



EAST BRADFORD TOWNSHIP

CHESTER COUNTY, PENNSYLVANIA

ENFORCEMENT NOTICE NOTICE OF VIOLATION AND CEASE AND DESIST ORDER

Date: August 15, 2019

Certified Mail #7015-0640-0003-7712-5187

**John F. and Kelly A. Finnerty
919 Lenape Road
West Chester, Pennsylvania 19382**

**Re: Non-permitted Construction Activities, 919 Lenape Road, TMP# 51-7-112.7, East Bradford Township,
Chester County, Pennsylvania**

Dear Mr. and Mrs. Finnerty:

The above referenced property was inspected on Thursday, June 27, 2019, by representatives of East Bradford Township (Township Engineer and Code Enforcement Officer) to determine compliance with the provisions of the Soil Erosion and Sediment Control Ordinance, Chapter 90, Stormwater Management Ordinance, Chapter 94 and Zoning Ordinance, Chapter 115, East Bradford Township Code. You are notified that the following violations were found:

1. Filling, stripping, or changing the grade of any land (as defined by the Code of the Township of East Bradford) without first securing the applicable grading permit as required by East Bradford Code § 90-4.B.
2. Disturbing, modifying, blocking, diverting, or affecting the natural overland or subsurface flow of stormwater without first securing the applicable grading permit as required by East Bradford Code § 90-4.C.
3. Constructing, erecting or installing any dam, ditch, culvert, drainpipe, bridge or other structure or obstruction affecting the drainage of any premises without first securing the applicable grading permit as required by East Bradford Code § 90-4.D.
4. Failure to apply for and obtain a stormwater management permit and comply with the requirements of Chapter 94 of the East Bradford Code as required by East Bradford Code § 94-301.A.
5. Commencing a regulated activity prior to obtaining a stormwater management permit and approval of a stormwater management site plan as required by East Bradford Code § 94-301.C(1).
6. Commencing a regulated activity prior to obtaining a letter of adequacy or approval for the erosion and sediment control plan review by the Township and the Conservation District and receiving all other local, state, federal permit approvals required for the project involving the regulated activity as required by East Bradford Code § 94-301.C(2), §94-303.A(1)(a) and 94-303.B.

7. Failure to design the site to minimize disturbances to land, site hydrology and natural resources and to maintain the natural hydrologic regime, drainage patterns and flow conditions and failure to apply the procedures set forth in §94-304 for the overall site design and for selection, location and design of features and BMP's to be used to comply with the requirements of Chapter 94 of the East Bradford Code as required by East Bradford Code § 94-301.E.
8. Failure to incorporate sound engineering principles and practices in the design of the conveyance (bridge waterway opening) in a manner that does not aggravate existing stormwater problems as identified by the Township as required by East Bradford Code §94-301.L, which reserves the right of the Township to disapprove any design that would result in construction in an area affected by existing stormwater problems or continuation of an existing stormwater problems.
9. Failure to demonstrate compliance with East Bradford Code §115-42 of the Zoning Ordinance for a regulated activity located within a special flood hazard area designated by the Federal Emergency Management Agency (FEMA) and failure to design the regulated activity to maintain the flood-carrying capacity of the floodway such that the base flood elevations are not increased, either upstream or downstream as required by East Bradford Code § 94-301.S.
10. Disturbing existing ground cover during construction of the regulated activity within 50 feet of top-of-bank of all perennial and intermittent waterways, water bodies and wetlands by an unapproved activity by both the state and local agency as prohibited by East Bradford Code §94-301.T.
11. Failure to demonstrate compliance with §115-45.3 of the Zoning Chapter, as required by East Bradford Code §94-301.U.
12. Failure to acquire a permit from the Pennsylvania Department of Environmental Protection (PADEP) and other regulatory agencies for the regulated activity as required by East Bradford Code §94-302.A, §94-302.B, §94-302.C, §94-302.E, 94-303.A(1)(a) and 94-303.A(1)(c).
13. Creating a public nuisance as described in East Bradford §94-901.A for conducting a regulated activity in violation of Chapter 94 of the East Bradford Code.
14. Undertaking or causing to be undertaken, construction or development anywhere in the Township of East Bradford without obtaining a permit from the Floodplain Administrator as required by East Bradford Code §115-42.B(2).
15. Failure to acquire a permit for undertaking construction or development in any area of East Bradford Township as required by East Bradford Code §115-42.C(2).
16. Failure to allow the Floodplain Administrator to perform his/her legal duties as required by East Bradford Code §115-42.C(3)(a through k).
17. Failure to file for a permit application to construct in the floodplain area as required by East Bradford Code §115-42.C(4)(a through d including all subsections).
18. Failure to provide applications and plans for any proposed construction or development in any identified floodplain area for submittal by the Floodplain Administrator to the Chester County Conservation District for review and comment prior to issuance of a permit as required by East Bradford Code §115-42.C(5).
19. Failure to provide applications and plans for any proposed construction or development in any identified floodplain area for submittal by the Floodplain Administrator to the appointed boards and commissions of East Bradford Township for review and comment prior to issuance of a permit as required by East Bradford Code §115-42.C(6).
20. Undertaking or causing to be undertaken, proposed construction or development prior to issuance of a development permit as required by East Bradford Code §115-42.C(9)(a).

21. Failure to design, locate and construct the proposed project so as to offer the minimum obstruction to the flow and water and design to have a minimum effect upon the flow and height of floodwater as required by East Bradford Code §115-42.E(3)(g).
22. Failure to firmly anchor the structure in accordance with accepted engineering practices to prevent flotation, collapse or lateral movement as required by East Bradford Code §115-42.E(3)(h)[1].
23. Disturbing or removing vegetation occupying environmentally sensitive areas including (but not limited to) vegetation performing important soil stabilizing functions on floodplains, stream and pond banks, riparian buffer areas and sloping lands without acquiring the applicable permit as required by East Bradford Code §115-45.B(7).
24. Failure to acquire a Conditional Use approval for a road crossing of a stream within 15 degrees of perpendicular to the water body within Area 1 of the Riparian Buffer Area as required by East Bradford Code §115-45.3.D(1)(b)[1].
25. Failure to demonstrate to the Board of Supervisors that the Riparian Buffer Area was proposed for land disturbance because no other alternative location within the site is feasible for practical for the proposed conditional use and the proposed conditional use is essential for the proposed development or use of the site as required by East Bradford Code §115-45.3.E(2)(a).
26. Failure to submit a Riparian Buffer Area management plan for the proposed construction as required by East Bradford Code §115-45.3.G(1).

In addition, wetlands also may have been disturbed and/or filled, which are regulated by the Pennsylvania Department of Environmental Protection and United States Army Corps of Engineers.

Based on the foregoing, you are required to take immediate corrective actions on this property as set forth below:

1. Remove the non-permitted (Township and all other agencies as noted above) water obstructions (bridge, railing and boulders) from the floodplain area in their entirety.
2. If you wish to attempt to properly permit the project, apply to the Township and all other agencies for all applicable permits and conditional use approvals as required by the East Bradford Code (and any other applicable agencies).
3. Immediately cease and desist all work on the project following the completion of Item 1 above, other than stabilization of any disturbed areas within the project area as a result of the non-permitted construction and/or the removal of the non-permitted structure and waterway obstructions, per the recommendations of the Pennsylvania State University Agronomy Guide or the recommendations of a design professional that are also approved by the Township.

The requirements set forth above **must be commenced within 21 days of receipt of this notice**. You must complete the remedial work (Item 1 above) in accordance with the directions of the Township Engineer and your design professionals by not later than **Monday, September 16, 2019**. Should you fail to comply within the time specified, you shall be considered in violation of the Soil Erosion and Sediment Control Ordinance, Chapter 90; the Stormwater Management Ordinance, Chapter 94; the Nuisances Ordinance, Chapter 73 (via Chapter 94); and the Zoning Ordinance, Article XI, Natural Features Protections Standards of the East Bradford Township Code and shall be subject to the following remedies and/or penalties and sanctions:

1. The Township, upon recommendation of the Township Engineer or Codes Enforcement Officer, whichever is applicable, and following hearings thereon, may revoke or suspend any subdivision and land development approval pursuant to which the work is being done, thereby prohibiting the conveyance of any lot in the subdivision.

2. The financial security, if any, shall be forfeited.
3. The revocation of any building permit issued to you, which has been issued pursuant to the permit and plans.
4. A prohibition on the issuance of any further building permits for the property and cessation of the review and/or processing of any Erosion and Sediment Pollution Control Plan and/or Stormwater Management Plan Permit Applications submitted for further development of the property.
5. Initiation of a civil enforcement proceeding for violations of the Nuisance Ordinance, Chapter 73, which may upon being found liable for such violation, require you to pay a fine of not more than \$1,000 nor less than \$25, together with court costs and reasonable attorney's fees, as well as the potential to be incarcerated for a period not exceeding 90 days. Such fine, costs, attorney fees and incarceration, after being reduced to a final, unappealed judgment, shall be enforced by the Township pursuant to the applicable rules of criminal procedure. Each day of violation shall constitute a separate violation. In addition, the Board of Supervisors may direct the removal, repairs or alterations, as the case may be, to be done by the township, and the cost thereof, with a penalty of 10%, may be collected from the owner of the premises by an action of assumpsit, or may file a municipal claim or lien therefore against such real estate. Furthermore, the township, by means of a complaint in equity, may compel the owner to do so or seek such other relief as such court is empowered to afford. A separate violation will be found to exist for each section of Chapter 94 found to have been violated, for each day of violation, per East Bradford Code §94-901.A, §94-901.B and §94-901.C.
6. Initiation of a criminal enforcement proceeding to the given violations of Soil Erosion and Sediment Control Ordinance, Chapter 90, which may upon being found liable for such violation, require you to pay a fine of not more than \$1,000 nor less than \$25, together with court costs and reasonable attorney's fees, as well as the potential to be incarcerated for a period not exceeding 90 days. Such fine, costs, attorney fees and incarceration, after being reduced to a final, unappealed judgment, shall be enforced by the Township pursuant to the applicable rules of criminal procedure. Each day of violation shall constitute a separate violation.
7. Any person, partnership or corporation violating or permitting the violation of the provisions of the Stormwater Management Ordinance, Chapter 94, shall be subject to a fine of not more than \$1,000 for each violation, recoverable with costs. The establishment of a violation for purposes of setting fines or penalties for such violation shall be in accordance with a citation to a Magisterial District Judge with jurisdiction and venue over the location of the violation, and such an action will be subject to the procedures provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. A separate offense shall arise for each day or portion thereof a violation is found to exist and may be determined for each section of Chapter 94 which is found to have been violated. In addition, the Township may, through its solicitor, institute injunctive, mandamus, or any other appropriate action or proceeding at law or in equity for the enforcement of this chapter. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus, or legal or equitable forms of remedy or relief. Such relief may include costs, fees, and charges, including the Township's attorney's fees (charged at the hourly rate approved by the Board of Supervisors of the Township) and costs, as may be permitted by law. Notwithstanding any other provision of Chapter 94, the Township shall have the right at any or all times deemed necessary by the Township Engineer or designee to enter upon any property within the Township to inspect and, upon determination of a violation of Chapter 94, to correct the violation, with all expenses associated with correcting the violation to be charged to the property owner responsible for the violation.
8. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of the Zoning Ordinance, Chapter 115, shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Township, pay a judgment of not more than \$500, plus all court costs, including reasonable attorney's fees incurred by the Township as a result thereof. No judgment shall commence or be imposed, levied or be payable until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgement, the Township may enforce

the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the District Justice determining that there has been a violation further determines that there was a good-faith basis for the person, partnership or corporation violating Chapter 115 to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the District Justice. Thereafter, each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney's fees collected for the violation of the Zoning Ordinance shall be paid over to the Township.

Any person aggrieved by any decision of the Township's Board of Supervisors relative to the provisions of the Stormwater Management Ordinance, Chapter 94, may appeal to the Chester County Court of Common Pleas within 30 days of the date of the Township's written decision.

Any person aggrieved by any action or decision of the Floodplain Administrator concerning the administration of the provisions of the Floodplain District regulations, Chapter 115-42 may appeal to the Township Zoning Hearing Board. Such appeal must be filed, in writing, within 30 days after the decision, determination or action of the Floodplain Administrator.

Any person aggrieved by any action or decision of the Zoning Officer and/or Township Engineer concerning the administration of the provisions of the Zoning Ordinance, Chapter 115 may appeal to the Township Zoning Hearing Board. Such appeal must be filed, in writing, within 30 days after the decision, determination or action of the Zoning Officer and/or Township Engineer.

Please contact the Township with any questions you may have.

Respectfully yours,



Mark J. Lucas, P.E.
Township Engineer
East Bradford Township



Melissa D. Needles
Zoning Officer
Codes Enforcement Officer
Floodplain Administrator
East Bradford Township

Copy:

Board of Supervisors
Mandie Cantlin
Andrew D.H. Rau
PADEP – Carol Canigiani
CCCD – Gordon Roscovich
BRCA – Brian Winslow