

WHITPAIN TOWNSHIP
MONTGOMERY COUNTY
COMMONWEALTH OF PENNSYLVANIA

960 WENTZ ROAD
BLUE BELL, PA 19422-1835
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January 17, 2024

Amee S. Farell, Esq.
Kaplin Stewart Meloff Reiter & Stein, PC
910 Harvest Drive
Blue Bell, PA 19422

Re: Conditional Use Application No. 45-23
GP Knox, LLC
1150 Wentz Road, Parcel No. 66-00-08278-00-8

Dear Amee:

As approved by the Board of Supervisors January 16, 2024, I am forwarding the Decision and Order for the above-noted application.

Sincerely,

A handwritten signature in red ink, appearing to read "Roman".

Roman M. Pronczak, P.E.
Township Manager

/v

BEFORE THE WHITPAIN TOWNSHIP BOARD OF SUPERVISORS

Applicant:
GP Knox, LLC

Property:
1150 Wentz Road
Blue Bell, PA 19422

Parcel No:
66-00-08278-00-8

Application No.: 45-23

CONDITIONAL USE DECISION

FINDINGS OF FACT

1. On or about September 22, 2023, GP Knox, LLC (“Applicant”) submitted to the Whitpain Township Board of Supervisors (“Board”) an application for conditional use approval (“Application”).
2. Specifically, the Application sought conditional use approval pursuant to Section 160-85.1 of the Whitpain Township Zoning Ordinance of 1950 (“Ordinance”) related to the property located at 1150 Wentz Road, Blue Bell, PA 19422 (“Subject Property”) to permit an open space design option for the configuration of the Subject Property to yield seven (7) lots with reduced lot size for single family residences (“Project”).
3. On December 19, 2023, the date requested by the Applicant after waiving all relevant timeliness provisions of the Pennsylvania Municipalities Planning Code (“MPC”), a hearing on the Application was held at a publicly noticed meeting before the Board.
4. Applicant is the equitable owner of the Subject Property, which is located in the R-7 – Residential District of Whitpain Township (“Township”).

5. The Ordinance permits an “open space design option” for lots in the R-7 – Residential District by conditional use only.
6. The Board met all of the requirements of the Ordinance and the MPC as to the requisite Legal Notice.
7. Applicant was represented by Amee S. Farrell, Esquire.
8. No members of the public or business entities requested party status.
9. At the December 19 Hearing, the following documents were offered by the Applicant and the Township, marked as indicated, and received into evidence:

T-1:	Application Packet
T-2:	Planning Commission Memorandum
T-3:	MCPC Review Letter
T-4:	Proof of Publication
T-5:	Proof of Mailing
T-6:	Affidavit of Posting
A-1:	Conditional Use Application
A-2:	Redacted Agreement of Sale
A-3:	Curriculum Vitae of Anthony Hibbeln
A-4:	Existing Conditions Images
A-5:	2017 Subdivision Plan
A-6:	2019 Cluster Plan
A-7:	2019 Plan
A-8:	Conditional Use Decision Dated 6/19/2019
A-9:	Current Plan

10. At the December 19th hearing, Anthony Hibbeln was accepted as an expert in civil engineering and offered the following testimony on behalf of the Applicant:
 - a. Mr. Hibbeln is a representative of Gorski Engineering, Inc. and designed the proposed development.
 - b. As equitable owner, Applicant seeks approval of the Project, which is the creation of a seven (7) lot cluster housing development at

the Subject Property pursuant to the open space design option found in Section 160-85.1 of the Ordinance.

- c. The Subject Property is 4.23 acres in gross area and has a width of approximately 215 linear feet along Wentz Road, from which it is accessed by a private driveway.
- d. The Subject Property is currently improved with an old farmhouse and several outbuildings, including a large barn.
- e. The Subject Property is in the R-7 – Residential District and is surrounded by numerous residential properties.
- f. In 2017, a subdivision application was submitted to the Township for the Subject Property that proposed a traditional nine (9) lot development (“2017 Subdivision”).
- g. Both the Whitpain Township Planning Commission and the Board issued approvals of the 2017 Subdivision.
- h. However, the 2017 Subdivision was never developed.
- i. Instead, in 2019, the landowner asked Mr. Hibbeln to develop a proposal pursuant to the open space design option, which has numerous design standards that are not applicable to a traditional subdivision.
- j. Mr. Hibbeln prepared an initial plan for thirteen (13) lots, which was then revised down to ten (10) lots after discussions with Township staff.
- k. The ten (10) lot plan led to the filing of a conditional use application similar to the application presently before the Board (“2019 Application”).
- l. The 2019 Application proposed ten (10) lots, a 51.5 percent open space reservation, 25 total off-street parking spaces and no access to Silver Lake Road, which abuts the rear of the Subject Property.
- m. The Board voted to approve the 2019 Application but the development was never constructed.
- n. In comparison with the 2019 Application, the Project proposes three (3) fewer lots, each with a slightly larger building envelope.
- o. The reduction will yield a density of 1.655 dwellings per acre where Section 160-85.1 permits up to 2.5 dwellings per acre.
- p. The Project proposes a private road running through the Subject Property and each lot thereon will have its own private driveway connected to the private road.
- q. The private road, as well as the preserved open space, will be maintained by a homeowners association.

- r. Each lot will also have two (2) off-street parking spaces and the entire development will have an additional five (5) off-street parking spaces.
 - s. Applicant will not need to request any variances for the Project.
 - t. The Subject Property is held under single ownership.
 - u. The Project will reserve approximately 51.54 of the Subject Property's gross area percent as open space subject to a deed restriction.
 - v. The Project will be served by public water and public sewer systems.
 - w. Each proposed lot will be at least 6,000 square feet, ranging from 7,988 square feet to 10,838 square feet.
 - x. The Project will provide at least 50 feet of lot width at the building setback line for each lot.
 - y. Each lot will have a 20-foot front yard setback, a 20-foot rear yard setback, minimum side yard setbacks of 5 feet each and 15-foot aggregate side yard setbacks.
 - z. The largest proposed building coverage will be 28.6 percent, where 45 percent is the maximum permitted.
 - aa. The largest impervious surface ratio will be 38.7 percent, where 60 percent is the maximum permitted.
 - bb. Each of the seven (7) dwellings will be less than 40 feet in height.
 - cc. The Township's Land Planner and the Montgomery County Planning Commission both determined that the Project was consistent with the relevant provisions of the Ordinance and therefore have recommended approval thereof.
 - dd. It is Mr. Hibbeln's professional opinion that the Project would not be contrary to the public interest and would match the surrounding community because the Subject Property is a good fit for the open space design option.
- 11. The Township found the testimony and documentary evidence presented by the Applicant to be credible.
 - 12. Steve Dunn, 1051 Plowshare Road, offered public comment to state that he supports the Application but has concerns related to buffering that he hopes the Applicant will address in land development.
 - 13. Jim Kozeniewski, 1125 Silver Lake Lane, offered public comment in support of the Application.
 - 14. Jeff Carcione, 1067 Plowshare Road, offered public comment to note concerns related to drainage, traffic and parking related to the Project.

15. Colleen Nacarelli, 1047 Plowshare Road, offered public comment to express concerns regarding the preservation of the existing tree canopy and the proposed setbacks.
16. Alex Haynie, 1130 Silver Lake Lane, offered public comment to express concerns related to preservation of the existing tree canopy.
17. Upon conclusion of the hearing, the Board unanimously voted to approve the Application.

DISCUSSION

1. Pursuant to § 160-85.1 of the Ordinance, an open space design option is permitted on tracts of land within the R-7 Residential District by Conditional Use, subject to certain conditions.
2. An open space design option permits the tract to be subdivided into undersized individual lots as long as those conditions are met.
3. To meet the requirements for an open space design option, “[t]he tract of land to be developed shall be a minimum of three acres in area” and shall either “be in single ownership” or under ownership of multiple owners acting jointly and “under single direction.”
4. A tract developed under an open space design option must have set aside at least 50% of its area “as preserved, deed-restricted open space” accessible from a public or private right-of-way.
5. Finally, “the tract shall be served by public sewer and water facilities.”
6. If a tract meets the above qualification, its development is subject to the following regulations.
 - a. No more than 2.5 dwelling units per developable acre are permitted.
 - b. All lots must be at least 6,000 square feet in area.
 - c. The following minimum setbacks from the lot line apply to all structures:
 1. Front yard: 20 feet.
 2. Rear yard: 20 feet.
 3. Side yards: 5 feet each, 15 aggregate.
 - d. The minimum lot width at the building setback line for all structures is 50 feet.
 - e. The maximum permitted building coverage per lot is 45 percent.
 - f. The maximum permitted impervious coverage per lot is 60 percent.
 - g. The maximum building height is 40 feet.

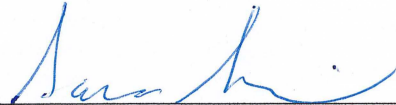
7. "A [conditional use] is not an exception to the zoning ordinance, but rather a use to which the applicant is entitled provided the specific standards enumerated in the ordinance for the [conditional use] are met by the applicant." In re AMA/Am. Mktg. Ass'n, Inc., 142 A.3d 923, 934 (Pa. Commw. Ct. 2016).
8. However, an Applicant for conditional use has the burden to demonstrate compliance with the specific criteria of the ordinance. In re Thompson, 896 A.2d 659 (Pa. Commw. Ct. 2005).
9. Where an Applicant proves that the proposed use complies with all the specific standards required for granting a conditional use, it enjoys a presumption that such use is not adverse to the public health, safety and welfare. Mehring v. Zoning Hearing Bd. of Manchester Twp., 762 A.2d 1137, 1141 (Pa. Commw. Ct. 2000).
10. Where there is opposition to an application, "the objectors must establish a high degree of probability that the proposed use will adversely impact on the public interests." Id.
11. However, no members of the public took party status as objectors to the application; consequently, there is no evidence in the record to rebut the presumption.

CONCLUSIONS OF LAW

12. Applicant sustained its burden of proof that its Application met the specific criteria of the Whitpain Township Zoning Ordinance.
13. All use and development allowed by any granted application shall conform to the exhibits and testimony presented at the hearing unless inconsistent with these conditions in which case these conditions take precedence.
14. Approval of the Application is subject to the Applicant's compliance with any requirements from any agency having jurisdiction over the matter in addition to all applicable codes and ordinances, including but not limited to the Whitpain Township Zoning Ordinance, the Whitpain Township Subdivision and Land Development Ordinance, and the Whitpain Township Building Code.
15. Approval of the Application is subject to Applicant agreeing to reimburse the Township for all fees and costs associated with the review of this plan account, including engineering and attorney fees, and to become current with all financial obligations to the Township.

CONCLUSION

Based on the testimony and documentary evidence, the Board of Supervisors of Whitpain Township unanimously voted to approve the Conditional Use application.



Sara S. Selverian
Assistant Secretary



Scott M. Badami
Chair

January 16, 2024
Dated

January 16, 2024
Dated