

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

IN RE: Application of Samuel Rosauri (“Applicant”) that seeks a variance from §250-17.D(5)(b) (General building requirements and design considerations – Wastewater treatment and disposal) of the Pocopson Township Zoning Ordinance (“Zoning Ordinance”) to permit the development of a residential lot with only one drainage field, where two drainage fields are otherwise required; additionally, the Applicant seeks special exceptions pursuant to the following sections of the Zoning Ordinance: §250-87.D(1)(a) (Conservation of natural features – Steep slope conservation) to permit a 46% disturbance of moderately steep slopes, where no more than 25% of moderately steep slopes shall otherwise be disturbed;¹ §250-87.D(1)(b) (Conservation of natural features – Steep slope conservation) to permit 100% disturbance of steep slope margins, where no more than 25% of steep slope margins shall otherwise be disturbed; §250-87.D(1)(c) (Conservation of natural features – Steep slope conservation) to permit a 17%² disturbance of very steep slopes, where no more than 10% of very steep slopes shall otherwise be disturbed; and §250-87.K(1)(b) (Conservation of natural features – Woodlands and hedgerows), to permit a 45% disturbance of woodlands, where woodland disturbance on any lot or tract shall otherwise not exceed 20%, all for the construction of a single-family detached dwelling and other attendant improvements, for the property located at 2 Deblyn V Lane, Pocopson Township, Chester County, Pennsylvania (UPI #63-3-117.11) in the Residential and Agricultural Zoning District of the Township.

DECISION AND ORDER

I. PROCEDURAL HISTORY:

On or about January 23, 2024, the Applicant filed an application to the Pocopson Township Zoning Hearing Board (“Board”) that sought a variance from §250-17.D(5)(b) (General building requirements and design considerations – Wastewater treatment and disposal) of the Zoning Ordinance to permit the development of a residential lot with only one drainage field, where two drainage fields are otherwise required; additionally, the Applicant sought special exceptions pursuant to the following sections of the Zoning Ordinance: §250-87.D(1)(a) (Conservation of natural features – Steep slope conservation) to permit a 46% disturbance of moderately steep slopes, where no more than 25% of moderately steep slopes shall otherwise be disturbed; §250-87.D(1)(b) (Conservation of natural features – Steep slope conservation) to permit 100% disturbance of steep slope margins, where no more than 25% of steep slope margins shall otherwise be disturbed; §250-87.D(1)(c) (Conservation of natural features – Steep slope conservation) to permit a 17% disturbance of very steep slopes, where no more than 10% of very steep slopes shall otherwise be disturbed; and §250-87.K(1)(b) (Conservation of natural features – Woodlands and hedgerows), to permit a 45% disturbance of woodlands, where woodland disturbance on any lot

¹ The application indicates a 36% disturbance of moderately steep slope. *See* Exhibit A-1. Prior to the hearing and at the beginning of the hearing, the Applicant amended the application to request 46% disturbance of moderately steep slope. Accordingly, the Board shall address the amended request.

² According to the Pennoni letter, dated January 26, 2024, the Applicant will disturb 20.4% of the very steep slopes on the Property. *See* Exhibit B-10. This is in conflict with the 17% requested in the application. *See* Exhibit A-1. It is the function of a zoning hearing board to weigh the evidence before it. *Taliaferro v. Darby Tp. Zoning Hearing Bd.*, 873 A.2d 807 (Pa. Cmwlth. 2005). The Board specifically credits the Pennoni calculation of very steep slope disturbance. Thus, the Board shall consider the application amended to request 20.4% disturbance of very steep slopes.

or tract shall otherwise not exceed 20%, all for the construction of a single-family detached dwelling and other attendant improvements, for the property located at 2 Deblyn V Lane, Pocopson Township, Chester County, Pennsylvania (UPI #63-3-117.11), which is located in the Residential and Agricultural Zoning District.

On or about February 9, 2024, Applicant's counsel amended the instant application to request 46% disturbance of moderately steep slopes and to permit 45% disturbance of woodlands. At the beginning of the hearing, Applicant's counsel clarified the relief being sought. Further, Applicant's counsel requested, to the extent necessary, a special exception pursuant to §250-87(M)(3)(c) (Conservation of natural features) of the Zoning Ordinance.

After public notice in accordance with the Pennsylvania Municipalities Planning Code (the "MPC"), the hearing was convened on the evening of February 28, 2024, at 7:00 p.m. Chairman, Nathan Wilson, and Member, David Ziegler, and Alternate Member, Georgia F. Brutscher, appeared on behalf of the Board. The Applicant was ably represented by Neil E. Land, Esq. of Brutscher, Foley, Milliner, Land & Kelly, LLP. No other parties appeared of record.

During the course of the hearing, the Board marked and admitted the following exhibits into evidence:

- B-1 Notice of the February 28, 2024 hearing.
- B-2 Proof of publication of the notice in the Daily Local News on February 12, 2024 and February 19, 2024.
- B-3 Proof of posting the notice on the subject property.
- B-4 Proof of mailing, dated February 14, 2024, along with a list of individuals and entities to whom notice was mailed.
- B-5 Tax parcel map depicting the location of the subject property.
- B-6 The Pocopson Township Zoning Ordinance, by reference.
- B-7 Letter, dated February 12, 2024, from Kristin S. Camp, Esquire, to the Board containing the recommendation of the Pocopson Township Planning Commission.
- B-8 Memorandum, dated February 27, 2024, from Susan Simone, Township Secretary, to the Board containing the recommendation of the Pocopson Township Board of Supervisors.
- B-9 Letter, dated January 30, 2024, from Craig A. Kologie, AICP, regarding the subject application.
- B-10 Letter, dated January 26, 2024, from Kenneth Hoffman, RLA, to Susan Simone, Township Secretary, regarding the subject application.

During the course of the hearing, the Applicant offered the following exhibits, which were admitted into evidence:

- A-1 Pocopson Township Zoning Hearing Board Application, received by the Township on January 3, 2024, with attachments.
- A-2 ChescoViews aerial image zoomed in depicting the location of the subject property, ChescoViews aerial image zoomed out depicting the location of the subject property.
- A-3 Deed to the subject property, dated November 12, 2020.
- A-4 Existing Site Images Plan, dated February 6, 2024, (Drawing No. S1).
- A-5 Plan Set prepared by Rosauri Builders (8 sheets).
- A-6 Permit for the Installation of a Sewage Disposal System from the Chester County Health Department for Tax Parcel ID #63-3-117.11, with attachments.
- A-7 Letter, dated August 18, 2023, to the Applicant from Raymond Gamble, President of the Deblyn V Homeowners' Association, regarding 2 Deblyn V Lane.
- A-8 Letter, dated February 12, 2024, from Kristin S. Camp, Esquire, to the Board containing the recommendation of the Pocopson Township Planning Commission.
- A-9 Lines and Grades Plan prepared by Hillcrest Associates, Inc., dated August 22, 2023, last revised February 2024 (Drawing No. 1 of 2).
- A-10 Erosion & Sedimentation Control Details Plan prepared by Hillcrest Associates, Inc., dated August 22, 2023, last revised February 2024 (Drawing No. 2 of 2).
- A-11 Curriculum vitae of Thomas A. Schreier, RLA, with Hillcrest Associates, Inc.
- A-12 Memorandum, dated February 27, 2024, from Susan Simone, Township Secretary, to the Board containing the recommendation of the Pocopson Township Board of Supervisors.

At the conclusion of the February 28, 2024, hearing, the Board deliberated in closed private session in accordance with the Pennsylvania Sunshine Act.³ The Board voted two to one to grant the requested relief, under and subject to conditions, as set forth in the following Order.

³ 65 Pa.C.S.A. §701 et seq.

II. FINDINGS OF FACT:

1. The Applicant owns the subject property, which is located at 2 Deblyn V Lane, Pocopson Township, Chester County, Pennsylvania (UPI No. 63-3-117.11) (“Property”). *See* Exhibits A-1, A-2, A-3, and A-9.

2. The Property is located in the Residential and Agricultural Zoning District of the Township. *See* Exhibit A-9.

3. Section 250-17.D(5)(b) (General building requirements and design consideration – Wastewater treatment and disposal) of the Zoning Ordinance provides that “[e]ach lot that will rely on an individual septic system shall have adequate area available (whether on-lot or via easement onto adjacent open space where permitted) for two drainage fields with percolation tests approved by the Chester County Health Department.” *See* Exhibit B-6.

4. Section 250-87.D(1) (Conservation of natural features – Steep slope conservation) of the Zoning Ordinance provides, in relevant part, that no more than 25% of moderately steep slopes shall be regraded, no more than 25% of steep slope margins shall be regraded, and no more than 10% of very steep slopes shall be regraded. *See* Exhibit B-6.

5. Section 250-87.K(1) (Conservation of natural features – Woodlands and hedgerows) of the Zoning Ordinance provides, in relevant part, that permitted woodland disturbance on any lot or tract shall not exceed 20% of any woodland other than forest interior habitat. *See* Exhibit B-6.

6. The Applicant and Thomas Schreier, who was admitted as an expert in the field of landscape architecture, testified on behalf of the subject application. *See* Exhibit A-11.

7. The Property has a unique shape and contains frontage along Lenape Road and Deblyn V Lane. The Property is bordered on its side and to the rear by single-family detached dwellings. *See* Exhibit B-5.

8. The Property measures approximately 3.762 gross acres in area and approximately 1.191 net acres in area. *See* Exhibit A-9.

9. The Property is currently unimproved vacant land and contains a stream, riparian buffer,⁴ approximately 1.212 acres (52,809 square feet) of floodplain area, 1.359 acres (59,217 square feet) of very steep slopes,⁵ moderately steep slopes,⁶ and steep slope margin.⁷ *See* Exhibits A-1 and A-9.

⁴ Section 205-6 (Definitions and word usage) of the Zoning Ordinance defines “riparian buffer” as “[a] vegetated area, including trees, shrubs, and herbaceous vegetation, adjacent to a water body.” *See* Exhibit B-6.

⁵ Section 205-6 (Definitions and word usage) of the Zoning Ordinance defines “very steep slopes” as “those areas of land where the grade is greater than 20%.” *See* Exhibit B-6.

⁶ Section 205-6 (Definitions and word usage) of the Zoning Ordinance defines “moderately steep slopes” as “those areas of land where the grade is 10% to 20%.” *See* Exhibit B-6.

⁷ Section 205-6 (Definitions and word usage) of the Zoning Ordinance defines “steep slope margin” as “[a]ny area not otherwise regulated as steep slope and located within 25 feet upslope of any area regulated as steep slope, measured

10. The Applicant proposes to construct a single-family detached dwelling, driveway, on-lot septic system, water well, and other attendant improvements on the Property. *See Exhibits A-1, A-9, and B-1.*

11. The footprint of the single-family detached dwelling will measure approximately 3,308 square feet, and the gross floor area of the dwelling will measure approximately 7,962 square feet. *See Exhibit A-5.*

12. The single-family detached dwelling will have three levels, four bedrooms, and 4.5 bathrooms. *See Exhibit A-5.*

13. The Applicant will disturb approximately 46% of moderately steep slopes, 100% of steep slope margin areas, 20.4% of very steep slopes, and 45% of woodlands. *See Exhibits A-1, A-9, and B-10.*

14. The Applicant will install a single drainage field on the Property. *See Exhibits A-1 and A-9.*

15. On or about June 27, 2023, the Chester County Health Department approved the permit for the installation of a sewage disposal system for the Property. *See Exhibit A-6.*

16. The Deblyn V Homeowners' Association approved the plans submitted for the development of the Property. *See Exhibit A-7.*

17. The Township Planning Commission and the Pocopson Township Board of Supervisors recommended that the requested relief be granted, subject to conditions. *See Exhibits A-8 and A-12.*

III. DISCUSSION:

In reviewing a request for a variance, the Board is guided by the criteria for a variance set forth in §250-78.A(5) (Variances) of the Zoning Ordinance, which provides, in relevant part, as follows:

Upon completion of the public hearing, the Board may grant a variance, provided the procedures specified above are met and the following findings are made where relevant in a given case:

- (a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of the lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions, and not the

perpendicularly to the contour of the land. Areas measured laterally or downslope of steep slope areas shall not be regulated as steep slope margin." *See Exhibit B-6.*

- circumstances or conditions generally created by the provisions of this chapter in the neighborhood or district in which the property is located;
- (b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this chapter, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
 - (c) That such unnecessary hardship has not been created by the applicant;
 - (d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and
 - (e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

In addition to the above referenced standards, the Supreme Court of Pennsylvania has addressed and interpreted dimensional variance requests. When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations. *Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh*, 721 A.2d 43, 47 (Pa. 1998). Thus, the grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation. *Id.* The quantum of proof required to establish unnecessary hardship is indeed lesser when a dimensional variance is sought. *Id.* at 47-48. To justify the grant of a dimensional variance, courts may consider multiple factors, including the economic detriment to the applicant if the variance was denied, the financial hardship created by any work necessary to bring the building into strict compliance with the zoning requirements and the characteristics of the surrounding neighborhood. *Id.* at 50. In *Hertzberg*, the Supreme Court articulated a more relaxed standard when addressing a dimensional variance. *Pequea Township v. Zoning Hearing Board of Pequea Township*, 180 A.3d 500, 507 (Pa. Cmwlth. 2018).

The Board is satisfied, having reviewed the evidence presented, that this application meets those standards. The Property contains a stream, riparian buffer, floodplain, moderately steep slopes, very steep slopes and steep slope margin, which are all natural features. The natural features of the Property are peculiar to it and create an unnecessary hardship. Because of the natural features, there is no possibility that the Property can be developed in strict conformity with certain provisions of the Zoning Ordinance. Therefore, a variance is necessary to enable a reasonable use of the Property. The Applicant did not create the hardship attendant to the Property as the hardship is created by natural features. In this particular case, the Board is satisfied the variance will not alter the essential character of the neighborhood as the Property shall be improved with a single-family detached dwelling in a neighborhood that currently contains single-family detached dwellings. Finally, based on the totality of the circumstances, the Board concludes that the variance represents the minimum variance that will afford relief. Accordingly, the requested variance shall be granted, under and subject to the conditions enumerated below.

A special exception is a conditionally permitted use, allowed by the legislature if specifically listed standards are met. *In re Brickstone Realty Corp.*, 789 A.2d 333, 340 (Pa. Cmwlth. 2001). A special exception is thus not an exception to the zoning ordinance, but a use permitted conditionally, the application for which is to be granted or denied by the zoning hearing board pursuant to express standards and criteria. *Id.* Where a particular use is permitted in a zone by special exception, it is presumed that the local legislature has already considered that such use satisfies local concerns for the general health, safety, and welfare and that such use comports with the intent of the zoning ordinance. *Id.* In reviewing requests for special exceptions, the Board is guided by the criteria for special exceptions set forth in §250-79.C (Special exceptions) and §250-87.M(3)(c) (Conservation of natural features) of the Zoning Ordinance.

The Board is satisfied, having reviewed the evidence presented, that this application meets those standards. The Applicant demonstrated that the Property is suitable for the proposed single-family detached dwelling. In this particular case, the Board is satisfied that the special exceptions will not unduly alter the character of the neighborhood or adjacent tracts as the proposed single-family detached dwelling will match the character of the existing dwellings located in the neighborhood. The single proposed dwelling should not have an undesirable impact on traffic patterns, volumes, access or parking. Finally, the one single-family detached dwelling will have a minimal impact on municipal services. Accordingly, the requested special exceptions will be granted, under and subject to the conditions enumerated below.

Finally, there were no third-party objectors. Both the Pocopson Township Planning Commission and the Board of Supervisors of Pocopson Township supported the instant application, subject to certain conditions.

IV. CONCLUSIONS OF LAW:

1. The Applicant is properly before the Board, which has jurisdiction pursuant to the MPC.
2. All public notices, postings and advertising requirements under the Township's Ordinance and the MPC have been complied with.
3. The Applicant met his burdens of proof to establish all of the criteria for the granting of the requested special exceptions as set forth in the Zoning Ordinance.
4. In particular, Applicant demonstrated:
 - a. That the requested use will not result in unduly or unusually negative impacts beyond those normally associated with such a use.
 - b. That tract is suitable for the proposed single-family detached dwelling and other attendant improvements.
 - c. That the requested relief will not alter the essential character of the neighborhood or interfere with any use or development of adjacent properties.

d. That the proposed special exceptions will not have an undesirable impact on traffic patterns and volumes, access and parking.

e. That the character and type of development proposed will not have a substantially negative impact on municipal services and the Township's ability to generate revenue.

5. The Applicant's request for special exceptions will be granted, subject to conditions.

6. The Applicant met his burden of proof of the elements necessary to entitle him to the requested variance under §250-78.A(5) of the Zoning Ordinance and the MPC.

7. In particular:

(a) There are unique physical circumstances or conditions peculiar to the Property. In particular, the Property contains a stream, riparian buffer, floodplain, moderately steep slopes, very steep slopes and steep slope margin.

(b) An unnecessary hardship arises because of those physical circumstances and conditions in that there is no possibility that the Property can be developed in strict conformity with certain provisions of the Zoning Ordinance, and the authorization of the variance is therefore necessary to enable the reasonable use of the Property.

(c) The circumstances giving rise to the hardship were not created by the Applicant. In particular, the stream, riparian buffer, floodplain, moderately steep slopes, very steep slopes and steep slope margin are natural features of the Property.

(d) The variance, if authorized, will not alter the essential character of the neighborhood or zoning district where the Property is located, nor substantially or permanently impair the appropriate use or development of any adjacent property, and will not be detrimental to the public welfare.

(e) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation at issue.

8. The Applicant's request for a variance will be granted, subject to conditions.

9. In accordance with §250-78.B of the Zoning Ordinance, the Board is attaching reasonable conditions as it deems necessary to implement the purpose of the Zoning Ordinance.

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

V. ORDER

AND NOW, 28th day of February 2024, upon consideration of the amended application of Samuel Rosauri that sought a variance from §250-17.D(5)(b) (General building requirements and design considerations – Wastewater treatment and disposal) of the Zoning Ordinance to permit the development of a residential lot with only one drainage field, where two drainage fields are otherwise required; additionally, the Applicant sought special exceptions pursuant to the following sections of the Zoning Ordinance: §250-87.D(1)(a) (Conservation of natural features – Steep slope conservation) to permit a 46% disturbance of moderately steep slopes, where no more than 25% of moderately steep slopes shall otherwise be disturbed; §250-87.D(1)(b) (Conservation of natural features – Steep slope conservation) to permit 100% disturbance of steep slope margins, where no more than 25% of steep slope margins shall otherwise be disturbed; §250-87.D(1)(c) (Conservation of natural features – Steep slope conservation) to permit a 20.4% disturbance of very steep slopes, where no more than 10% of very steep slopes shall otherwise be disturbed; and §250-87.K(1)(b) (Conservation of natural features – Woodlands and hedgerows), to permit a 45% disturbance of woodlands, where woodland disturbance on any lot or tract shall not otherwise exceed 20%, all for the construction of a single-family detached dwelling and other attendant improvements, for the property located at 2 Deblyn V Lane, Pocopson Township, Chester County, Pennsylvania (UPI #63-3-117.11) in the Residential and Agricultural Zoning District of the Township, it is hereby ordered that the variance and special exceptions shall be **GRANTED**,⁸ **UNDER AND SUBJECT TO** the following conditions:

1. The Applicant shall prepare, execute and record an operations and maintenance agreement for the single septic system in a form acceptable to the Township Solicitor. A copy of the operations and maintenance agreement shall be recorded in the Office of the Chester County Recorder of Deeds.

2. The Applicant shall comply with all outstanding comments of the January 30, 2024 Review Memorandum from Township Consultant Craig Kologie, AICP, and the January 26, 2024 Grading Permit Plan Review from Kenneth Hoffman, RLA. Should compliance with outstanding comments result in the need for additional relief, the Applicant shall return to the appropriate Township body to seek additional relief.

3. The Applicant shall record a notice in the Chester County Recorder of Deeds in the chain of title for the Property placing future owners of the Property on notice of the lack of a replacement septic field on the Property and the potential associated expense of future replacement of the septic system. The notice shall be reviewed and approved by the Township Solicitor prior

⁸ At the beginning of the hearing, the Applicant requested, to the extent necessary, a special exception pursuant to §250-87.M(3)(c) (Conservation of natural features) of the Zoning Ordinance. Applicant's counsel explained that the aforementioned section of the Zoning Ordinance was deemed a "triggering" section of the Zoning Ordinance. Further, Applicant's counsel explained that the triggering section permits the Applicant to seek the requested special exceptions. The Board did not specifically grant relief pursuant to §250-87.M(3)(c) of the Zoning Ordinance as the Board did not advertise this request. However, to the extent a special exception pursuant to this triggering section is necessary to permit the Applicant to seek the special exceptions that the Applicant has already requested, the Board would have granted relief pursuant to §250-87.M(3)(c) of the Zoning Ordinance. Thus, the Applicant need not appear before the Board again to simply request a special exception pursuant to §250-87.M(3)(c) (Conservation of natural features) of the Zoning Ordinance to permit the relief that has already been granted by the Board.

to recording.

4. The Applicant shall comply with the tree replacement requirements of §250-87.K (Conservation of natural features) of the Zoning Ordinance.

5. The Applicant and the use and development of the Property shall comply with the representations and commitments made in the evidence presented at the hearing and submitted to the Board.

6. The Applicant and the use and development of the Property shall comply in all respects with all ordinances and regulations of Pocopson Township and with all applicable provisions of any statute, ordinance or regulation of any municipal or governmental entity having jurisdiction over the Property or the uses thereon.

POCOPSON TOWNSHIP ZONING HEARING BOARD

BY: *Nathan Wilson*
Nathan Wilson, Chairman

David H. Ziegler, Sr.
David H. Ziegler, Sr., Member

I, Georgia Brutscher, respectfully voted to deny the requested relief.

Georgia F. Brutscher, Alternate Member

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

IN RE: Application of Samuel Rosauri.

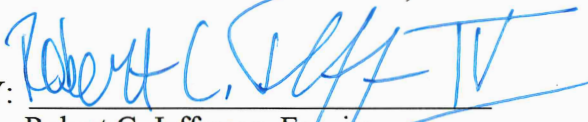
CERTIFICATE OF MAILING

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 26th day of March, 2024.

Service by Electronic Mail, unless otherwise stated:

<p>Kristin S. Camp, Esq. Buckley Brion McGuire & Morris, LLP 118 W. Market Street, Suite 300 West Chester, PA 19382 kcamp@buckleyllp.com</p>	<p>Amanda J. Sundquist, Esq. Unruh, Turner, Burke & Frees, PC 17 West Gay Street, Suite 200 P.O. Box 515 West Chester, PA 19380 asundquist@utbf.com</p>
<p>Pocopson Twp. Board of Supervisors ATTN: Susan Simone P.O. Box 1 Pocopson, PA 19366 secretary@pocopson.org</p>	<p>Craig Kologie, Code Enforcement Officer Castle Valley Consultants 1011 Daisy Point Road Pottstown, PA 19465 cakologie@casval.com</p>
<p>Mr. Neil E. Land, Esquire Brutscher Foley Milliner Land & Kelly LLP 213 East State Street Kennett Square, PA 19348 nel@bfmlk.com *First Class Mail and Electronic Mail</p>	

GAWTHROP GREENWOOD, P.C.

BY: 
Robert C. Jefferson, Esquire
Conflict Solicitor for Pocopson Township
Zoning Hearing Board