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SOLICITOR FOR EAST
FALLOWFIELD TOWNSHIP
ZONING HEARING BOARD

IN RE: APPLICATION OF JOHN PIA, c/o LOUIS PIA	:	**BEFORE THE ZONING HEARING**
	:	**EAST FALLOWFIELD TOWNSHIP**
	:	**CHESTER COUNTY, PENNSYLVANIA**

DECISION AND ORDER

This is the application of John Pia, c/o Louis Pia (hereinafter referred to as the "Applicant"). The Applicant, is seeking variances from Sections 1402.3.B.1, 1402.3.B.1.a, 1403.2.B, 1403.2.C and 603.1.A of the East Fallowfield Township Zoning Ordinance in order to construct a single-family dwelling at 100 Perry Court, East Fallowfield, Pennsylvania (hereinafter referred to as the "Property").

The application was received on or about November 25, 2008. Pursuant to the application, a public hearing was scheduled. The first hearing was held on Thursday, January 15, 2009, at 7:00 p.m., at the East Fallowfield Township Municipal Building, 2264 Strasburg Road, East Fallowfield, Pennsylvania 19320-4426. That hearing was continued on the record until Thursday, April 23, 2009. At the request of the Applicant, the hearing scheduled for April 23, 2009 was continued on the record until Thursday, June 18, 2009. Again, the Applicant requested a continuance of that hearing and the hearing was continued on the record until Wednesday, July 22, 2009.

Public notice of the initial hearing was given by publication in the Daily Local News on January 1, 2009 and January 8, 2009. The Property was posted in accordance with the Zoning Ordinance and the adjoining property owners were notified via First Class Mail.

As a result of that notification, the following is a list of adjacent property owners who requested party status:

Edward J. Chance
Post Office Box 337
Unionville, PA 19375

Mary Ellen Josephson
104 Perry Court
East Fallowfield, PA 19320

The application was heard by Zoning Hearing Board members; Peter Davis, Chris Rechenberg and Dennis O'Neill. The Applicant was not represented by counsel, but Applicant's project engineer, Jeffrey A. Hayes, of Berger & Hayes Lake Roeder Hillard & Associates, 205 Barley Sheaf Road, Post Office Box 72505, Thorndale, Pennsylvania 19372, appeared and testified on behalf of Applicant.

Based upon the testimony and exhibits presented, the Zoning Hearing Board makes the following Findings of Fact:

FINDINGS OF FACT

1. The Applicant is the equitable owner of property located at 100 Perry Court, East Fallowfield, Pennsylvania.

2. The Property is constrained by steep slopes which can be categorized both as moderate and severe.

3. As such, the Property suffers from a hardship which is unique to this Property.

4. This Property cannot be developed in conformity with the zoning ordinance specifically with regard to disturbances in the areas of steep slopes and the placement of driveways and on-site sewage and water systems in steep slopes.

5. This hardship was not created by the Applicant.

6. The variance requested is now the minimum variance necessary to afford relief. As such the variance should be granted subject to numerous conditions.

DISCUSSION

The criteria for the grant of a variance are specified in Section 910.2 of the Pennsylvania Municipalities Planning Code, 53, P.S. §10910.2 (hereinafter referred to as "MPC"). The MPC requires that there be a unique physical circumstance or condition peculiar to the Property which creates an unusual hardship and that because of that condition, the Property could not be developed in conformity with the Ordinance or other requirements. The hardship must not have been created by the Applicant and the variance must not alter the essential character of the neighborhood nor be detrimental to the public welfare. Finally, the variance must represent the minimum variance necessary to afford relief. Each and every one of the foregoing criteria must be satisfied before the Board is empowered to grant a variance. The burden of proof and the burden of persuasion is upon the Applicant seeking that variance. See, *Appeal of Lester M. Prang*, _____ Pa. Cmwlth. _____ 637 A.2d 279 (1994).

As noted in the Findings of Fact, this Property is constrained by steep slopes. The Property slopes dramatically down from the road through this Property and eventually to a pond which served as the bottom of a natural drainage area in this section of the Township. The Applicant did not create this lot and is simply purchasing it "as is". The

Applicant did not create any grading nor did the Applicant's predecessor in title do anything to this lot which could be deemed to have been a self-created hardship.

This application went through numerous iterations. The Applicant would continually return to the East Fallowfield Township Planning Commission to review and consult with them on the appropriate methods to develop this lot as a single family home with the least impact on the topography and slopes. The plan that was eventually presented to the Zoning Hearing Board had been run through the Planning Commission and met with their approval. The final plan presented to the Zoning Hearing Board was significantly different than the original plan and represented a major improvement in the proposed development of this constrained lot. It should be noted that the Zoning Hearing Board, as part of its conditions, seeks to limit the Applicant to the construction of the plan as presented to the Board. The Zoning Hearing Board believes that in this particular case the minimum amount of disturbance to a wide range of steep slopes is required as part of a maintenance of the health, safety and welfare of the downhill and downstream properties.

As a result, the Board believes there are sufficient facts and evidence to conclude the Applicant has met their burden of proof that this property is uniquely burdened by slopes and therefore the Board makes the following:

CONCLUSIONS OF LAW

1. The Applicant, as equitable owner of the Property, has standing to bring the application and seek the requested relief.

2. The Applicant has carried its burden of proving the entitlement to the needed variances.

3. The grant of the requested variances from Sections 1402.3.B.1, 1402.3.B.1.a, 1403.2.B, 1403.2.C and 603.1.A of the East Fallowfield Zoning Ordinance are subject to the following conditions:

a. That the disturbance for the grading associated with the proposed driveway and sewer and water utilities in the area of Very Steep Slopes requires conditional use approval up to 15% of the proposed grading. All other grading for the dwelling and over 15% steep slopes have been approved by these variances;

b. Applicant is required to use permanent retaining walls designed, signed and sealed by a registered professional engineer in the Commonwealth of Pennsylvania. In addition, the construction shall be inspected and certified to the Township by a registered professional engineer;

c. A building permit may only be issued based upon the location of the dwelling as precisely defined on the plan so that the Township Engineer can ensure that the proposed construction complies with what is approved by the Zoning Hearing Board, including the depicted footprint;

d. Any approvals are conditioned upon no further accessory structures being built in the steep slopes or riparian buffers. This requirement shall be recorded against the property in a document approved by the Township so that future purchasers are aware of the limitation. This limitation shall apply, but not be limited to, any accessory structure such as a pool, a deck or detached garage;

e. The two lots must be combined and evidence of such shall be filed with the Chester County Recorder of Deeds, including a new deed which is also restricted from further subdivision; and

f. Obtain a permit from the Chester County Health Department for an on-lot sewer system and improvements as shown on the plan marked as Exhibit "B-14" with an approved replacement area delineated thereon.

4. The Zoning Hearing Board's grant of the requested variances will not be contrary to the public health, safety or general welfare and will not adversely effect the character of this neighborhood.

ORDER

AND NOW this 22nd day of July, 2009, upon consideration of the application, testimony and exhibits presented in support thereof, the application is GRANTED subject to the terms and conditions set forth in this Opinion. The conditions imposed herein require compliance with all other Township Ordinances, statutes and/or regulations of any regulatory authority having jurisdiction. Upon the Applicant's payment of all proper fees and the compliance with all conditions, if any, the Zoning Officer is authorized and directed to issue the necessary permits, if any, to allow for the subdivision and filing of the subdivision plan if recommended by the East Fallowfield Township Planning Commission and if approved by the East Fallowfield Township Board of Supervisors.

EAST FALLOWFIELD TOWNSHIP
ZONING HEARING BOARD

Peter Davis

Peter Davis, Member

Chris Rechenberg

Chris Rechenberg, Member

Dennis O'Neill, Member