

BEFORE THE BOARD OF COMMISSIONERS OF UPPER DUBLIN TOWNSHIP

In re: Conditional Use Application of
Danny Jake Corporation

Property: Camp Hill Road,
(between PA Turnpike and Norfolk
Southern RR), Ft. Washington

MEMORANDUM FINDINGS OF FACT, OPINION AND ORDER

An amended application for conditional use approval was filed with Upper Dublin Township on December 5, 2006 and heard before the Board of Commissioners in four separate hearings held January 23, 2007, March 6, 2007, March 27, 2007 and April 24, 2007, after due advertisement. The applicant seeks approval to build age restricted housing in the MD Multiple Dwelling District and seeks approval to construct storm sewer culverts, a roadway, proposed utilities and associated grading within the Floodplain Conservation District. The subject property lies on both sides of Camp Hill Road between the bridge over the PA Turnpike and the underpass under the Norfolk and Southern Railroad, Ft. Washington.

FINDINGS OF FACT

Description Of Site - Ownership

1. The proposed age restricted housing project is to be located on what is described in the Conditional Use Application as a 50.93 acre lot on Camp Hill Road (between PA Turnpike and Norfolk Southern Railroad). The application form does not set forth the block and unit numbers for the property. However attached to the application are two pages of an agreement of sale between South Brunswick Industrial Properties Limited Partnership and WFP Pennland

Company, L.P., a Joint Venture as Sellers and Danny Jake Corp. as Buyer. The Agreement of Sale references two parcels, # 54-00-03544-002 and # 54-00-03601-008.

2. According to the records in the Board of Assessment office, parcel # 54-00-03544-002 is owned by WFP Pennland Company, L.P. and contains 36.43 acres of vacant land. Parcel # 54-00-03601-008 is also owned by WFP Pennland Company, L.P. and contains 14.5 acres of vacant land. Danny Jake Corporation is the equitable owner of both properties pursuant to the Agreement of Sale.

3. The Conditional Use Application was accompanied by a Land Development Plan dated March 31, 2006 with a last revision dated November 10, 2006 prepared by Schlosser & Clauss Consulting Engineers, Inc.(the "Plan"). The Plan shows two separate parcels of ground on either side of Camp Hill Road, a Township street. The Plan gives no dimensional information for the individual parcels and, although requested, no testimony was offered by the Applicant to provide this information. However, the parcel to the west of Camp Hill Road appears on the Plan to be the smaller of the two, and thus presumably is the 14.5 acre parcel (the "West Parcel"). The parcel to the east of Camp Hill Road is larger and thus presumably is the 36.43 acre parcel (the "East Parcel").

4. The two parcels are bordered on the north by the Pennsylvania Turnpike, which lies well below the first floor grade of the proposed buildings on both parcels. Beyond that is an industrial park containing a mix of light industrial and office uses. The two parcels are bordered on the south by a freight railroad line owned by the Norfolk and Southern Railroad. The railroad lies below the first floor grade of the buildings on the West Parcel and above the first floor grade of the buildings proposed for the East Parcel. Beyond the railroad right of way are neighborhoods of single family houses.

5. The Plan sets forth calculations for average slopes, impervious cover, building coverage and units per acre for a 50.347 acre property, that being approximately the size of the two parcels added to one another. It is not known if these calculations include the area within the right of way of Camp Hill Road. No statistical zoning information was provided for the two individual parcels.

6. Both parcels were zoned in the MD Multiple Dwelling District at the time the conditional use application was originally filed. The zoning on both parcels was subsequently changed to EC Employment District.

7. Applicant's engineer was advised that the Township considered the West Parcel and the East Parcel to be two separate lots and two separate tracts of ground which were required to be viewed independently with respect to zoning compliance. Applicant's engineer agreed with this determination. (NT 1/23/07, p. 62) With respect to the two individual parcels, Applicant's engineer did not know their size or average slope. He did not know whether the proposed construction on the individual parcels complied with impervious surface, building coverage, or maximum units per acre requirements. Applicant's counsel agreed to provide this information. (NT 1.23.07, p.65) However, Applicant chose not to provide the Township with any dimensional calculations for the separate parcels in order to demonstrate compliance with the zoning code.

8. Applicant's counsel stated that the applicant considered the two parcels to constitute a single "tract" even though they were separated by Camp Hill Road, a public highway. As early as November 16, 2006 the Township planner advised the Township and the Applicant that she considered the two parcels to consist of two separate tracts. This assertion was repeated in her review letters dated January 19, 2007 and March 23, 2007.

9. Although neither parcel is improved with a building, there is a 50 foot wide international pipe line easement owned by Sunoco that extends the length of both parcels from west to east generally adjacent to the southerly property line. A single pipeline carrying various petroleum products lies within this easement. In addition, a second 50 foot wide international pipe line easement, this one owned by Transco, extends north to south across the East Parcel under what is proposed as the driveway entrance to the East Parcel. Two pipelines, which likewise carry various petroleum products, lie within the Transco easement.

10. The Plan for the West Parcel shows areas of wetlands and steep slopes. The Plan for the East Parcel shows several separate areas of wetlands, floodplain, and hydric soils (Hatboro and Croton). Both parcels currently are extensively wooded. There are a total of 4400 trees over 8" in diameter on the two parcels.

11. The two parcels are very long and narrow, hemmed in between the Turnpike and the railroad. Together they are apx. 6600 feet from west to east. Approximately 3300 feet of the easterly portion of the East Parcel, or half of the length of the entire two tracts, will remain undeveloped and in its natural state.

Description Of Proposed Development

12. The Plan shows the West Parcel as being improved with two three-story age restricted apartment buildings each containing 66 units, for a total of 132 units and each with 130 parking spaces below the living units. The Plan also shows a separate clubhouse and outdoor swimming pool with an at-grade parking lot for approximately 45 vehicles.

13. The Plan shows the East Parcel as being improved with three three-story age restricted apartment buildings containing 56 units, 66 units and 46 units respectively, for a total

of 168 units, and with underground parking under each unit for 114 vehicles, 130 vehicles and 76 vehicles respectively, for a total of 320 parking spaces. The East Parcel Plan also shows three outdoor tennis courts and an at-grade parking lot for 12 vehicles.

14. In the midst of the hearing the Applicant presented an exhibit board (Exhibit A-8) of an incomplete sketch of a significantly revised development plan, with the number of buildings on the East Parcel being reduced from three to two and buildings on both parcels being moved and reconfigured. The Board's decision in this case is based on the Plan filed with the conditional use application, not with the partial sketch plan presented in the midst of the hearings. It is noteworthy that this sketch plan was not offered as a revised or amended plan in conjunction with the conditional use application.

15. Both parcels are to be served by public water and public sewer. All internal infrastructure, including storm sewer facilities, roads, parking areas and recreational facilities are to be maintained by a Homeowners Association.

16. The property will be age restricted by means of a covenant. Walkways and trails will connect the buildings. The plan shows sidewalks along Camp Hill Road at the driveway entrances. The Applicant presented testimony that on one side of Camp Hill Road the sidewalk will be extended over the Turnpike bridge to Virginia Drive, which is the road that traverses the adjacent industrial park. However, this cannot be accomplished, since a 4-foot minimum sidewalk width is not available on the bridge over the Turnpike, nor is there room to build it next to the road due to the existing slopes. A pedestrian connection to Virginia Drive is important for an age restricted community in order to provide residents with access to public transit on Virginia Drive, and to provide domestic help or healthcare aides who use public transit with the

ability to walk to the development. Sidewalks cannot be extended south on Camp Hill Road because of the narrow one-lane railroad underpass.

17. The entrance roadway to each of the parcels will be a boulevard design with two lanes exiting and two lanes entering. The two lanes combined will be 16 feet in width with a mountable island 10 feet wide between them. The boulevard will extend 1200 feet from Camp Hill Road on the West Parcel and 1400 feet from Camp Hill Road on the East Parcel.

18. The posted speed limit on Camp Hill Road is 25 mph. The entrance ways will be 470 feet from the railroad underpass and 240 feet from the Turnpike bridge. The sight distance looking toward the Turnpike is estimated to be approximately 300 feet.

19. Applicant's land planner testified that the dwelling units will be sold as condominium units at a price of approximately \$250,000 each. The total population of the two complexes will be approximately 525 elderly persons. The Township now has 128 age restricted units, not including those already approved and awaiting construction, and has an aging population.

Building Design

20. Testimony concerning the building design was provided by the Applicant's architect, Hans Stein. He provided the following testimony, most of which could not be confirmed by the documentary evidence submitted. The buildings are designed to minimize the number of windows within the residential units facing the Turnpike in order to reduce the noise level into the individual dwelling units. Upper story windows are aligned with those below them. Roofs have a 6:1 slope with a cut out in the middle to provide flat space for HVAC equipment. The outside of the buildings will be brick and stucco with gables and hip roofs

covered with shingles. Windows are divided double hung or casement type. The windows are to be architecturally compatible with the other details of the building. 40% of the units will have balconies 12 feet x 5 feet. It is noted, however, that the Zoning Code requires balconies that are at least 6 feet in depth, so a variance would be required if the design remains as testified to by Mr. Stein.

21. The Applicant's architect, Hans Stein, testified that the design of the buildings is appropriate to age restricted dwelling units where most of the average age of the residents will be in the mid 70's. This age group seeks underground parking where it is out of the elements. They also want security, elevators and someone who could be called to fix things. All of this will be provided in the design and management of the buildings. There is a trash chute on each floor. The units are light and airy with no maintenance required. The overall design is harmonious.

22. According to the Applicant's architect, the most negative factors regarding the two parcels are noise from the Turnpike and poor views. Thus the buildings are designed so that all units face east, west or south – none face north in the direction of the Turnpike. The walls will be constructed with sound buffering techniques and materials. The windows will have laminated glass with a 1 inch air space to reduce noise. Also, interior plazas have been created to provide views into a common gathering area, rather than outwards toward the transportation corridors.

23. The great bulk of the parking is proposed to be located below the buildings containing the dwelling units. The floor level of the lowest parking floor will be above the 100 year floodplain elevation, according to Mr. Stein. However, he was not personally aware of what the 100 year floodplain level was; he designed the plans based on information from others. Applicant's engineer, Mr. Schlosser, testified that the level of the lowest garage floor will be 1.5

feet above the 100 year floodplain level. However this could not be verified as the floodplain elevations in relation to the buildings is not shown on the plans submitted.

24. The parking spaces in the underground garage are shown as 9 feet wide and 18 feet deep. The zoning code at § 255-140 requires these spaces to be 9.5 feet wide and 19 feet long. No variance has been applied for or granted.

25. Applicant will provide area for the parking of bicycles sufficient to comply with the zoning code.

Recreation Facilities

26. While acknowledging that the West Parcel will be improved with an outdoor pool and 4000 sq.ft. clubhouse, Mr. Stein noted that in his experience the clubhouse is not very useful for elderly persons. He predicted it will rarely be used, except for occasional meetings of the homeowners association.

27. Mr. Stein was the only witness who testified concerning the recreational facilities on the two parcels. He testified that he did not know what recreational facilities were appropriate for an age restricted community. He acknowledged that the only recreational facilities being planned were the swimming pool and the clubhouse on the West Parcel and three tennis courts on the East Parcel. In addition a ground level plaza area will be provided surrounded by the walls of the individual buildings and open on the north to the Turnpike. This plaza area is intended to satisfy the requirement of § 255-53.1.B that 80 sq.ft. of area per unit be provided for indoor or outdoor common areas and facilities.

28. No testimony was presented concerning the suitability to an elderly population of the recreation and common facilities proposed, other than the testimony of Mr. Stein that the

clubhouse facility was not suitable for an age restricted population and would not be used. This Board finds as a fact that an outdoor swimming pool in this climate can only be used by an elderly population for three-four months a year and that outdoor tennis courts can only be used for a maximum of six months a year. Therefore no recreational facilities are being provided for use during the majority of the year as required by § 255-53.N.

29. No testimony was provided concerning the size of the swimming pool or the size of the tennis courts in order to satisfy the requirements of § 255-53.N.

30. It is unclear if the tennis courts on the East Parcel can be constructed because the floodplain next to the tennis courts has not been delineated nor has the disturbance area to grade for the tennis courts been shown to be outside of the floodplain area.

31. Since Applicant proposes to develop two separate parcels, the requirements of § 255-53.N must be met on each parcel with respect to the number of units on each parcel (100 sq.ft. per unit). Since it is apparent that the number of units proposed for the West Parcel cannot be constructed there because of the steep slope disturbance, building area and impervious surface violations (see below the findings of fact relating to zoning violations), it is impossible to tell whether the recreational area requirements have been met even if suitable recreation facilities for an age restricted population were proposed and the area of such facilities were calculated and included with this application.

Traffic and Vehicle Access – Pedestrian Safety

32. The design of the buildings does not allow for emergency vehicular access to the rear (the Turnpike side) of any of the buildings.

33. The only access proposed for the two parcels is from Camp Hill Road. Testimony was presented on behalf of the Applicant that emergency access to the Turnpike was being sought. However no testimony was presented that such emergency access would be made available, or that it would be feasible to construct it even if the Turnpike Commission would allow it.

34. The Applicant's traffic engineer, John Caruolo, testified that at present the intersection of Camp Hill Road and Virginia Drive to the north of the site is a Level F, i.e. failing. Applicant proposes to install a traffic signal at this intersection to improve the safety of crossing Virginia Drive. At present no turning movements are allowed at that intersection. Mr. Caruolo recommended that this restriction remain.

35. Going in the other direction, the level of service at Dreshertown Road is currently at Level F in the morning and Level E in the evening. That level of service will be reduced to Level F as a result of development elsewhere and there is nothing that can be done to mitigate that, according to Mr. Caruolo.

36. At the entrances to the two parcels, Mr. Caruolo recommends turning lanes for right turn and left turn movements off of Camp Hill Road. These turning lanes are shown on the Plan, and would increase the width of what now is a two lane road to four lanes. Thus persons going from the East Parcel to the West Parcel, and vice versa, will have to traverse four lanes of traffic.

37. To facilitate residents in the proposed development walking from one side of Camp Hill Road to the other, Mr. Caruolo recommended the installation of a pedestrian crossing. Presumably this would include highway markings and warning signs on Camp Hill Road.

38. The underpass under the railroad is currently only one lane wide. The volume of traffic through this underpass will increase 8% to 10% by the proposed development. To facilitate the rapid passage of emergency traffic through the underpass, Mr. Caruolo recommended an emergency signal to stop oncoming traffic on those occasions when emergency vehicles have to get through the tunnel. The light would be actuated from the emergency vehicle much like such vehicles actuate a green light in their favor as they approach an intersection.

39. It is noted that this is an amended conditional use application. When the original application for a different design was submitted, a traffic study prepared by Mr. Caruolo and dated July 6, 2006, was filed with the Township and introduced in this proceeding as Exhibit T-13. This traffic study included an analysis of sight distances from the proposed driveway entrances for the purpose of determining whether safe vehicle movements into and out of the site could be provided. Based on the posted speed limit of 25 mph, Mr. Caroulo concluded that the available sight distances of 400 feet towards the Turnpike and 300 feet towards the railroad underpass were greater than the PennDOT minimum required stopping sight distances. Thus he expressed the opinion that safe access would be provided.

40. Mr. Caroulo's traffic study submitted for this application as Exhibit A-12 completely omits reference to site access. It does not reference or document actual available sight distances. However, Mr. Caruolo testified that he conducted a speed study and found that the 85th percentile speed for Camp Hill Road is 36-37 mph. He provided no documentation for this analysis. He stated that the generally accepted standard industry practice for determining appropriate sight distance is to use the 85th percentile speed rather than the actual posted speed. (NT 3/6/07, p. 128 and 156). Without providing any data or source for what safe sight distances

were, Mr. Caroulo expressed the verbal opinion that sight distances from the entrances were in excess of the minimum required.

41. Adrienne Eiss of Orth-Rodgers Associates, Inc. testified and presented a report as the Township's transportation engineer. She calculated that the boulevard entrance driveways are located approximately 300 feet south of the high point of the bridge over the Turnpike and 300 feet north of the Norfolk and Southern railroad underpass. While the distance to the Turnpike bridge meets the minimum stopping sight distance, it does not meet the desired safe sight distance according to Drive Design Requirements of the PA Code Chapter 441. Safe sight distance at 35 mph is 440 feet to the north (towards the Turnpike) and 350 feet to the south (towards the railroad underpass.) The actual sight distance to the Turnpike bridge is approximately 300 feet as estimated by Orth-Rodgers Associates. In Ms. Eiss' opinion providing the minimum stopping sight distance is not appropriate for an age restricted residential driveway where senior drivers may have slower reaction time and poorer vision. Senior residents will also be walking across Camp Hill Road between their residence and amenities on the other parcel. In her opinion the driveway should be relocated to another point along the frontage where desired safe sight distance can be provided in both directions. The installation of a traffic signal on Virginia Drive at Camp Hill Road will allow cars southbound on Camp Hill Road to not have to stop thereby increasing their speed approaching the site and further compromising the pedestrian crosswalk.

42. The Board accepts the opinion of its own Traffic Engineer that the traffic study presented by the Applicant is not acceptable and that optimum safe ingress and egress from the site cannot be provided at the proposed location of the site access points. The Board finds that the lack of documentation from the Applicant's Traffic Engineer renders his opinion

unsupported. The Board further finds that the willingness of the Traffic Engineer to express an opinion in his earlier report that the sight distance was adequate, while using the posted speed limit, rather than the 85th percentile actual speed, renders his testimony on safe access unacceptable. He was willing to ignore the industry standard method for determining safe sight distance in his earlier report. The conclusion is inescapable that this is why he left out any reference to safe sight distance in his subsequent report and testified to an opinion without statistical authority.

43. The Applicant's traffic study is required by § 255-53.1.D(4) of the zoning code to "set forth the improvements needed to provide for the safe, efficient and orderly movement of traffic." Mr. Caroulo's revised traffic study that was submitted on January 15, 2007 (Exhibit A-12) analyzes levels of service but does not address improvements at the access to the site. A prior reported from Mr. Caroulo dated July 6, 2006 (Exhibit T-13) stated that deceleration lanes and left turn lanes should be provided in both directions on Camp Hill Road. This report did not specify that diversions were required. The July 6th report was written before the speed study and was based on the posted speed limit of 25 mph. It is not possible to determine from the Applicant's traffic study and reports whether safe and efficient access can be provided. What is missing, in addition to sight distance data, is discussion of requirements for left turn lanes and deceleration lanes, and calculations demonstrating that geometry for the widening and lane transitions is adequate for the measured speed. If the deceleration lanes are too short for the actual speed of traffic, the driveway entrances have to be moved. This changes the location of the point where the entrance driveway to the East Parcel crosses the floodplain and could require a complete reworking of the design of the floodplain crossing.

44. The Applicant's traffic engineer stated in his supplemental report dated April 20, 2007 (Exhibit A-18) that the access intersection to each parcel has been located on Camp Hill Road to optimize sight distances while limiting its environmental impact on the adjacent land. There is no basis in the record for this statement and nothing in the traffic engineer's traffic study that would sustain it.

45. Any development at this site will generate some new traffic. An age-restricted residential use such as that proposed generates relatively low traffic volumes during peak hours when compared to other residential or commercial uses. The concerns raised by this application do not involve volume or "traffic impact" in terms of adding delay at other intersections. Rather, issues of access and safety are those primarily raised for an age-restricted residential use of this site.

Floodplain

46. Applicant presented a plan that shows soil delineation and the location of buildings with respect to those soils. Applicant presented another plan (Exhibit A-13) which delineates the calculated flood plain. However Exhibit A-13 does not show buildings in relation to the floodplain. It is clear from these two plans, however, that a lengthy retaining wall and portions of the middle building on the East Parcel (Building 200E) lie within either the floodplain or the floodplain boundary. The applicant's engineer admitted this. (NT 3/6/07, p. 6) The zoning code does not permit such structures within the floodplain or the floodplain boundary.

47. There is no floodplain on the West Parcel, although there are areas of wetlands and hydric soils.

48. Water on the East Parcel flows north from the railroad right of way to the Turnpike and creates 6 areas of floodplain crossing this parcel in a north-south direction. This water then contributes to a stream which flows from east to west along the Turnpike right of way to a culvert near Camp Hill Road. From there the water flows under the Turnpike and into the Pine Run tributary which flows then through the Industrial Park.

49. Applicant intends to cross the first three floodplain areas. By far the widest floodplain area is at the first crossing into the site from Camp Hill Road. The second floodplain crossing leads to the at-grade parking lot. The third floodplain crossing leads to the tennis court area, and will only be crossed by a pathway and a sanitary sewer line. The Applicant chose the narrowest portion of the first floodplain area to cross over to the ground where the buildings will be constructed. The roadway will be 10 feet above the floodplain. The road will be constructed of pervious paving materials as required by the Township. The bridge over the first floodplain area will not alter the flow or direction of that water. Thus Applicant's engineer concluded that no off-site conditions will be worsened by the construction of the bridge.

50. The culvert under the bridge will be concrete. According to Applicant's engineer, the bridge over the first floodplain will present the minimum obstruction to the floodway consistent with allowing the Applicant to use its property. However, no Floodplain Study is shown on the Plan (Exhibit A-2).

51. The Plan only shows the location of soil types and wetlands, but does not locate the boundary of the floodplain. Hatboro soil is shown across the East Parcel in two places. Hatboro soil is an alluvial soil and is entirely within the Floodplain Conservation District unless a variance from that presumption is received. No such variance has been either requested or

received. Both building structures and retaining walls are shown within the Hatboro soil boundaries, in violation of the zoning code.

Zoning Issues

52. Various zoning code violations are identified in the Findings of Fact above. Additionally, as set forth in the report of the Township Engineer dated March 27, 2007, and the reviews by other members of the Township staff, the Plans presented by the Applicant show a number of zoning violations, among them:

a. Stormwater management structures are not permitted within twenty (20) feet of a proposed building or structure. Z.O. §255-24.1B. Applicant's Plans show stormwater management structures within twenty (20) feet of Building #1 and the swimming pool on the West Parcel and within twenty (20) feet of Building #3 and #4 on the East Parcel.

b. No Steep Slope plans or calculations were presented by the Applicant. However, based on the topographic information submitted, the percentage area disturbed on the steep slopes on the West Parcel exceed the area of disturbance permitted by § 99-17 of the Township Code.

c. The maximum permitted building coverage and maximum impervious coverage are both exceeded on the West Parcel. This analysis was confirmed by Mr. Stein.

d. Buildings on the West Parcel and the East Parcel are not set back a minimum of 30 feet from the entrance roadways as required by § 255-49.D.(1)(a).

e. The maximum permitted building height is 35 feet measured from existing grade. Applicant's buildings as shown on their Plan range in height from 42.6 feet to 54.25 feet in violation of § 255-50.

f. Applicant does not qualify for the height relief provided by § 255-50.B.(1) because the ground floor elevation is above the level of the adjacent Turnpike, not 10 or more feet below it.

g. The retaining walls in the side yards on the West Parcel and East Parcel are structures and thus violate the forty (40) foot setback required by § 255-49.D.(1)(b) and § 255-53.1.D.(6).

h. The recreation facilities proposed are inadequate to satisfy the requirements of § 255-53.N.

i. The exterior balcony on the buildings does not have a 6 foot width as required by § 255-53.1.D(1)(f).

j. Parking spaces are required to be a minimum of 9.5 feet wide and 19 feet long. The parking spaces below the buildings are shown as nine (9) feet wide by eighteen (18) feet deep. This will reduce the actual number of parking spaces that can be constructed, thus the applicant has failed to show compliance with the parking requirements. Z.O. § 255-140. Parking aisles within the parking lot are required to be twenty-two (22) feet wide per Z.O. § 255-141. This has not been met in the aisles at the end of each row.

k. Travel lanes to a parking area must be twenty-five (25) feet wide. Travel lanes within the parking area adjacent to parking spaces must be at least twenty-two (22)

feet wide. Widths of travel lanes to/from the parking areas and within parking areas are not shown and thus compliance with Z.O. § 255-141 has not been demonstrated.

l. Handicapped parking must be provided in accordance with all current Federal and State regulations. Handicapped parking has not been provided in any of the lots outside of the garages. Z.O. 255-141.1.

m. The Ha soils are defined as alluvial and are considered floodplain per Z.O. § 255-161.A. (3). However the floodplain areas are not labeled and delineated on the conditional use plan. Z.O. § 255-161. Building 200E encroaches in the Ha (floodplain).

n. The site is traversed by eight (8) drainage courses subject to periodic inundation. Details have not been provided on the Plans indicating the size of the existing culverts, type of material, and condition of the culverts or if the culverts are open and operating properly under the Norfolk and Southern Rail Line and the Pennsylvania Turnpike. Each of these drainage courses may be within the Floodplain Conservation District per Z.O. 255-161.A. (4). This information is necessary to determine if the flow of floodwaters is currently being impeded.

DISCUSSION

The Upper Dublin Township Zoning Code requires at § 255-192 that an application for conditional use comply with the standards set forth in the Zoning Code.

§ 255-192. Conditional use application.

An application shall be submitted in writing to the Township. It shall include, as a minimum, a tentative sketch plan indicating basically how the applicant intends

to develop the property and sufficient data to document compliance with applicable standards of this chapter. The Board of Commissioners shall schedule a public hearing on said application within 60 days unless the time limit is waived in writing by the applicant.

The Zoning Code likewise sets forth at § 255-194 general standards at to which the applicant has the burden of proof. Those particularly relevant to this application are:

§ 255-194. Standards and criteria for approval of use. The Board of Commissioners may grant approval of a listed conditional use under any district, provided that the following standards and criteria are complied with by the applicant for the conditional use. The burden of proving compliance with such standards and criteria shall be on the applicant.

B. The applicant shall establish by credible evidence that the proposed use or other subject of consideration for approval complies with the conditions enumerated in that section of this chapter which gives the applicant the right to seek a conditional use.

F. The applicant shall establish by credible evidence that the proposed use or other subject of consideration for approval is designed in accordance with the Township Code with regard to internal traffic circulation, parking, buffering, grading, stormwater management, erosion control and all other elements of proper land planning.

G. The Board of Commissioners shall impose such reasonable conditions and safeguards as are advisable to ensure compliance with the purpose and intent of this chapter, which may include, without limitation, planting and buffers, special yards and spaces, construction of fences and walls, special parking and/or loading and dropoff provisions, together with control of vehicles' egress and ingress, harmonious design of buildings, protection of watercourses, the protection of environmental amenities and the elimination of noxious, offensive or hazardous elements.

H. The applicant shall establish by credible evidence that the proposed use or other subject of consideration for approval will not adversely affect the health, safety and welfare of the neighborhood and community.

The Zoning Code at § 255-195, pertaining to the grant of conditional uses, imposes on the Applicant the burden of proof in demonstrating not only compliance with the specific

requirements applicable to the conditional use, but also compliance with the requirements of all Township Codes.

§ 255-195. Burden of proof.

A. Specific code requirements.

(1) The applicant has the burden of persuasion and the duty to go forward with evidence with respect to the specific requirements of the Township Code, including:

(a) The requirement that the use be one permitted by conditional use.

(b) Specific requirements applicable to the conditional use.

(c) General requirements of the Township Code, including but not limited to lot areas and parking requirements.

(d) Specific public interest criteria listed in the Township Code.
(emphasis supplied)

An applicant who fails to meet its burden of showing compliance with the municipality's zoning code is not entitled to conditional use approval. *Northampton Area School District v. East Allen Township Board of Supervisors*, 824 A.2d 372 (Pa. Cmwlth. 2003) (proposal to construct public school on land designated conservation area violated the zoning code); *Sheetz, Inc. v. Phoenixville Borough Council*, 804 A.2d 113 (Pa. Cmwlth. 2002) (conditional use plan did not comply with buffer, landscaping and set back requirements of the zoning code); *Appeal of Baird*, 113 Pa.Cmwlth. 637, 537 A.2d 976 (1988) (where zoning code required that applicant for conditional use prove compliance with general code requirements, application was properly denied because of failure to submit a plan showing compliance with dimensional requirements of the zoning code.)

On June 22, 2006 Applicant submitted a conditional use application seeking permission to construct 418 age restricted dwelling units on the two parcels along Camp Hill Road. No

conditional use to cross the floodplain was applied for at that time. Township staff reviewed this application and submitted engineering, planning and environmental reports. An amended application was subsequently filed on or about October 12, 2006 with a revised plan seeking conditional use for 300 age restricted units on the two parcels and also seeking conditional use to construct storm sewer culverts, driveway access, proposed utilities and associated grading within the Floodplain Conservation District. The Township accepted the amended application and confirmed that it would be considered based on the Township Code in existence on June 22, 2006. This decision is based on the November 10, 2006 plan.

The two parcels equitably owned by the Applicant in this case were rezoned from EC Employment District to MD Multiple Dwelling District by Ordinance #1152 on July 19, 2005. The parcels were subsequently rezoned back to EC Employment District by Ordinance #1170 on August 8, 2006 but this was subsequent to Applicant's original filing of its conditional use application. Thus this application will be considered under the terms of the MD Multiple Dwelling District provisions in the Zoning Code.

Age restricted multiple dwellings are permitted in the MD Multiple Dwelling District as a conditional use by § 255-48 of the Upper Dublin Zoning Code (the "Zoning Code"). Special height, density, parking, and recreation provisions for age restricted housing are made applicable through the grant of conditional use by the Board of Commissioners. However certain development standards must be complied with, as follows:

§ 255-53.1. Age-restricted multiple dwelling units.

The use of any property may be age-restricted by its owner in compliance with the Federal Fair Housing Act. Where that has occurred, and where the applicant, in addition, seeks conditional use approval for such use so that the specific regulations herein

applicable to age-restricted housing would apply, the applicant shall comply with the following additional regulations:

A. Perpetual use guarantee.

(1) A property which has been developed to the special standards allowed for this use shall not, at any time in the future, change from age-restricted use unless all of the standards for the other use are complied with.

(2) An applicant for an age-restricted use shall provide at the time of final plan approval proof of deed restrictions or other documentation satisfactory to the Township Solicitor that limits the residential use of the property to one where the residents are restricted by age in compliance with the Federal Fair Housing Act.

(3) Any homeowners, condominium or renters association associated with an age-restricted property shall include in their bylaws provisions to restrict and enforce the restriction of residents by age in compliance with the Federal Fair Housing Act and the provisions of applicable Township regulations. Such provisions may not be amended unless approved by the Township.

(4) Should the management, homeowners, condominium or renters association fail to enforce the age restrictions, the Township reserves the right to do so by any lawful means, including the imposition of fines on the violating residents and/or the management, homeowners, condominium or renters association.

B. Common area. For each dwelling unit, a minimum of 80 square feet, exclusive of hallways, passageways and outdoor trails, shall be provided and developed for indoor or outdoor common areas and facilities, such as areas used for dining, or for active recreation or socialization.

C. Pedestrian connections and environment. When applicable the following pedestrian connections and environment shall be provided:

(1) Walkways and/or trails shall be provided to connect the property with adjacent properties, pathways or trails that provide amenities to residents.

(2) Crosswalks, pedestrian signals and warning signage shall be provided at all major driveways and streets in proximity to the property.

(3) Pedestrian-scale walkway lighting shall be provided where necessary for the safety of the residents, as required by the Township Engineer. Techniques to minimize the impact of the light on adjacent properties shall be utilized, including but not limited to, full cut-offs and timed lighting.

- (4) Shade trees and benches shall be provided along internal walkways.

D. Development requirements. To mitigate the impacts and promote the safety and welfare of residents in a higher-density setting, compliance with the following requirements shall be demonstrated at the conditional use hearing.

- (1) Architectural guidelines. The following regulations shall apply to the erection, construction and alteration of structures:

- (a) Flat roofs shall be prohibited except when designed to allow use of the roof for residents, such as for roof decks or roof gardens. Flat roofs shall also be allowed if they are to be used for stormwater detention or for a landscaped "green roof" that might not be accessible by residents. In no case may the flat roof area exceed 50% of the entire roof area of all buildings on the property. Architectural embellishments that serve a function and add visual interest to roofs, such as dormers, masonry, chimneys, cupolas, towers, and other similar elements shall be included in the design of buildings. Gable and hipped roofs shall have a minimum pitch of 6/12 and shall provide overhanging eaves on all sides extending a minimum of one foot beyond the building wall.

- (b) Fenestration shall be architecturally compatible with the style, materials, colors, and details of the building. Windows shall be vertically proportioned wherever possible. To the extent possible, upper-story windows shall be vertically aligned with the location of windows and doors on the ground level.

- (c) Windowless walls, if visible from a right-of-way or vehicular or pedestrian circulation area, are prohibited unless the construction of a blank wall is necessitated by local building codes, in which case the wall should be articulated by details in masonry courses and/or the provision of blank window openings trimmed with frames, sills, and lintels.

- (d) The Board of Commissioners may approve the use of architectural concepts and designs which differ from those set forth above, if the applicant demonstrates to the satisfaction of the Board that such concepts and designs are in furtherance of the legislative intent of this article and the intent of this subsection.

- (e) In conjunction with the conditional use application, the applicant shall provide representative, color, perspective renderings and elevations of all proposed buildings. The applicant shall also provide graphic representations showing the relationship between the proposed development and structures on adjacent properties.

(f) Balconies, at least 60 square feet in size and with at least six feet in depth from the exterior wall, shall be provided for at least 30% of the dwelling units.

(g) Exterior wall and detail materials are to be brick, stone (natural or man-made) or wood on at least 35% of all building faces.

(h) One percent of the project's construction costs shall be allocated to public art work to be located in interior and/or exterior common spaces.

(2) Signs. Signs shall be designed and constructed to give the appearance of natural materials, shall be of muted color and shall not be internally illuminated. Signs anchored in the ground shall not exceed 10 feet in height. In all other respects, signs shall comply with Article XXI.

(3) Bicycle storage. Sufficient area for the storage of bicycles shall be provided as approved by the Township Engineer, including racks or other permanently affixed storage devices to accommodate one bicycle for each 25 required vehicular parking spaces, at a minimum. Bicycle storage facilities may be held in reserve upon approval of the Township Engineer upon a finding that the requirements set forth herein exceed the foreseeable need therefor.

(4) Traffic control. The conditional use application shall be accompanied by a transportation impact study and parking and circulation analysis as provided in § 212-35.1. The study shall set forth the improvements needed to provide for the safe, efficient and orderly movement of traffic and shall be subject to the approval of the Township Engineer.

(5) The applicant shall provide appropriate transit shelters for integration with public or private transit services.

(6) Continuous walls or fences and guard booths shall be prohibited within the required setback area.

The Findings of Fact set forth above document numerous ways in which this application fails to meet the criteria for the grant of conditional use. Specifically with respect to the conditional use application to allow age restricted housing, this application presents a number of significant issues, among them the following:

A. The Plan fails to list criteria for each parcel sufficient to confirm that it complies with the Zoning Code. Each parcel is missing information concerning the net lot

area, building area, impervious surface area, steep slope calculations and area of disturbance. Based on the minimal information provided, the Township Engineer has concluded that the development on the West Parcel will violate the Zoning Code in all these respects.

An Applicant for conditional use has the burden to prove that its plan complies with the general provisions of the Township Code. (See § 255-194(F) and § 255-195(A)(1)(c) above) The Applicant in this case takes the position that any code requirements that pertain to land development can be deferred to the land development stage and can be ignored when applying for conditional use. Certainly the holding in *In re Thompson*, 896 A.2d 659 (2006) is relevant in this regard. However, *Thompson* held that “(w)hat must be demonstrated in order to obtain conditional use approval must be determined on a case-by-case basis and will vary among municipalities based upon the use requested and the language in the ordinance.” p. 670 The language in the Upper Dublin ordinance requiring proof of general code requirements is almost identical to the language of the New Britain Township zoning code that was upheld in *Baird, supra*.

Applicant’s plans and evidence demonstrate no less than 15 separate zoning code violations. These are individually set forth in the Findings of Fact above. While some may be easily cured, a number of others are substantive to the point where the project, as represented on the plans submitted, cannot be built unless significant zoning variances are granted. No variances have been applied for or granted.

The Applicant asserts that its development covers a single tract of ground and thus zoning and dimensional data need only be provided for the West Parcel and the East Parcel taken together. Applicant’s counsel was disabused of this belief early in the hearing process but no data for the individual parcels was ever submitted. Counsel was told that two separate parcels of

ground on either side of a public highway, each separately described, with separate parcel numbers, cannot be considered a single “tract”.

The term “tract” is defined in the Upper Dublin Zoning Code at § 255-7 as:

TRACT -- A parcel of land which is occupied or is to be occupied by more than one structure and may be further subdivided into lots for cluster residential development or for development for multiple dwellings within the Multi-Dwelling District, together with any accessory uses, building or structures customarily incidental to such dwellings, and any lot or open space arranged or designed to be used in connection with such dwellings, such lots or open space and the area and dimensions of such tract being not less than the minimum required by this chapter.

Thus a “tract” is a single parcel of land. A “tract” consists of one or more “lots”. A “lot” is defined as:

LOT -- A designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit pursuant to 53 P.S. § 10107.

The area of a “lot” is defined as:

LOT AREA -- The total horizontal area of a lot lying within the lot lines.

Finally “lot line” is defined as:

LOT LINE -- A property boundary line of any lot held in single and separate ownership, except that, in the case of any lot abutting a street, the lot line for such portion of the lot as abuts the street shall be deemed to be the same as the right-of-way line and shall not be the center line of the street or any other line within the right-of-way line even though such may be the property boundary line.

The concepts of “tract”, “parcel” and “lot” are interlocking. None of them include the area within the right-of-way lines of an established street. As the definition of “tract” makes clear, the area of a tract for purposes of determining compliance with the area requirements in the MD District, is determined prior to any subdivision of that tract for development purposes. Where as

here two parcels of ground on either side of an established public highway are being developed for a single purpose, that doesn't make them one "parcel" or one "tract". They are two parcels, or two tracts, and each must comply with the zoning codes requirements when developed.

No dimensional data was provided for the two parcels of ground which are the subject of this application. Using his best engineering judgment from the plans that were submitted, the Township Engineer determined that the construction proposed for the West Parcel violated the building area and impervious surface requirements of the zoning code for that parcel. The Applicant's architect, Mr. Stein, confirmed that he came to the same conclusion. The Township Engineer also determined that construction will take place on steep slopes in violation of the Zoning Code and that the area of land to be disturbed exceeds that permitted by the Zoning Code. Thus the proposed construction on the West Parcel cannot take place without a number of zoning variances being granted. None have been sought. Where a plan is submitted in support of a conditional use application, and the plan cannot be implemented because it violates the zoning code, the conditional use is properly denied. *Northampton Area School Dist. v. East Allen Tp. Bd. of Sup'rs, supra.*

B. The Plan shows that significant cutting and filling is required to fit the proposed buildings on the lots. Walls ranging up to 35 feet in height are proposed with most exceeding 10 feet in height. There are 3220 linear feet of walls shown on the Plan. Those to the rear of the three buildings closest to the Turnpike (two on the West Parcel and one on the East Parcel) are all significant and are within the 40 foot setback from the Turnpike in violation of the Zoning Code § 255-53.1.D(6) noted above. At least one significant wall is well within the 100 year floodplain in violation of the zoning code. Applicant's engineer says this is a land development issue. However the Zoning Code imposes proof of compliance with all Township codes as a specific requirement for conditional use.

The Township engineer calculated that 3220 linear feet of retaining walls are shown on the amended conditional use plan, much of which is within the required side-yard setback area.

Clearly this violates a specific condition for age restricted housing, which at § 255.53.1.D(6) prohibits continuous walls within a required setback area. This is not a land development issue. It violates a specific requirement for the grant of conditional use approval for an age restricted development and is fatal to this application.

The significant cutting and filling and the resulting retaining walls that are proposed stem from the size and configuration of the buildings on the plan. Rather than conform the buildings to the slopes and shape of the ground, the Applicant has chosen to conform the ground to the size and shape of its proposed buildings. In doing so it has run afoul of the zoning code provision.

C. The conditional use plan shows buildings which significantly violate the maximum height permitted in this zoning district. Applicant also failed to provide elevations for buildings and a graphic representations of the relationship between the proposed buildings and structures on adjacent properties.

The maximum building height permitted in the MD Multi-Dwelling District is thirty-five (35) feet measured from mean grade elevation. However, age restricted dwellings may have a height of up to forty-seven feet provided the first floor elevation is ten (10) feet or more below the level of any adjacent highway and provided additional setbacks are provided in certain situations. Applicant's Plan shows the height of its proposed buildings range from 42.60 feet to 54.25 feet. While it was thought Applicant would ask for conditional use to be allowed the additional height, Applicant insists the height of its buildings will not exceed thirty-five (35) feet. However, its Plan is at significant variance with that assertion. No explanation has been provided as to how these buildings could comply with the Zoning Code. Applicant's engineer says this is a land development issue. Rather this Board is of the view that it is a critical zoning issue for two reasons.

First, the Plans cast into serious doubt whether buildings having the size, shape and configuration of those shown on the Plans can be built. Secondly, Applicant must show compliance with the architectural guidelines at the conditional use hearing. The building design introduced by the Applicant cannot, in the opinion of the Township Engineer, be constructed on the site and still conform to the 35 foot height limitation.

Applicant was required by §255-53.1.D(1)(e) to provide elevations for all proposed buildings and graphic presentations showing the relationship post development with structures on adjacent properties. This information was not provided. Representations of the building facades were presented, but they shown nothing about the elevation relationship between the proposed buildings and adjacent properties. The relationship of the proposed buildings to the structures on adjacent properties was of paramount concern to the many of the neighbors live next to this project and who testified against it. Also, the architectural information provided was not close to being adequate to determine if the proposed project met the significant architectural requirements of the zoning code. The Applicant was specifically required to present this information to the Board of Commissioners with its conditional use presentation, and failed to do so.

D. The recreation and common areas shown on the Plan are not defined in terms of size and are inappropriate to an age restricted community.

There are two specific recreational/common area requirements that must be met by an age restricted community in an MD Multi-Dwelling District. Together the code requires 180 sq.ft. per dwelling unit of recreation/socialization areas. First: § 255-53(N) provides:

N. Each tract shall contain a minimum recreation area at least equal to the number of dwelling units multiplied by 100 square feet.

Secondly, § 255-53.1(B) provides:

B. Common area. For each dwelling unit, a minimum of 80 square feet, exclusive of hallways, passageways and outdoor trails, shall be provided and developed for indoor or outdoor common areas and facilities, such as areas used for dining, or for active recreation or socialization.

Applicant proposes to satisfy these requirements by constructing a court yard of unknown dimensions associated with each building. Applicant also proposes a community building and swimming pool on the West Tract; and two tennis courts on the East Tract. No dimensions of these structures were provided other than those set forth on the Plan.¹ Based on these the plans do not show adequate recreation area on the West Parcel. The Board is unable to determine if adequate area has been shown on the East Parcel – and thus the Applicant failed to sustain its burden of proof in this regard.

Equally as important, an outdoor swimming pool and two tennis courts cannot be used year round and thus are not adequate to meet the zoning code's requirements. It is noteworthy that no testimony was provided concerning the propriety of these types of recreational facilities to meet the recreational needs for an age restricted community. The only testimony in this regard came from a remark by the Applicant's architect that in his view the community center would not be used by the residents except for an occasional meeting of the homeowner's association.

E. The Township Transportation Engineer has testified that the sight distances are inadequate for an age restricted community.

¹ The development plan (Exhibit A-2) under "Parking Requirements" references the Community Center as having 2700 sq.ft. of meeting and lounge areas and the swimming pool and deck as having 7241 sq.ft. for a total of 9,941 sq.ft. on the West Parcel, but no dimensions are set forth on the plan. Assuming this is correct, and that a meeting room could be considered a "recreation area", this is less than 100 sq.ft. for each of the 132 units on the West Parcel. No dimensions are set forth for the tennis courts.

A specific requirement for conditional use approval relates to safe traffic movements and is set forth at § 255-53.1(D)(4) as follows:

(4) Traffic control. The conditional use application shall be accompanied by a transportation impact study and parking and circulation analysis as provided in § 212-35.1. The study shall set forth the improvements needed to provide for the safe, efficient and orderly movement of traffic and shall be subject to the approval of the Township Engineer.

The Applicant submitted a traffic impact study, however it did not discuss improvements needed to provide for the safe, efficient and orderly movement of traffic. Specifically, it did not deal at all with the limited sight distances from the proposed driveways to the bridge over the Turnpike. The Applicant's traffic engineer testified that the sight distances met the required minimum stopping sight distances, but without substantiation. As noted in the Findings of Fact above, this Board finds the testimony of the Applicant's Traffic Engineer to be unacceptable.

The Township's Traffic Engineer testified that the use of stopping distance criteria was not adequate when dealing with elderly drivers because their reaction time is slower than that of younger drivers. Further, she pointed out that the PennDOT desirable sight distances for a 35 mph roadway (which is the category in which Camp Hill Road falls) is 440 feet looking to the north when entering the roadway and 350 feet when looking to the south. She offered the suggestion that the location of the driveways be moved. However, it isn't known if this is feasible and it has a direct impact on the floodplain crossing. The Applicant's engineer offered the suggestion that the Township put four way stop signs at the entranceway. However, Applicant considers the entranceway to be a private driveway. It appears the Township isn't authorized by the Motor Vehicle Code to put stop signs where a driveway enters a road; municipalities are only authorized to erect stop signs at highway intersections. If the

entranceway were to be considered a private street, it would have to be built to the specifications of a public street and building setbacks would have to be provided. This would be completely inconsistent with the Plan submitted. No detail of the sight distances and entranceway design, with pedestrian crossing, was submitted at the hearings. ²

It is apparent to all considering this application that the proposed sites of these age restricted facilities are significantly constrained in lying between the Turnpike and the railroad. Likewise travel on Camp Hill Road is limited by the narrowness of the road, the single lane tunnel under the railroad and the bridge over the Turnpike. Clearly little or no consideration was given by the Applicant to access issues onto Camp Hill Road that an elderly population would experience from the proposed driveways. The driveways were located because one of them crossed the floodplain, and they simply picked the narrowest part of the floodplain and placed the driveway there without concern for sight distances. The Township's traffic engineer could not approve the Applicant's plan for the safe movement of traffic at the driveway entrances, and for good reason.

We turn now to the second conditional use application, that which seeks permission to cross three of the Floodplain Conservation Districts on the East Parcel with the entrance driveway and utility lines extending all the way back to the rear parking area, and beyond that to the Tennis Courts. The Plan (Exhibit A-2) identifies wetlands and soil types. It does not set forth the boundaries of the Floodplain Conservation District. Applicant's floodplain buffer map (Exhibit A-13) identifies the calculated floodplain and the floodplain boundary (that area extending one foot above the Floodplain Conservation District the use of which is likewise

² Under cover of a letter dated May 21, 2007, Applicant submitted a letter from Applicant's Traffic Expert proposing that the desirable sight distance could be achieved by significant changes in the vertical profile of Camp Hill Road. That material was submitted long after the hearings were closed and has not been considered in

limited by the zoning code). However Exhibit A-13 does not show the location of the proposed project overlaying the floodplain area. In addition to the entrance driveway onto the East Tract, a portion of what is identified on the Plan as Building 200E is shown on Ha soil. This is an alluvial soil that defines the boundaries of the Floodplain Conservation District in the absence of a variance, and none has been requested or granted. Additionally a significant retaining wall is shown in the Floodplain Conservation District adjacent to Building 200E. The Zoning Code prohibits most uses in the Floodplain Conservation District, including the construction of a building or a structure, such as a retaining wall. (Zoning Code § 255-164.B(1)) Thus the Plan shows that the Applicant proposes uses within the Floodplain Conservation District that violate the zoning code.

Certain work within the Floodplain Conservation District is permitted by conditional use.

§ 255-165 of the Zoning Code permits the following uses for which the Applicant has sought conditional use:

§ 255-165. Conditional uses.

The following conditional uses in a Floodplain District may be allowed or denied by the Board of Commissioners after recommendations by the Advisory Boards of the Township or other agencies deemed appropriate and Montgomery County Planning Commission pursuant to the standards set forth in this district:

C. Storm sewers or impoundment basins, with the approval of the Township Engineer and subject to the floodproofing regulations in applicable ordinances and in accordance with the provisions of Chapter 122, Flood Damage Prevention.

E. Dams, bridges and culverts, approved by the Commonwealth of Pennsylvania, Department of Environmental Protection or the Power and Water Resources Board, if the same has jurisdiction over the watershed in question.

F. Paved roads and driveways, parking lots, where required by the regulations for the district applicable to the lot without consideration of this district, provided that:

(1) In case of roads and driveways, no such facilities shall be permitted by conditional use if alternative alignments are feasible.

(2) In the case of parking facilities, no such facility shall be permitted by conditional use unless satisfactory evidence is submitted that such parking will not be utilized during periods of flood flow, thus posing no threat to safety of the vehicles, their uses and/or to downstream properties. Temporary parking for periods not to exceed one hour and/or parking for recreation uses would be examples of such uses.

(3) Any road, driveway or parking lot located within the Floodplain Conservation District shall be constructed of pervious paving materials in accordance with the provisions of Chapter 212, Subdivision and Land Development.

G. Grading or regrading of lands, including the deposit of topsoils and the grading thereof and the construction of retaining walls. In addition, a conditional use application for such use shall also be accompanied by a plan indicating the fill or material proposed to be deposited by the grading or regrading of land; such fill or other materials shall be protected against erosion by riprap, vegetation cover or bulkheading.

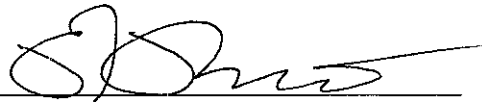
Since the floodplain areas crossing the East Parcel extend fully from one side to the other, there clearly are no alternative alignments of roads and driveways which would eliminate the need to cross the floodplain. The Applicant's engineer testified that the road going across the floodplain area will have no impact on water flow, that the road will be ten (10) feet above the floodplain where it crosses, that the road will be constructed of pervious surfaces, that the stream profile will not be disturbed except where the crossing occurs, and that the culverts will be designed to carry the water flow from the 100 year storm. He also testified that the lowest level of the garage floor under the buildings will be 1.5 feet above the base flood elevation.

All of this testimony relies on construction of the floodplain crossing where indicated on the Plan. However, crossing at this point may not be possible because of the sight distance and deceleration lane issues. Alternative sites for the crossing have to be explored. Thus conditional use cannot be granted.

ORDER

AND NOW, this 29th day of May, 2007, upon application of Danny Jake Corporation, conditional use approval to construct age restricted housing and to cross the Floodplain Conservation District with respect to premises on either side of Camp Hill Road between the PA Turnpike and the Norfolk and Southern Railroad right-of-way is denied for the reasons set forth above.

BOARD OF COMMISSIONERS
TOWNSHIP OF UPPER DUBLIN

By: 
Robert J. Pesavento, President

ATTEST:



Paul A. Leonard, Township Manager/Secretary

development\Danny Jake\ cond use decision
5.29.07