ingress/egress. We recommend the proposed construction entrance location be reviewed.
RESOLVED. The median is now indicated on the plans. The applicant has indicated this location will primarily be used as an exit point with right in/right out traffic flow.

16. Regarding Sheet ES-6.69:

- a. Please be advised that the proposed staging areas is a low-lying area that frequently ponds with water and may not be appropriate for the proposed activities.
RESOLVED. The applicant has indicated the contractor has been informed of this information.

MISCELLANEOUS

- 17. We recommend sight distances for all proposed accesses meet minimum PennDOT requirements.
RESOLVED. The applicant has obtained required permits from PennDOT.

18. It is unclear if the construction access locations have been designed to accommodate all anticipated vehicles utilizing the same.

RESOLVED. The applicant has indicated all construction entrances have been designed to accommodate anticipated vehicles and obtained all required permits from PennDOT.

19. All contractors and subcontractors will be required to register with the Township. (\$124)

RESOLVED. The applicant has indicated all contractors and subcontractors will register with the Township.

20. Much of the construction will take place in or near residential areas; it is unclear if the project will comply with the sound level limits of §156.

RESOLVED. The applicant has indicated it will comply with the Township's ordinances and work with the Township in the event any special circumstances result in higher sound level limits.

21. It may be appropriate to have the Township's designated emergency services personnel review the plans.

RESOLVED. The applicant has indicated they have met with the Township's emergency service personnel and the Township officials to discuss the project.

Should you have any further questions or comments, please contact me.

Sincerely,

PENNONI



Nathan M. Cline, PE
Township Engineer

cc: Rick Smith, Township Manager (via e-mail)
Mark Miller, Public Works Director (via e-mail)
Bill Smith, PE, Tetra Tech (via e-mail)
Matt Gordon, Sunoco Logistics (via e-mail)