

**ZONING HEARING BOARD OF DOYLESTOWN TOWNSHIP  
BUCKS COUNTY, PENNSYLVANIA**

**Application No.** Z-14-2016

**Applicant:** Township of Doylestown  
425 Wells Road  
Doylestown, PA 18901

**Owners:** Daniel & Elizabeth Bray  
3335 Bristol Road  
Doylestown, PA 18901

**Subject Property:** Tax Parcel No. 09-007-002 which is located at the address of the Owners set forth above.

**Requested Relief:** The Applicant proposes to construct a sanitary sewer pump station within an easement on the Subject Property and requests the following variances:

1. a variance from the Riparian Corridor Conservation District regulations of Zoning Ordinance §175-103.4 and §175-103.5 subsections (A), (C), (D), (E) and (F), to allow construction of the Pebble Ridge/Woodridge Area Sanitary Sewer Pump Station and appurtenances thereto within the Riparian Corridor Conservation District;
2. a variance from the regulations of Environmental Protection Standards of Zoning Ordinance §175-27.D(7)(b), to allow construction of the Pebble Ridge/Woodbridge Area Sanitary Sewer Pump Station and appurtenances within Riparian Corridor Conservation District lands; and
3. a variance from §96-24 of the Doylestown Township Floodplain Management Ordinance, to permit the proposed construction within an identified floodplain area.

**Hearing History:** The original application was filed in Doylestown Township on November 15, 2016. Hearings were held on January 26, 2017 and May 25, 2017 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901<sup>1</sup>.

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<sup>1</sup> Subsequent to the original application, the Applicant submitted a revised application and thereafter, a second revised application clarifying the relief sought. Appropriate waivers from the time limitation requirements of the MPC regarding hearings were signed by the Applicant (see Exhibits B-6 and B-11).

**Appearances:** Applicant by: Jeffrey P. Garton, Esq.  
John P. Koopman, Esq.  
Begley, Carlin & Mandio LLP  
680 Middletown Boulevard  
Langhorne, PA 19047

Charles & Linda Urie by: Jordan B. Yeager, Esq.  
Curtin & Heefner LLP  
2005 S. Easton Road, Suite 100  
Doylestown, PA 18901

**Mailing Date:** July 5, 2017

## **DECISION**

### **FINDINGS OF FACT:**

1. The Zoning Hearing Board of Doylestown Township met the requirements of the Zoning Ordinance, the Municipalities Planning Code, and other relevant statutes as to legal notice of the hearing held.

2. The Subject Property is approximately 32 acres in size and accommodates a farmhouse and otherwise vacant land. An easement between the Applicant and the Owners, identifying an easement area, approximately 14,688 square feet in size, was created to permit the construction of the Pebble Ridge/Wood Ridge area sanitary sewer pump station and related facilities. Additionally, the Owners granted permission to the Applicant to submit the application (Exhibit A-5). Accordingly, the Applicant is possessed of the requisite standing to make application to this Board.

3. Adjacent residential property owners, Charles and Linda Urie, of 1502 Lower State Road, Doylestown, PA, whose property is contiguous to the Subject Property, were granted party status through their counsel Jordan B. Yeager, Esq. At the first hearing held in this matter, Mr. and Mrs. Urie appeared in opposition to the requested relief. Prior to the second hearing, however, the Applicant and the Uries resolved their opposition as set forth in a May 24, 2017 letter from Yeager (Exhibit B-12).

4. Stephanie Mason, the Doylestown Township Manager, established that, as a result of complaints of failed septic systems from residents in the area of the Pebble Ridge and Wood Ridge residential developments, and, as a result of evidence that house sales in this area established additional failures, the Township determined to study the on lot septic systems and created the Doylestown Township Public Water and Sewer Advisory Committee (DTPWSAC), composed of volunteer Township residents,

to study the septic systems involved and report with recommendations to the Township Supervisors.

5. In approximately 1997, the DTPWSAC began collecting data on the septic system functionality in these two neighborhoods. Visual inspections of the approximately 203 lots that form the neighborhood, both in 1998 and in 2008, found examples of malfunctioning on lot disposal systems (OLDS). Soil studies showed that the soils in this neighborhood are poor to moderate, negatively effecting septic system performance and the ability to find new places to install a septic system if an old system failed.

6. In 1998, Doylestown Township commissioned Boucher & James, Inc., a civil engineering firm, to conduct visual inspections of the OLDS in these neighborhoods. It found 38 properties which revealed confirmed malfunctioning septic systems and 8 properties that were suspected of malfunctioning at some point within a year.

7. In 2008, Boucher & James again conducted visual inspections of the OLDS in these neighborhoods and found an additional 15 properties revealed confirmed malfunctioning septic systems. At that time, another 35 properties had systems that were suspected of malfunction within a year.

8. From 2007 through 2011, a further study of the OLDS in these neighborhoods revealed that a significant percentage of the OLDS investigated showed higher than acceptable fecal coliforms levels.

9. A feasibility study was conducted by the Bucks County Water and Sewer Authority to ascertain the cost and type of public system that would remedy the malfunctioning OLDS.

10. As a result of the studies and investigations that occurred, the DTPWSAC recommended the installation of a gravity system to serve the Pebble Ridge and Wood Ridge neighborhoods and properties in their vicinity.

11. Exhibit A-1 is an extensive collection of documentation entitled "Pipe in the Street – the Only Solution" prepared by Doylestown Township in May of 2012. The Board's review of this exhibit, together with the credible testimony of Ms. Mason, establishes the necessity for the creation of a gravity sewer system extension to serve the Pebble Ridge/Wood Ridge area.

12. On February 26, 2013, the Applicant prepared a "Minor Act 537 Sewage Facilities Plan Update Revision, Component 3M" for the Pebble Ridge/Wood Ridge and vicinity gravity sewer system extension and submitted same to the Pennsylvania Department of Environmental Protection (DEP) (Exhibit A-2).

13. On December 16, 2013, DEP approved the plan submission (Exhibit A-3).

14. Thereafter, the Applicant has been in the process of acquiring easements over properties to enable the construction of the full sewer system extension. Several meetings and hearings were conducted by the Township with impacted property owners.

15. This application seeks to locate a generator building, a valve chamber, a wet well, and related structures on the eased area of the Subject Property, accessed by a driveway from Lower State Road, all as depicted on this Site Plan, prepared by Gilmore & Associates, Inc. dated January 15, 2015, last revised January 17, 2017 (Exhibit B-2.B).

16. Exhibit B-2.C is a "Buffer Landscape Plan" prepared by Boucher & James, Inc. dated January 6, 2017. It depicts a surrounding chain link fence and significant buffer landscaping to be installed, in addition to existing foliage, to shield this facility from view and soften its impact on the Urie residential property.

17. Alexander Dyke, P.E., a Vice President at Gilmore & Associates, Inc., a civil engineering and consulting firm, testified on behalf of the Applicant. Dyke has 24 years consulting experience including the planning, design, construction and management of public and private water and waste water projects. He was qualified to testify as an expert in the construction and design of sewer pump stations and systems.

18. Dyke designed the overall plan for sanitary sewer system design for this project, entitled "Sanitary Sewer Plan" prepared by Gilmore & Associates, Inc. dated January 15, 2015, last revised August 3, 2016 (Exhibit A-7). The eased area of the Subject Property is designed to serve as the collection point and pumping station for the sewer system extension proposed.

19. Dyke credibly established that pump stations are typically located in the lowest lying areas. They are often situated in the vicinity of streams, creeks or floodplain areas in order to achieve natural drainage by gravity. He established the eased area on the Subject Property as the necessary location for the pump station.

20. Dyke credibly established the necessity for the location of the proposed pump station as the most reasonable location for it, after examining various alternatives in the area. He further credibly established that the pump station for the proposed sewer system extension cannot be located anywhere outside of the floodplain. The Subject Property is located in the floodplain but not in the floodway. It is located in the "AE" area of the floodplain. The proposed location, according to Dyke, is the least intrusive on existing properties in the neighborhood and is logically located with roadway access.

21. He further established that many of the structures proposed in the eased area of the Subject Property will be in the ground so as to be least intrusive upon neighboring property owners.

22. Dyke established that the Subject Property is located not only in the floodplain, but in the Riparian Corridor Conservation Overlay District of Doylestown Township.

23. James Matticola, a Senior Project Manager at Gilmore & Associates, Inc., with significant experience in public sector projects similar to that proposed, including sanitary sewer and potable water designs, stormwater management improvements, floodplain studies, and the like. He was qualified to testify as an expert in civil engineering.

24. Matticola pointed out that the structures necessary for the proposed pump station are not permitted in the Riparian Corridor Conservation Overlay District pursuant to §175-103.4.

25. Matticola also referenced, in his testimony, §175-103.5 of the Ordinance because the pump station proposed contemplates the construction of permanent structures, driveway access over which motor vehicles will travel, a small parking area, and the clear cutting and removal of trees, all of which are prohibited in the Riparian Corridor Conservation Overlay District by subsections a, c, d, e, and f.

26. Despite these Ordinance prohibitions, Matticola's credible evidence confirmed that of Dyke that the pump station is necessarily located as proposed and that strict conformity with Ordinance §175-103.4 and §175-103.5 is impossible due to the required location at the lowest elevation of the area in which the system is proposed.

27. Matticola's expert opinion also confirmed that compliance with §175-27.D.7.b, which requires a resource protection ratio of 100% for property located in the Riparian Corridor Conservation Overlay District is impossible due to the necessity of the construction of the pumping station in the eased area of the Subject Property in order to properly serve the sewer system extension proposed.

28. Matticola also testified regarding the application of the Township's Floodplain Management Ordinance, adopted on January 20, 2015 by Doylestown Township Ordinance No. 374.

29. §96-24 of the Floodplain Management Ordinance prohibits any new construction or substantial improvements within any identified floodplain area.

30. However, §96-24.b of this ordinance contemplates that any new construction or substantial improvement of a nonresidential structure in the AE Zone requires flood proofing consistent with its provisions. Matticola established that the structures proposed on the Subject Property will meet the flood proofing requirements of this Ordinance.

31. Despite the prohibition contained at §96-24, design and construction standards for water and sanitary sewer facilities and systems are provided at §96-25. He established that the proposed sewage pump station and related facilities will be located, designed and constructed to minimize or eliminate flood damage and the infiltration of floodwaters. The system will be designed to prevent the discharge of untreated sewage into floodwaters and constructed in strict compliance with all state and local regulations for such systems.

32. Testimony on behalf of the Applicant was also presented by Judith Stern Goldstein, ASLA, the Managing Director of Boucher & James, Inc. She is a registered landscape architect and has served as Doylestown Township's Planning Expert for many years. She was qualified to testify as an expert in landscape architecture and planning. She confirmed the testimony of other experts that the pumping station proposed, which is located in zone 2 of the Riparian Corridor Conservation Overlay District, needs to be located at the low point of the area and that there is no possibility for it to be located outside of the floodplain or the Riparian Corridor Conservation Overlay District.

### **CONCLUSIONS OF LAW**

1. The credible evidence presented by the Applicant in this hearing establishes the necessity for the creation of a gravity sewer system extension to serve the Pebble Ridge, Wood Ridge area.

2. Further, the credible and competent testimony of the Township's professionals, Messrs. Dyke and Matticola, and Ms. Stern Goldstein, establishes the necessity of the location of the proposed pumping station in a low point in the area of the sewer system extension and on the Subject Property, despite its location within both the floodplain and the Riparian Corridor Conservation Overlay District.

3. Strict compliance with the sections of the Zoning Ordinance and Floodplain Management Ordinance from which variances are sought is impossible in order to enable a pumping station to be gravity fed and appropriately functioning to support the sewer system extension.

4. The necessity for the location of the pumping station at the low point in the area creates a unique circumstance as such low areas are typically located within a floodplain or riparian area. The Subject Property is the necessary location for the pumping station in order to permit the functioning of the sewer system extension proposed.

5. There is no possibility that the pumping station can be developed on the Subject Property in strict conformity with the provisions of the Ordinance from which variances are sought.

6. The hardship established in this matter has not been created by the Applicant but rather exists due to the physical conditions and features of the Subject Property and properties within its vicinity.

7. Variance relief will not alter the essential character of the neighborhood or district in which the Subject Property is located nor will it substantially nor permanently impair the appropriate use or development of adjacent property.

8. The variances, if authorized, will not be detrimental to the public welfare.

9. The credible testimony of Mr. Matticola satisfies the Board that the variances requested represent the minimum necessary to afford relief.

10. The grant of the variances requested will not cause any increase in the base flood elevation.

11. The variances requested will not, together with all other existing and anticipated development, increase the base flood elevation more than 1 foot at any point.

12. The Board concludes that there is good and sufficient cause for the variances requested. Failure to grant the requested variances will result in exceptional hardship to the Township and the residents of the Pebble Ridge and Wood Ridge developments, and their vicinity due to the inability of the soils in the area to accommodate functional on lot septic systems.

13. The grant of the variances requested will neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense nor will they create nuisance, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinance or regulation.

14. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to grant relief requested by the Applicant as is set forth hereafter.

**ORDER**

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS the following variances in order to permit the construction of a sanitary sewer pump station within an easement area on the Subject Property as depicted in the “Sanitary Sewer Plan” prepared by Gilmore & Associates, Inc. dated January 15, 2015, last revised August 3, 2016:

1. a variance from the Riparian Corridor Conservation District regulations of Zoning Ordinance §175-103.4 and §175-103.5 subsections (A), (C), (D), (E) and (F), to allow construction of the Pebble Ridge/Woodridge Area Sanitary Sewer Pump Station and appurtenances thereto within the Riparian Corridor Conservation District;
2. a variance from the regulations of Environmental Protection Standards of Zoning Ordinance §175-27.D(7)(b), to allow construction of the Pebble Ridge/Woodbridge Area Sanitary Sewer Pump Station and appurtenances within Riparian Corridor Conservation District lands; and
3. a variance from §96-24 of the Doylestown Township Floodplain Management Ordinance, to permit the proposed construction within an identified floodplain area.

The relief herein granted is subject to compliance with all other applicable governmental ordinances and regulations.

**ZONING HEARING BOARD OF  
DOYLESTOWN TOWNSHIP**

**By:** /s/ William J. Lahr  
William J. Lahr, Chairman

/s/ Richard K. Gaver  
Richard K. Gaver, Vice Chairman

/s/ Mitchell Aglow  
Mitchell Aglow, Secretary

**IMPORTANT NOTE:** Pursuant to §175-136 and §175-137 of the Doylestown Township Zoning Ordinance, the relief granted herein shall expire five (5) years from the date of this decision.

**NOTICE:** Pursuant to §96-34.G of the Doylestown Township Floodplain Management Ordinance, the Applicant is hereby notified that:

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