

BEFORE THE ZONING HEARING BOARD

TOWNSHIP OF EAST LAMPETER

IN RE: :
: No. 2014-14
APPLICATION OF HIGH PROPERTIES :

DECISION

I. FINDINGS OF FACT

1. Applicant is High Properties, 1853 William Penn Way, Lancaster, Pennsylvania 17605 ("Applicant").
2. The property which is the subject of the instant application is located to the southeast of the intersection of Willow Road and Greenfield Road, East Lampeter Township, Lancaster County, Pennsylvania (the "Property").
3. Applicant is the owner of the Property.
4. The Property is located in the BP Business Park District and partially in the Flood Plain District, as shown on the Official Zoning Map of East Lampeter Township.
5. Notice of the hearing on the within application was duly advertised and posted in accordance with the provisions of the Pennsylvania Municipalities Planning Code ("MPC") and The Revised Zoning Ordinance of East Lampeter Township - 1990 (the "Zoning Ordinance").
6. A public hearing was held before the Zoning Hearing Board of East Lampeter Township ("Board") on this application on May 23, 2014.
7. Testimony at the hearing was stenographically recorded.

8. Applicant was represented at the hearing by Mark Stanley, Esquire.
9. Thomas Smithgall, of High Properties, and David Miller and Gerald McClune, of Rettew Associates, Inc., appeared at the hearing and testified on behalf of Applicant.
10. The following person completed an entry of appearance form as was recognized as a party to the hearing:

Dennis L. Cole
488 Willow Road
Lancaster, PA 17601

11. Applicant has requested: (i) a special exception pursuant to Section 1507.1.D.1 of the Zoning Ordinance; and (ii) a special exception pursuant to Section 1507.1.G of the Zoning Ordinance.

12. Section 1507.1.D.1 of the Zoning Ordinance states that public utility facilities (not under the exclusive jurisdiction of the Pennsylvania Public Utility Commission) may be located within the flood plain by special exception.

13. Section 1507.1.G of the Zoning Ordinance states that culverts, bridges and approaches to public and private bridges may be located within the flood plain by special exception.

14. The Property contains approximately 62.5 acres and is currently undeveloped land used for agricultural purposes.

15. Applicant desires to prepare for future development of the Property and desires at this time to construct an access drive from Greenfield Road to Willow Road, as more fully shown on the plans and materials (collectively the "Plans") submitted by Applicant at the hearing.

16. The access drive will align with Forry Road.
17. The access drive will have a 34 foot wide cartway and there will be curbing and sidewalks on each side of the access drive.
18. Construction of the access drive will require a bridge over an unnamed tributary to Stauffer Run, along with utility crossings and a stormwater detention basin, all as more fully described in and shown on the Plans.
19. All utilities will be located underground.
20. Utilities will be sealed and designed to minimize or eliminate infiltration of floodwaters into the facilities and discharges from the facilities into the floodwaters.
21. The proposed gas line will have shut-off valves on each side of the bridge.
22. Applicant will install a riparian buffer, as more fully shown on the Plans, to provide environmental benefits such as sediment and pollutant removal.
23. A floodplain study was performed to determine the effects of the project on the 100-year floodplain. The floodplain study demonstrates there will be no impacts on the properties upstream or downstream of the project site.
24. Applicant has discussed the project with East Lampeter Township, the Lancaster County Conservation District, the Pennsylvania Department of Environmental Protection, the Pennsylvania Fish and Boat Commission and the Pennsylvania Historical and Museum Commission and is coordinating all necessary approvals.
25. The proposed improvements meet the "Standards and Criteria for Special Exceptions" as outlined in Section 1507.2 of the Zoning Ordinance.
26. The proposed improvements will have essentially no effect on the flood waters.

27. The proposed improvements will not create any adverse affects or increase the possibility of disease, contamination and unsanitary conditions.

28. The proposed improvements are necessary for development of the Property.

29. The proposed improvements are consistent with the East Lampeter Township Comprehensive Plan. In addition, the proposed improvements within the flood plain are subject to review and permitting by the Pennsylvania Department of Environmental Protection.

30. The proposed improvements within the flood plain boundary have been designed and located in a manner as to minimize disturbance to the surrounding areas.

31. There are no significant archeological or historical sites or endangered or threatened species in the project area.

II. CONCLUSIONS OF LAW

1. An applicant for a special exception bears the burden of presenting evidence that the proposed use is one allowed by special exception and that the proposed use complies with all of the objective requirements contained in the zoning ordinance. Abbey v. Zoning Hearing Board of East Stroudsburg Borough, 126 Pa. Commonwealth Ct. 235, 559 A.2d 107 (1989); Bray v. Zoning Board of Adjustment of the City of Philadelphia, 48 Pa. Commonwealth Ct. 523, 410 A.2d 909 (1980).

2. Applicant requires: (i) a special exception under Section 1507.1.D.1 of the Zoning Ordinance in order to place the utilities within the flood plain; and (ii) a special exception under Section 1507.1.G of the Zoning Ordinance in order to place the proposed bridge and appurtenances within the flood plain.

3. Applicant has presented evidence to demonstrate that it has met the conditions for the issuance of special exceptions under Section 1507.1.D.1 and Section 1507.1.G of the Zoning Ordinance.

4. Conditions must be attached to the grant of the special exceptions to protect and preserve the surrounding neighborhood.

III. DECISION

Based upon the foregoing findings of fact and conclusions of law, the Zoning Hearing Board of the Township of East Lampeter hereby grants the application of High Properties for: (i) a special exception under Section 1507.1.D.1 of the Zoning Ordinance in order to place the proposed utilities within the flood plain; and (ii) a special exception under Section 1507.1.G of the Zoning Ordinance in order to place the proposed bridge and appurtenances within the flood plain. The special exceptions granted herein shall be subject to the following conditions and safeguards which the Board deems necessary to implement the purposes of the Zoning Ordinance and the MPC:

1. Applicant shall obtain all approvals and permits required by applicable federal, state and Township laws and regulations.

2. Applicant shall at all times comply with and adhere to the information and representations submitted with and contained in its application and the evidence presented to the Board.

3. The proposed access drive encroaches into a stormwater easement of an existing detention basin for Eastwood Village. The existing basin must be revised to reflect the alignment of the proposed access drive.

4. The entire proposed riparian buffer shall be located within an easement that shall be recorded along with a maintenance agreement that shall also be recorded.

5. Any further subdivision of land development plans that require additional work within the floodplain boundary may require another special exception submittal.

6. The approval granted by this Decision shall expire if Applicants do not obtain a zoning permit within two (2) years from the date of this Decision and do not complete construction of the improvements so authorized within three (3) years from the date of this Decision.

7. Any violation of the conditions contained in this Decision shall be considered a violation of the Zoning Ordinance and shall be subject to the penalties and remedies contained in the Pennsylvania Municipalities Planning Code.

8. The foregoing Decision shall be binding upon the Applicants and its successors and assigns.

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



David Petrisek, Chairman



Walter Siderio, Secretary

J. Scott Enterline, Alternate

Dated and filed June 12, 2014, after hearing held on May 22, 2014.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to June 13, 2014.

Dana A. Hitchens