



EAST BRADFORD TOWNSHIP

CHESTER COUNTY, PENNSYLVANIA

Memo

To: Board of Supervisors & Zoning Hearing Board

From: Andrea Campisi, Director of Planning and Zoning/Zoning Officer

Date: November 5, 2021

Subject: **Variance Application – 919 Lenape Road, Finnerty property, Parcel #51-7-112.7**

The Township received a variance application filed by Michael Shiring, Esquire, on behalf of the property owners, John and Kelly Finnerty, on October 6, 2021 seeking permission to allow an existing pedestrian footbridge that was installed in the floodplain without permits to remain. The bridge is 7.3' by 14.8'.

Property Description

The property is zoned R-3 and contains 3.2 acres. Existing on the property are a single-family detached dwelling and a shared driveway to Lenape Road. The property is served by a private well and a septic system. The Plum Run stream bisects the property, a portion of which lies within the floodplain identified as Zone A on the plan. Given the presence of the stream, the Riparian Buffer Overlay District also applies to the property.

Request

The applicant is appealing the remaining open items included in the notice of violation (NOV) that was issued by the Township on August 15, 2019, including items 8, 9 and 14-23. In the alternative, the applicant seeks variance relief from these items. Each request is detailed below. Several of the Zoning Ordinance sections listed in the NOV apply to the procedural aspects of applying for a permit to construct in the floodplain while others apply to the technical aspects that proposed construction in a floodplain must comply with. I have noted below which aspect applies to the relief sought.

Hearing Date

The application has been scheduled for November 15, 2021 at 7 pm.

Relief Sought:

As noted above, in the absence of a successful appeal of the remaining open items in the NOV issued by the Township, the applicant requests the following variances to allow the bridge to remain.

1. Item 8 of the NOV

This item cites a section of Chapter 94, the Township's Stormwater Management Ordinance. The Zoning Hearing Board does not have the authority to grant variances from this Chapter. Relief from Chapter 94 can only be granted by the Board of Supervisors.

2. Item 9 of the NOV - Technical

This item cites the applicants for failure to demonstrate compliance with Section 115-42 of the Township's Zoning Ordinance for a regulated activity located within a special flood hazard area designated by FEMA and failure to design the regulated activity to maintain the flood-carrying capacity of the floodway such that the base elevations are not increased, either upstream or downstream as required by East Bradford Code Section 94-301.S. To reiterate, the Zoning Hearing Board does not have the authority to grant variances from Chapter 94.

Please refer to Mark Lucas's memo for a detailed analysis of this request.

3. Item 14 of the NOV - Procedural

This item cites the applicants for failure to demonstrate compliance with Section 115-42B.2 of the Township's Zoning Ordinance for not first obtaining a permit from the Floodplain Administrator before installing the bridge. This Section states:

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 Township of East Bradford unless a permit has been obtained from the Floodplain Administrator.

4. Item 15 of the NOV - Procedural

This item cites the applicants for failure to demonstrate compliance with Section 115-42C.2 for not first acquiring a permit before installing the bridge. This Section states:

Permits required. A permit shall be required before any construction or development is undertaken within any area of the Township of East Bradford.

5. Item 16 of the NOV - Procedural

This item cites the applicants for failure to demonstrate compliance with Section 115-42C.3.a-k for not allowing the Floodplain Administrator to perform his/her legal duties as required by the Township Code. These Sections state:

Duties and responsibilities of 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);¹²¹ the Pennsylvania Dam Safety and Encroachments Act (Act 1978-325, as amended);¹²¹ the Pennsylvania Clean Streams Act (Act 1937-394, as amended);¹²¹ and the U.S. Clean Water Act, Section 404, 33 U.S.C. § 1344. The developer shall submit a copy of a water obstructions and encroachment permit and wetlands permit from the Pennsylvania Department of Environmental Protection and/or the United States Army Corps of Engineers, as applicable, for the proposed use within the floodway or evidence from the appropriate regulatory agency that such a permit is not required. 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 section.

(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 section, 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 34 Pa. Code and the 2009 IBC and the 2009 IRC, or the latest revision thereof as adopted by the Commonwealth of Pennsylvania.

6. Item 17 of the NOV - Procedural

This item cites the applicants for failure to demonstrate compliance with Section 115-42C.4., a-d including all subsections, for failure to file a permit application to construct the bridge in the floodplain as required by the Township Code. This Section states:

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 of East Bradford. Such application shall contain the following:

[1] The name and address of the applicant.

[2] The name and address of the owner of the land on which proposed construction is to occur.

[3] The name and address of the contractor.

[4] The site location, including address.

[5] A listing of other permits required.

[6] A 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 flotation, 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 inch being equal to 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 accessways; 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 International Building Code (IBC) or the 2009 International Residential Code (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 effect of any proposed development within a Floodway Area [see § 115-42D(2)(a)] will not increase the base flood elevation at any point.
 - [d] Documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within an AE Area/District without floodway [see § 115-42D(2)(b)], when combined with all other existing and anticipated development, will not increase the base flood elevation at any point within the community.
 - [e] 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 § 115-42D(3)] when combined with all other existing and anticipated development, will not cause any increase in the base flood elevation.
 - [f] 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 floodproofing measures which have been incorporated into the design of the structure and/or the development.

[g] Detailed information needed to determine compliance with § 115-42E(3)(f), Storage, and § 115-42E(4), Development which may endanger human life, including:

[i] The amount, location and purpose of any materials or substances referred to in § 115-42E(3)(f) and § 115-42E(4) 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 § 115-42E(4)(b) during a base flood.

[h] The appropriate component of the Department of Environmental Protection's Planning Module for Land Development."

[i] 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.

7. Item 18 of the NOV - Procedural

This item cites the applicants for failure to demonstrate compliance with Section 115-42C.5 by not providing applications/plans for development in the floodplain for submittal to the Chester County Conservation District. This Section states:

Review by County Conservation District. A copy of all applications and plans for any proposed construction or development in any identified floodplain area to be considered for approval shall be submitted by the Floodplain Administrator to the County Conservation District for review and comment prior to the issuance of a permit. The recommendations of the Conservation District shall be considered by the Floodplain Administrator for possible incorporation into the proposed plan.

8. Item 19 of the NOV - Procedural

This item cites the applicants for failure to demonstrate compliance with Section 115-42C.6 by not providing applications/plans for development in the floodplain for submittal to appointed boards and commissions of the Township for review and comment prior to issuance of a permit. This Section states:

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.

9. Item 20 of the NOV - Procedural

This item cites the applicants for failure to demonstrate compliance with Section 115-42C9a, Start of construction. This section states:

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 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.

10. Item 21 of the NOV - Technical

This item cites the applicants for failure to demonstrate compliance with Section 115-42E.3.g for failure to design, locate and construct the bridge so as to offer minimum obstruction to the flow and water and have minimum effect upon the flow and height of floodwater. This Section states:

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 floodwater.

Please refer to Mark Lucas's memo for a detailed analysis of this request.

11. Item 22 of the NOV - Technical

This item cites the applicants for failure to demonstrate compliance with Section 115-42E.3.h.1, for failure to firmly anchor the structure. This Section states:

All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.

Please refer to Mark Lucas's memo for a detailed analysis of this request.

12. Item 23 of the NOV - Technical

This item cites the applicants for failure to demonstrate compliance with Section 115-45B.7 prior to installing the bridge. This section states:

Disturbance or removal of vegetation occupying environmentally sensitive areas shall be undertaken only as permitted herein to minimize the adverse impacts of such actions. This shall include, but not necessarily be limited to, vegetation performing important soil stabilizing functions on floodplains, stream and pond banks, riparian buffer areas and sloping lands. In addition to any other requirements of the Code, no stripping of vegetation shall be conducted in areas of greater than twenty-percent slopes unless specific approval is obtained from the Zoning Officer after having consulted with the Township Engineer. All disturbance or removal shall be reviewed and approved by the Township Engineer in consultation with Township staff and consultants.

13. Related to items 24-26 in the NOV, the Township amended the Riparian buffer area Conservation District requirements such that conditional use approval is no longer required for this project.

14. In addition to the above items cited in the NOV, the Zoning Hearing Board should be aware that the Zoning Ordinance also includes the following restriction with respect to variances in the floodplain in Section 115-42H.2.a which states:

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 § 115-42D(2)(c).

If you have any questions, please feel free to contact me at acampisi@eastbradford.org.