

CHARLESTOWN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

DECISION AND ORDER

**Application of Kara Dougherty and
William & Jo Anna Dougherty for
Conditional Use Approval**

August 7, 2023

I. INTRODUCTION

Kara Dougherty and William and Jo Anna Dougherty (collectively the “Applicants”) presented an Application for an Equestrian Academy use relating to the demolition of an existing barn, which has ten stalls, and the construction of a new barn, planned for seventeen stalls. The increase in stalls in the new barn from ten to seventeen requires conditional use approval pursuant to Section 27-402.1.C(8) of the Charlestown Township Zoning Ordinance, which permits an Equestrian Academy by conditional use in the FR-Farm Residential District, where the Applicants’ property is located.

The following exhibits were made part of the record:

- T-1 Application filed by the Applicants, with sketches of the proposed improvements (the proposed barn and interior stalls and accessory improvements), letter of compliance with the conservation easement, and sketch plans as part of the Property (all 8-1/2 x 11 in size).
- T-2 Public Notice of the hearing.
- T-3 Aerial photograph of the property.
- A-1 The Conservation Easement.
- A-2 Sketch plan (full size) showing proposed improvements.

II. FINDINGS OF FACT

1. The Applicants’ property is located at 32 Hillsover Lane, Malvern, consisting of some 92 acres land improved with a residence and agricultural buildings including a barn (the “Property”).
2. The Property is identified as Chester County Tax Parcels 35-6-2, 35-7-1 and 37-7-7.2.

3. Hillsover Lane fronts on PA Route 401 and backs up against the Pennsylvania Turnpike.

4. The Applicants acquired the Property by Deed recorded in Chester County Record of Deed at Book 10555, page 990.

5. The Applicants reside on the Property.

6. The present use of the Property is as a horse farm, and has been so used at least since the mid-70's when purchased by the late Richard McDevitt.

7. Existing horse farm activities on the Property include training, lessons for riders, boarding, and related activities.

8. The Property has not, to Mrs. Dougherty's knowledge, been used for horse shows and the Applicants have no intention of conducting or performing horse shows as on the Property.

9. The Property is subject to a conservation easement in favor of the French and Pickering Creeks' Conservation Trust, which has indicated that the proposed use does not violate the conservation easement.

IV. CONCLUSIONS OF LAW

1. The Applicants have standing.

2. The Applicants have satisfied the standards set forth in 27-1809 of the Zoning Ordinance for conditional use approval.

IV. DISCUSSION

The Property is located is within the FR Zoning District and the Applicants have requested conditional use approval to permit an Equestrian Academy use on the Property pursuant to Section 27-402.1.C(8) of the Township Zoning Ordinance. Equestrian Academy is defined by the Zoning Ordinance as follows:

EQUESTRIAN ACADEMY The commercial equestrian use of a property in which 10 or more horses are sheltered on the property, provided that equestrian events conducted on the property shall involve no more than 150% of the number of horses sheltered on the property and shall not be conducted on consecutive days. An equestrian academy is allowed only as a conditional use in the FR District in accordance with § **27-407**, Subsection 2. The number of horses that may be sheltered on a property used as an equestrian academy shall not exceed that permitted by § **27-1615**.

A conditional use is a form of permitted use. *Pennridge Development Enterprises, Inc. v. Volovnik*, 624 A.2d 674 (Pa. Cmwlth. 1993). The fact that a use is permitted as a conditional use

evidences a legislative decision that the particular type of use is not adverse to the public interest per se. *Vision Quest National Ltd. v. Board of Supervisors of Honeybrook Township*, 169 A.2d 915 (Pa. 1990). Initially, both the burden and the duty fall upon the applicant to affirmatively prove they comply with “specific requirements” of the ordinance. A conditional use applicant must demonstrate that it is entitled to a conditional use by establishing compliance with the specific objective criteria for the use detailed in the zoning ordinance. *Bray v. Zoning Board of Adjustment*, 410 A.2d 909 (Pa. Cmwlth. 1980).

Under Sections 603(c)(2) and 913.2(a) of the MPC (53 P.S. §§10603(c)(2) and 913.2(a)), the Board of Supervisors, as the governing body of the Township, has the authority to grant conditional uses pursuant to the express standards and criteria set forth in the Zoning Ordinance and to attach such reasonable conditions and safeguards in addition to those expressed in the Zoning Ordinance, as it may deem necessary to implement the purposes of the MPC and the Zoning Ordinance. *Clinton County Solid Waste Authority v. Wayne Township*, 643 A.2d 1162 (Pa. Cmwlth. 1994). Any conditions which the Board imposes must be upheld if the conditions are reasonably related to the health, safety or welfare of the public. *Id.*

The Board of Supervisors conducted a discussion with Mrs. Dougherty at the hearing, which covered a number of points, including but not limited to, compliance with provisions of the Charlestown Township Historical Commission, the commitment to not have horseshows, and compliance with lighting and other building code requirements. Mrs. Dougherty represented that she has been in communication with the Historical Commission, recognizing the certain structures on the Property are of historic significance. Mrs. Dougherty testified that the Historic Commission has represented to her that there is no violation or inconsistency with the Property and/or her proposed plans. She agreed on the record to get a letter from the Historic Commission substantially to that affect, and file it with the Township Manager.

Section 27-1809 of the Zoning Ordinance sets forth the general standards for consideration relative to the grant of a conditional use approval. Based on the historic use of the property for equestrian uses and the testimony of the Applicant, Mrs. Dougherty, the Applicants presented sufficient testimony and evidence at the hearing for the Board to determine that the proposed Equestrian Academy use complies with those standards.

Therefore, the Board issues the following Order.

V. DECISION AND ORDER

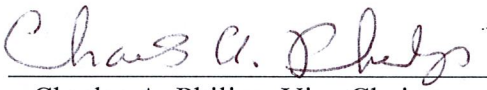
AND NOW, this 7th day of November 2022, upon consideration of the testimony and exhibits presented, it is ORDERED that the Applicants are granted conditional use approval to permit an Equestrian Academy use on the Property pursuant to Section 27-1203.2.B(6) of the Charlestown Township Zoning Ordinance subject to the following conditions.

1. All activities on the Property shall comply with the Charlestown Township Zoning Ordinance, Land Development Ordinance, Stormwater Management Ordinance, Building Code, and all other ordinances and regulations applicable to the Property, and the proposed improvements, and the Equestrian Academy use.

2. The Applicants shall cooperate with the Township Engineer in advising of improvements proposed on the Property as part of the proposed Equestrian Academy Use.
3. The Applicant shall deliver a letter from the Charlestown Township Historical Commission, as discussed above.
4. Any horse shows on the Property are subject to the prior approval by the Board of Supervisors, and any application shall include engineered plans showing all structures, parking and other proposed facilities.
5. The Applicant shall comply with any requirements set forth in the Township Engineer's review letters for the use.
6. The proposed construction shall conform the plans presented at the hearing.
7. By undertaking the proposed improvements, the Applicant acknowledges that the approval granted herein does not include approval for horse shows, nor activities other than those described above.

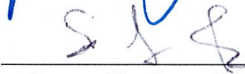
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