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April 26, 2022

Gina Gerber, Esq.  
Riley Riper Hollin & Colagreco  
717 Constitution Drive, Suite 201  
Exton, PA 19341

Mr. and Mrs. Ian Lundvig  
105 Indian Hannah Road  
West Chester, PA 19382

Re: Application of Ian and Erin Lindvig seeking a special exception under zoning ordinance sections 250-87.M(3)(c) and (d) to permit disturbance of approximately 38% of the moderately steep slopes, (disturbance of which is limited to 25% by Ordinance section 250-87.B(8) and .D) on property located at 105 Indian Hannah Road, West Chester, PA (UPI #63-3-1.2) in the Township's RA zoning district, so as to permit the construction of a single-family residential dwelling, deck, detached garage, driveway, septic system and stormwater management controls.

POCOPSON TOWNSHIP  
RECEIVED

Dear Ms. Gerber and Mr. and Mrs. Lindvig:

APR 28 2022

Enclosed please find copies of the Decision and Order of the Pocopson Township Zoning Hearing Board issued today, April 26, 2022, including the previously-discussed conditions of approval.

Thank you for your attention to this matter; good luck with your construction project.

Very truly yours,

  
Edward M. Foley

EMF:dg

Enclosure

cc: Mr. Allen Cadden

✓ Susan Simone, Pocopson Twp. Board of Supervisors

Amanda Sundquist, Esq.

Kristin S. Camp, Esq.

Craig Kologie, Township Code Enforcement Officer (via email)

**BEFORE THE ZONING HEARING BOARD OF POCOPSON TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA**

**IN RE:** Application of Ian and Erin Lindvig seeking a special exception under zoning ordinance sections 250-87.M(3)(c) and (d) to permit disturbance of approximately 38% of the moderately steep slopes, (disturbance of which is limited to 25% by Ordinance section 250-87.B(8) and .D) on property located at 105 Indian Hannah Road, West Chester, PA (UPI #63-3-1.2) in the Township's RA zoning district, so as to permit the construction of a single-family residential dwelling, deck, detached garage, driveway, septic system and stormwater management controls.

**DECISION AND ORDER**

**I. PROCEDURAL HISTORY:**

On or about February 8, 2022, the Applicants filed an application to the Pocopson Township Zoning Hearing Board (the "Board" or "ZHB"), seeking a special exception pursuant to ordinance section 250-87.M(3)(c) for relief from the 25% maximum limit of disturbance of the moderately steep slopes under ordinance section 250-87.D(1), or other zoning relief so as to enable the construction of a residential dwelling, deck, detached garage, driveway, septic system and stormwater management controls resulting in disturbance of approximately 38% of the moderately steep slopes on property located at 105 Indian Hannah Road, West Chester, Pennsylvania (UPI #63-3-1.2) (herein referred to as the "Property"), located in the Township's RA – Residential Agricultural zoning district.

On March 2, 2022 the Township Planning Commission voted to recommend that the Township support the Applicant's request, subject to conditions. (See Exhibit B-8).

On March 28, 2022 the Township Board of Supervisors voted to recommend approval of this application, again subject to conditions. (See Exhibit B-9).

After public notice in accordance with the Pennsylvania Municipalities Planning Code (the "MPC")<sup>1</sup>, the hearing was convened on the evening of March 30, 2022 at 7:00 p.m.<sup>2</sup>

At the hearing, Applicants were ably represented by Gina Gerber, Esq. of Riley Ripper Hollin & Colagreco.

Neighboring Property owner Allen Cadden of 107 Indian Hannah Road appeared and was granted "party" status without objection.

The Board placed exhibits into the Record to document compliance with all appropriate advertising and notice requirements as follows:

B-1 Applicant's Application with all attachments.

B-2 Chester County tax parcel map/aerial photographs of the subject property.

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<sup>1</sup> Act of 1968, P.L. 805, No. 247; reenacted and amended December 21, 1988, P.L. \_\_\_\_, No. 170, 53 P.S. §10101 et seq. as amended.

<sup>2</sup> The Zoning Hearing Board was comprised of James H. Noon, Jr., Chairman, Nathan Wilson, and David H. Ziegler, Sr., members.

- B-3 Copy of the official Notice of Hearing, as published, posted and mailed to all parties.
- B-4 Proof of Publication Showing newspaper publication on March 9, 2022 and March 16, 2022.
- B-5 Verification of Posting of Notice.
- B-6 Verification of Mailing of Notice.
- B-7 Copy of Township's Engineer's review letter of February 24, 2022.
- B-8 Copy of the March 7, 2022 position statement of the Township Planning Commission, in favor of the Application, subject to conditions.
- B-9 Copy of the March 29, 2022 position statement of the Township Board of Supervisors in favor of the Application, subject to the conditions.
- B-10 (In the event of any appeal) Copy of the Pocopson Township Zoning Ordinance in effect on the date of the Application.

The Applicants introduced the following exhibits:

- A-1 Zoning Hearing Board Application, List of Neighboring Property Owners and Addendum dated February 8, 2022, including:
  - a. Exhibit A – Deed of Property
  - b. Exhibit B – Chester County Parcel Details and GIS Map of Property
  - c. Exhibit C – Grading Permit Plan prepared by D.L. Howell & Associates, Inc., dated January 13, 2022 (6 sheets)
- A-2 Pocopson Township Zoning Ordinance of 1972, as amended (*incorporated by reference*).
- A-3 Grading Permit Plan prepared by D.L. Howell & Associates, Inc. dated January 13, 2022, last revised March 18, 2022 (6 sheets).
- A-4 Planning Commission Recommendation Letter dated March 7, 2022.
- A-5 Rendered Grading Permit Plan prepared by D.L. Howell & Associates, Inc. dated January 13, 2022, last revised March 18, 2022 (1 sheet).
- A-6 C.V. of Denny L. Howell, P.E.
- A-7 Architectural Rendering prepared by Archer and Buchanan Architecture, Ltd., dated June 22, 2021, last revised July 6, 2021.
- A-8 Copy of March 22, 2022 review letter from Michael S. Balsama, Pocopson Township Fire Marshall.

Allen Cadden introduced the following exhibits:

- Cadden-1: Copy of a prior deed in the Caddens' chain of title, containing a right of access over the 50' wide access strip of Lot #4 to access Indian Hannah Road.
- Cadden-2: Copy of the Caddens' deed to their property at 107 Indian Hannah Road.
- Cadden-3: Copy of Deed of Restriction in Applicants' chain of title, requiring all new homes to have a minimum of 2,200 square feet of living area, exclusive of all garage, basement, storage, etc. access.
- Cadden-4: Cross-section sketch of Applicants' proposed infiltration bed and the resulting slope of the Applicants' property.

At the conclusion of the hearing on March 30, 2022, the Board deliberated in open session in accordance with the Pennsylvania "Sunshine Law." The Board reconvened in public and, after discussion, unanimously voted to approve the Applicant's request, under and subject to conditions.

**II. FINDINGS OF FACT:**

1. Applicants are the owners of the subject Property, located at 105 Indian Hannah Road in the Township's R-A Residential Agricultural zoning district, being UPI #63-3-1.2.
2. The Property is roughly a pentagon-shaped flag lot containing 2.0 acres with driveway access to Indian Hannah Road via an easement over a 50-foot wide access strip which is part of the adjacent property, UPI #63-3-1.3.
3. By reference to the Grading Permit Plan, Exhibit A-3, the Property is sloped and would shed stormwater in a northwest direction, toward Indian Hannah Road and adjacent properties, including the Cadden property at 107 Indian Hannah Road. Applicants' engineer testified that 93% of the Property consists of moderately steep slopes.
4. Applicants propose to build a relatively small single-family dwelling, being 2,500 square feet of living space in three stories, having a 935 square foot "footprint."
5. Applicants' engineer testified that the small footprint, as well as the plan to build the lower level of the house into the slope, were intended to minimize disturbance of the slopes.
6. Likewise, the use of underground stormwater management facilities is intended to minimize the disturbance of the slopes.
7. Applicants seek a special exception to allow a total of 38% disturbance of the moderately steep slopes.

### **III. DISCUSSION:**

Ordinance section 250-87.D(1)(a) limits disturbance of the moderately steep slopes on a property to 25%.

However, ordinance section 250-87.M(3)(c) permits the zoning hearing board to relax that limit by special exception, provided that the criteria for special exceptions are met, including the requirements at ordinance section 250-87.M(3)(d) requiring that the environmental resource protection purposes of the ordinance are being adhered to "to the maximum extent practicable."

Here, the ZHB was satisfied that all criteria had been or will be met prior to the issuance of construction permits, including that the Applicants are proposing new stormwater recharge facilities at the downhill side of the property to collect and control any additional stormwater run-off generated by the new impervious surfaces. Both the Township planning commission and the Board of Supervisors were in favor of the requested special exception, subject to conditions which will be imposed.

During the hearing, adjacent property owner Allen Cadden, who is a civil engineer but does not practice in the field of land development, testified. His property at 107 Indian Hannah Road is located downhill from the subject Property. For at least the past five years, the Caddens have experienced excess run-off from the properties located uphill from theirs. This has been noted by them in communications to the Township. Mr. Cadden is concerned about any possible increase in stormwater run-off being directed towards his property. His specific concerns include the amount of disturbance of the slopes on the Property, including his opinion that the 38% disturbance could be reduced by reconfiguration of the driveway and detached garage proposed by the Applicants. In addition, he expressed concerns about the possibility of a failure of the proposed underground stormwater management basin, which is, itself, located within the sloped area of the Property, and could possibly fail, resulting in a wash-out. Finally, Mr. Cadden expressed concern about the creation of new 3:1 slopes in the area where the underground stormwater basin is to be located, including his concern that the existence of such steep slopes could accelerate the run-off in the direction of his property.

In response, Applicants recalled their engineer, Denny L. Howell, P.E. Mr. Howell has been practicing civil engineering in the field of residential, commercial and industrial subdivision and land development since June of 1993. (Exhibit A-6) He testified that the stormwater management system designed for the Property will comply with all Township and County requirements, including controlling the stormwater run-off from a 2-year storm to the pre-development rate of a 1-year storm. The system will also assist in reducing and slowing the run-off from more intense storms up to, and including, run-off from a 100-year storm.

He testified that the additional disturbance of the slopes to accommodate the layout of the driveway and detached garage was negligible, with only 3% of the disturbance being attributable to the detached garage, itself. If both the detached garage and the associated portion of the driveway were removed, the disturbance of slopes could be reduced by around 6%, but would still be 32% of the slope areas. Mr. Howell testified that the stormwater basin is to be constructed underneath the existing grade of the Property (See Exhibit Cadden-4) and there is no concern that the water would rise vertically within the underground basin, super-saturate the retaining slopes, or otherwise result in a sudden failure or flooding, even if the discharge pipes from the underground basin became completely clogged or blocked.

Mr. Howell testified that the creation of the small area of 3:1 slopes in the area of the underground basin is common and, in fact, there are numerous other properties with slopes as steep as 2:1. The Board found the testimony of Mr. Howell to be credible and remained satisfied that the proposed development of the Property as applied for, including the detached garage and the additional driveway area leading to it, constitutes a reasonable use of the Property, and that the environmental resource protection purposes of the ordinance are being adhered to "to the maximum extent practicable."

Accordingly, an order will be issued granting the requested relief, subject to conditions.

#### **IV. CONCLUSIONS OF LAW:**

1. The parties are properly before the ZHB, which has jurisdiction to hear and decide the matter.
2. Applicants met their burden of proof to establish the conditions necessary for the grant of the requested special exception under the Ordinance and the MPC.
3. Applicants, and their successors and assigns, shall be, and remain bound by the agreed conditions of approval as set forth in the Board's Order, below.

#### **V. ORDER**

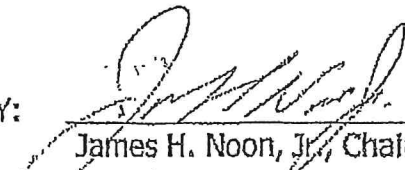
AND NOW, upon consideration of the application of Ian and Erin Lindvig, seeking a special exception for relief from the 25% maximum disturbance of moderately steep slopes under zoning ordinance section 250-87.D(1) so as to enable the construction of a residential dwelling, deck, detached garage, driveway, septic system and stormwater management controls, resulting in a 38% disturbance of the moderately steep slopes, it is hereby **ORDERED** as follows:

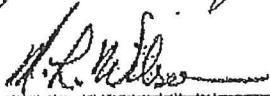
Applicants' request for a special exception allowing for an increase in the percentage of disturbance of moderately steep slopes to 38% is hereby **GRANTED, under and subject to the following conditions:**

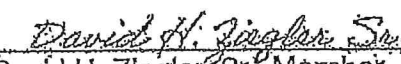
1. Prior to issuance of any Township permits, Applicants shall comply with all the comments of the Township Engineers, Gilmore & Associates, Inc. as contained in their February 24, 2022 review letter.
2. Prior to issuance of any Township permits, Applicants shall revise their plans to comply with the Fire Marshall's report of March 22, 2022.
3. Applicants shall not make any commercial use of the detached garage, which shall be used solely for uses ancillary to their residential occupancy of the property.
4. Applicants shall construct the project substantially as described by the plans and testimony presented to the zoning hearing board on March 30, 2022.
5. Except for the special exception relief granted herein, Applicants shall comply with all Township ordinances, and with all county, state and federal laws, rules and regulations.

These conditions shall be, and remain, binding upon the Applicants and their successors and assigns.

**POCOPSON TOWNSHIP  
ZONING HEARING BOARD**

BY:   
James H. Noon, Jr., Chairman

  
Nathan Wilson, Member

  
David H. Ziegler, Sr., Member

**BEFORE THE ZONING HEARING BOARD OF POCOPSON TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA**

**IN RE:** Application of Ian and Erin Lindvig seeking a special exception under zoning ordinance sections 250-87.M(3)(c) and (d) to permit disturbance of approximately 38% of the moderately steep slopes, (disturbance of which is limited to 25% by Ordinance section 250-87.B(8) and .D) on property located at 105 Indian Hannah Road, West Chester, PA (UPI #63-3-1.2) in the Township's RA zoning district, so as to permit the construction of a single-family residential dwelling, deck, detached garage, driveway, septic system and stormwater management controls.

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that a true and correct copy of the foregoing Decision and Order has been served upon the following individuals in the manner indicated below this 26<sup>th</sup> day of April, 2022.

Service by First Class Mail, address as follows:

Mr. and Mrs. Ian Lindvig  
45 Bragg Hill Road  
West Chester, PA 19382

Gina Gerber, Esq.  
Riley Riper Hollin & Colagreco  
717 Constitution Drive, Suite 201  
Exton, PA 19341

Mr. Allen Cadden  
107 Indian Hannah Road  
West Chester, PA 19382

Kristin S. Camp, Esq.  
Buckley Brion McGuire & Morris, LLP  
118 W. Market Street, Suite 300  
West Chester, PA 19382

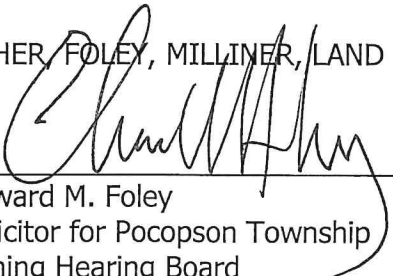
Pocopson Township  
Board of Supervisors  
ATTN: Susan Simone  
740 Denton Hollow Road  
PO Box 1  
Pocopson, PA 19366

Craig Kologie  
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BRUTSCHER, FOLEY, MILLINER, LAND & KELLY, LLP

BY: \_\_\_\_\_

  
Edward M. Foley  
Solicitor for Pocopson Township  
Zoning Hearing Board