

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

In RE: **Application of Scott Anthony Woyak and Laura Jane Woyak seeking special exceptions under Zoning Ordinance Section 250-87.M(3)(c) authorizing disturbance of moderately steep slopes and steep slope margin areas in excess of the 25% maximums under Ordinance Sections 250-87.D(1)(a) and (b) to allow disturbance of 29.7% of the moderately steep slopes and 43.8% of the steep slope margins, and to allow grading within the very steep slope area related to the proposed building, stormwater management and sewage disposal areas; and such other relief as may be necessary to permit the replacement of an existing single-family dwelling with a new single-family dwelling, garage, barn and associated appurtenances on a 10.8 acre property located at 40 Bragg Hill Road, West Chester, PA (UPI#63-1-43.2) in the Township's RA-Residential and Agricultural Zoning District.**

DECISION AND ORDER – REVISED 5-10-2023

I. PROCEDURAL HISTORY:

On or about February 7, 2023, the Applicants filed an application to the Pocopson Township Zoning Hearing Board (the "ZHB" or "Board") seeking special exceptions under Zoning Ordinance Section 250-87.M(3)(c) authorizing disturbance of moderately steep slopes and steep slope margin areas in excess of the 25% maximums under Ordinance Sections 250-87.D(1)(a) and (b) to allow disturbance of 29.7% of the moderately steep slopes and 43.8% of the steep slope margins, and to allow grading within the very steep slope area related to the proposed building, stormwater management and sewage disposal areas; and such other relief as may be necessary to permit the replacement of an existing single-family dwelling with a new single-family dwelling, garage, barn and associated appurtenances on a 10.8 acre property located at 40 Bragg Hill Road, West Chester, PA (UPI#63-1-43.2) in the Township's RA-Residential and Agricultural Zoning District.

Prior to the hearing, and as a result of the Township engineer's review of the Applicants' plans and calculations, the applicants corrected their calculations, and are actually requesting approval for disturbance of 34.1% of the moderately steep slopes, and 48.6% of the steep slope margins.

After public notice in accordance with the *Pennsylvania Municipalities Planning Code (the "MPC")*<sup>1</sup>, the hearing was conducted on the evening of April 3, 2023, at 7:00 p.m. The Zoning Hearing Board was comprised of its Chairman, James H. Noon, Jr. and members Nathan Wilson and David H. Ziegler, Sr.

At the hearing, Township resident Charles Benzel of 25 Bragg Hill Road, West Chester, PA appeared and requested "party" status, which was granted.

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

**Zoning Hearing Board Exhibits:**

- B-1 Applicant's Application with attachments.
- B-2 Copy of Deed to subject property.
- B-3 Chester County tax parcel map/aerial photograph of the subject Property.
- B-4 Copy of official Notice of Hearing, as published, posted and mailed to parties.
- B-5 Proof of Publication showing publication in the Chester County Press on February 15, 2023 and February 22, 2023.
- B-6 Verification of Posting the Notice on the subject property.
- B-7 Verification of Mailing the Notice to neighboring property owners.
- B-8 Copy of Zoning Review Letter dated March 1, 29023 from Craig Kologie, AICP of Castle Valley Consultants, Inc.
- B-9 Copy of Township Planning Commission position statement in support of application.
- B-10 Copy of Township Supervisor's position statement in support of the application. .
- B-11 (In the event of any appeal) Copy of the Township Zoning Ordinances in effect on the date of the Application.

In addition, the Applicants introduced exhibits as follows:

**Applicant's Exhibits:**

---

<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.

- A-1** Resume of James E. Fritsch, professional engineer;
- A-2** Copy of recorded Grant of Conservation Easement and Declaration of Covenants;
- A-3** Building Permit Plan and BMP Operations and Maintenance Plan dated January 27, 2023;
- A-4** Copy of Township engineer's review letter dated February 24, 2023;
- A-5** Copy of letter from the Brandywine Red Clay Alliance in support of the application; including the proposed relocation of a portion of the existing driveway;
- A-6** Copy of resume of Matthew Nelson, registered landscape architect.

At the conclusion of the hearing on April 3, 2023, the Board deliberated in open session in accordance with the Pennsylvania "Sunshine Law".<sup>2</sup> The Board voted unanimously to grant the requested relief, under and subject to conditions, each of which was accepted by the Applicants.

## II. FINDINGS OF FACT:

1. The Applicants Scott Anthony and Laura Jane Woyak are the owners of the residential property located at 40 Bragg Hill Road, West Chester, PA 19382 (UPI #63-1-43.2, the "Property").

2. According to the Application, as confirmed by reference to the Chester County Tax Parcel Map (Exhibit B-2), the Property consists of 10.8 acres of mostly open, hilly land, improved with a single-family dwelling.

3. By reference to Exhibit A-2, including the topographical lines, the Property is rectangular in shape, bordered on two sides by Bragg Hill Road, and almost entirely moderately and steeply sloped.

4. Applicants propose to raze the existing single-family dwelling and replace it with a new dwelling, two accessory buildings (garage and barn/studio) and landscaping terraces.

5. In addition, Applicants propose to relocate a portion of the existing driveway (not including the portion closest to Bragg Hill Road) to serve the new dwelling and detached garage.

---

<sup>2</sup> P.L. 338, No. 84, July 3, 1986, 53 Pa. C.S. Section 701 et seq.

6. The proposed work would require disturbance of up to 34.1% of the moderately steep slopes, and up to 48.6% of the steep slope margins.

7. In addition, grading within the very steep slope areas, although not exceeding the 10% allowed by right, would be needed for grading related to the proposed building, stormwater management and sewage disposal areas - - uses for which grading there is not permitted by right.

8. The application was supported by both the Township Planning Commission and the Board of Supervisors. No third parties appeared to object or contest the application.

### III. DISCUSSION:

Zoning Ordinance Section 250-87.M(3)(c) authorizes the Zoning Hearing Board to modify the various environmental protection standards under the ordinance by special exception. This includes modification of both the percentages of allowable disturbance and modification of the uses for which such disturbance is allowed. In this case, the Applicants, whose property is steeply sloped in several areas, seek approval to disturb more of the moderately steep slopes and more of the steep slope margin areas than the 25% permitted by right. In addition, Applicants seek permission to grade within the very steep slope areas related to the proposed building, stormwater management and sewage disposal areas.

By reference to ordinance section 250-87.M(3)(d) the primary criteria for granting such special exceptions are (1) that the specific nature of the proposed lawful use or activity, the existing site conditions, and/or safety conditions warrant the requested relief; and (2) that the natural resource protection purposes of the ordinance are being adhered to, to the maximum extent practicable. In addition, the ZHB must consider the general standards of ordinance section 250-79, applicable to all special exception applications (suitability of the tract; impact on existing neighborhood character, etc.).

Here, Applicants' engineer testified convincingly that the grading work related to the razing of the existing dwelling and construction of the new dwelling and out-buildings would not be detrimental to the environment. Erosion and sedimentation will be adequately controlled, both during and after construction. By reference to Exhibit A-4, the Township engineer agreed that "The plans, as submitted, have provided stormwater management facilities, on-lot sewage disposal, and on-lot water supply, and appear to be designed to meet the requirements of [ordinance] chapters 85 and 178."

Moreover, Applicants' engineer pointed out that much of the proposed disturbance will result solely from the removal of existing structures, including portions of the existing driveway, and restoration of those areas to their original natural condition. If those areas of disturbance were eliminated from the calculations, the new disturbance of the moderate steep slopes would be 31.7% (just 6.75% more than allowed by right), and the disturbance of the steep slope margins would be *less than* the 25% allowed by right.

Uses permitted by special exception are actually a form of permitted use, with the burden of proof being upon any objectors to establish some non-compliance with the ordinance criteria, or some other detriment to the public health, safety or welfare. There were no third-party objectors, and both the Township Planning Commission and the Board of Supervisors supported the application.

The ZHB had no difficulty in concluding that Applicants' plans meet the criteria of the ordinance, and the application will be granted, subject to the usual conditions to assure compliance.

#### IV. CONCLUSIONS OF LAW

1. The Applicants are properly before this Zoning Hearing Board, which has jurisdiction pursuant to the *Pennsylvania Municipalities Planning Code* (the "MPC").

2. All public notice, posting, and advertising requirements under the Township's Ordinance and the MPC have been complied with.

3. The Applicants met their burdens of proof to establish all of the criteria for the granting of the requested special exceptions as set forth in the Township Zoning Ordinance.

4. In particular, Applicants demonstrated:

a. That the specific nature of the proposed lawful use, and the existing site conditions warrant the requested relief;

b. That the natural resource protection purposes of the ordinance are being adhered to, to the maximum extent practicable;

c. That the tract is suitable for the proposed uses;

d. That the requested relief will not alter the essential character of the neighborhood or interfere with any use or development of adjacent properties.

5. The Board concludes there will be no other adverse impact on the public health, safety, or welfare.

6. The Applicants' request for special exceptions will be granted, subject to conditions.

#### V. ORDER

Based on the evidence presented, and in view of the above Findings of Fact and Conclusions of Law, the Board enters the following:



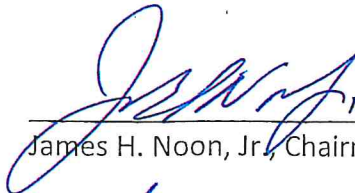
ORDER

**AND NOW**, in accordance with the unanimous vote of the Zoning Hearing Board taken at the conclusion of the hearing on April 3, 2023, the Application of Scott Anthony and Laura Jane Woyak seeking special exceptions under Zoning Ordinance Section 250-87.M(3)(c) authorizing disturbance of moderately steep slopes and steep slope margin areas in excess of the 25% maximums under Ordinance Sections 250-87.D(1)(a) and (b) to allow disturbance of 34.1% of the moderately steep slopes and 48.6% of the steep slope margins, and to allow grading within the very steep slope area related to the proposed building, stormwater management and sewage disposal areas to permit the replacement of an existing single-family dwelling with a new single-family dwelling, garage, barn and associated appurtenances on a 10.8 acre property located at 40 Bragg Hill Road, West Chester, PA (UPI#63-1-43.2) in the Township's RA-Residential and Agricultural Zoning District is **GRANTED**, under and subject to the conditions listed below:

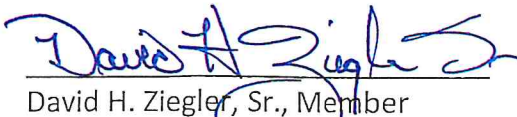
1. No kitchen facilities shall be installed in either of the accessory buildings so as to convert them into accessory dwellings without application to, and approval by, the Township and/or its Zoning Hearing Board.
2. Except to the extent that the actual construction, including the calculated areas of disturbance, may be modified as required by the Township engineer in order to comply with other Township or County requirements including any requirements to obtain an NPDES permit from the Chester County Conservation District, the project shall be completed in accordance with the testimony and evidence presented to the Zoning Hearing Board on April 3, 2023.
3. Except as modified by the special exceptions granted herein, the Applicants shall comply with all other applicable township, county, state and federal laws, ordinances, rules and regulations, including all requirements for submission of a formal landscape plan, and including compliance with the height restrictions on retaining walls under ordinance section 250-94.E(2)(a).

**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 Scott Anthony Woyak and Laura Jane Woyak seeking special exceptions under Zoning Ordinance Section 250-87.M(3)(c) authorizing disturbance of moderately steep slopes and steep slope margin areas in excess of the 25% maximums under Ordinance Sections 250-87.D(1)(a) and (b) to allow disturbance of 29.7% of the moderately steep slopes and 43.8% of the steep slope margins, and to allow grading within the very steep slope area related to the proposed building, stormwater management and sewage disposal areas; and such other relief as may be necessary to permit the replacement of an existing single-family dwelling with a new single-family dwelling, garage, barn and associated appurtenances on a 10.8 acre property located at 40 Bragg Hill Road, West Chester, PA (UPI#63-1-43.2) in the Township's RA-Residential and Agricultural Zoning District.

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that a true and correct copy of the foregoing Amended Decision and Order has been served upon the following individuals in the manner indicated below this 15<sup>th</sup> day of May, 2023.

Service by First Class Mail, addressed as follows:

Mr. and Mrs. Scott Anthony Woyak  
40 Bragg Hill Road  
West Chester, PA 19382

Pocopson Township  
Board of Supervisors  
ATTN: Susan Simone  
P. O. Box 1  
Pocopson, PA 19366

Amanda J. Sundquist, Esq.  
Unruh, Turner, Burke & Freese, PC  
17 West Gay Street, Suite 200  
P O Box 515  
West Chester, PA 19380

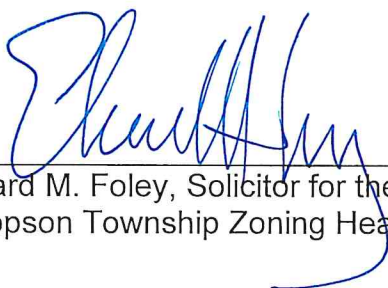
Mr. Craig Kologie  
Code Enforcement Officer  
Castle Valley Consultants  
1011 Daisy Point Road  
Pottstown, PA 19465

James E. Fritsch, P.E.  
Regester Associates  
P. O. Box 406  
Kennett Square, PA 19348

Mr. Charles Benzel  
25 Bragg Hill Road  
West Chester, PA 19382

Mr. Jim Gawthrop  
10 Bragg Hill Road  
West Chester, PA 19382

BRUTSCHER, FOLEY, MILLINER, LAND & KELLY, LLP

BY:   
Edward M. Foley, Solicitor for the  
Pocopson Township Zoning Hearing Board