

DATE OF DECISION: JUNE 30, 2015

DATE OF MAILING: JUNE 30, 2015

**BEFORE THE NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD**

RE: APPLICATION OF COLEBROOK PROPERTIES, L.P., FOR THE PROPERTY LOCATED ALONG SCHOOL HOUSE ROAD ACROSS FROM ITS INTERSECTION WITH BOULDER DRIVE, PART OF A LARGER TRACT WITH AN ADDRESS OF 4371 COUNTY LINE ROAD, NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA, FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-5-2

FINDINGS OF FACT

1. On Thursday, May 28, 2015 at 7:00 p.m. at the New Britain Township Building, 207 Park Avenue, Chalfont, New Britain Township, the New Britain Township Zoning Hearing Board (“Board”) held a duly noticed hearing on the application of Colebrook Properties, L.P. (the “Applicant”).

2. The property subject to the application is located along School House Road across from its intersection with Boulder Drive (the “Property”).

3. The Property is part of a larger tract that has an address of 4371 County Line Road, New Britain Township, Bucks County, Pennsylvania, further identified as Bucks County Tax Map Parcel No. 26-5-2 (the “Parent Tract”).

4. Notice of the May 28, 2015 hearing was published in advance of the hearing in the Thursday, May 14, 2015 and Thursday, May 21, 2015 editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township.

5. Notice of the hearing was sent by first class mail on May 14, 2015 by Devan Ambron (“Ambron”), the New Britain Township Zoning Officer, to (a) all record owners of properties within New Britain Township surrounding the Property; and (b) to the adjoining municipality for any surrounding properties that are located in that municipality. See Exhibit B-7.

6. Ambron posted notice of the hearing on the Property on May 18, 2015 at 9:32 a.m. See Exhibit B-8.

7. The Property is located in the RR, Residential, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

8. The Applicant proposes a Planned Residential Development (PRD) on the Property of 59 dwelling units, consisting of 24 twin dwelling units and 35 townhome dwelling units (both Use B5, Single Family Attached) (the “Project”). See Exhibit A-2.

9. The Applicant seeks a special exception pursuant to Zoning Ordinance §§27-2800(c) and 27-3103 to permit the required 35 feet planted buffer yard on the Property to be waived where a buffer yard exists on an adjoining property.

10. Introduced as exhibits at the hearing are the documents identified on Schedule A attached to this decision. Schedule A is incorporated by reference as though fully set forth herein at length.

11. The following individuals testified on behalf of the Applicant in support of the application at the hearing:

- a. Chris Canavan ("Canavan"), corporate officer of the Applicant; and
- b. Ron Klos, P.E. ("Klos"), professional civil engineer.

12. New Britain Township (the "Township") took no official position on the application. The Board notes that by law, the Township is automatically granted party status to participate in this hearing. *See* 53 P.S. §10908(3).

13. However, through a communication from Eileen Bradley, the Township's manager, the Township's Board of Supervisors granted tentative conditional approval of the Project at its May 4, 2015 meeting. *See* Exhibits B-9 and A-1.

14. No other persons requested party status to the application. A few individuals appeared at the hearing to comment and ask questions about the application.

15. The Property is subject to an Agreement of Sale dated January 21, 2014, (the "Agreement") between Quad/Graphics Marketing, LLC and Prospect Acquisitions, L.P. ("Prospect"), or its nominee or assignee, making Prospect the beneficial and equitable owner of the Property. *See* Exhibit B-1, Agreement.

16. The Applicant is a Pennsylvania limited partnership that is under common control with Prospect. Canavan stated, and the Board finds, that prospect has conditionally assigned the Agreement to the Applicant upon receipt of all approvals for the Project proposed for the Property.

17. As an equitable owner of the Property pursuant to the assignment of the Agreement, the Applicant has the requisite standing to prosecute this zoning hearing board application.

18. As noted previously, the Property is currently part of the Parent Tract. The Applicant proposes to subdivide the Property from the Parent Tract if the Project receives all necessary and required approvals.

19. The Parent Tract is located in the I, Industrial, zoning district. After the subdivision, the Property, being located in the RR, Residential, zoning district will abut the industrially zoned Parent Tract along its rear lot line.

20. Klos stated, and the Board finds, that as a result of these adjacent differently zoned properties, a 35 feet wide planted buffer is required on the Property along the proposed rear lot line. *See Zoning Ordinance §27-2800(a).*

21. Klos stated, and the Board finds, that after the subdivision, the Property will contain 20.949 acres. The minimum site area for a property to be improved with a planned residential development is 20 acres. *See Zoning Ordinance §27-904(c).*

22. The Property is vacant. The Property has 1188.55 feet of frontage along School House Road. Klos stated, and the Board finds, that the Project will include a single interior street with two accesses to School House Road. One access will align with Boulder Drive. *See Exhibit A-2.*

23. The Project will contain four stormwater detention basins located near the dwellings. The Project will also have 2 large open space areas, totaling almost 10 acres of reserve/natural open space. The larger open space area will be behind the houses, along the entire rear lot line of the Property. *See Exhibit A-2.*

24. Klos stated, and the Board finds, that the Property's proposed rear lot line essentially follows an existing defined stream located on the Parent Tract. This stream, while unnamed, goes under School House Road, eventually connecting with the West Branch of the Neshaminy Creek. *See Exhibit A-2.*

25. Klos stated, and the Board finds, that numerous mature trees and plantings exist along both sides of the stream channel for the entire length of the proposed rear lot line. The plantings are a mix of deciduous and evergreen trees and vegetation of varying sizes. *See Exhibits A-2, A-3 and A-4.*

26. Klos stated, and the Board finds, that these existing plantings are located in an area that on average is roughly 6 times wider than the required 35 feet buffer. *See Exhibits A-2, A-3 and A-4.*

27. Klos stated, and the Board finds, that the existing vegetation along the stream bank on the Parent Tract is subject to a conservation easement of which the Township is the beneficiary.

28. Klos stated, and the Board finds, that Zoning Ordinance further imposes a 75 feet wide riparian buffer due to the stream. As a result of this riparian buffer and the conservation easement, Klos and Canavan stated, and the Board finds, that the existing vegetation and planting on the Parent Tract will be a long-term protected resource.

29. Klos and Canavan stated, and the Board finds, that although the Project does not show plantings within the 35 feet buffer area along the Property's proposed rear lot line, a minimum 35 feet undisturbed area will exist on the Property. *See Exhibit A-2.*

30. Klos and Canavan stated, and the Board finds, that the proposed dwelling units will be located at least 60 feet from the Property's proposed rear lot line. *See Exhibit A-1.*

31. Subject to the conditions imposed herein, the existing plantings and vegetation along the stream on the Parent Tract serve as a sufficient planted buffer yard, and are harmonious with the Property's size and consistent with uses of other properties in the surrounding neighborhood.

CONCLUSIONS OF LAW

1. Required public notice of the hearing was made by sufficient publication, posting and mailing to affected property owners.

2. When a landowner applies for a special exception, the Board's function is to determine that such specific facts, circumstances and conditions exist which comply with the standards of the Zoning Ordinance and merit the granting of the special exception. *See Broussard v. Zoning Board of Adjustment of City of Pittsburgh, 907 A.2d 494 (Pa. 2006).*

3. As previously noted, an on-site 35 feet wide planted buffer is required for any project where a residentially zoned property adjoins a non-residentially zoned tract. This buffer may be waived, upon special exception approval, where a sufficient buffer yard exists on the adjacent property. *See Zoning Ordinance §27-2800(c).*

4. Zoning Ordinance §27-3103(a) provides that "the Board shall grant a special exception only if it finds adequate evidence that any proposed development submitted will meet all of the following general requirements as well as any specific requirements and standards listed [in this Zoning Ordinance] for the proposed use."

5. Regarding the general criteria applicable to a special exception, Zoning Ordinance §27-3103(a) provides that the Board shall, among other things, require the proposed use and location to be:

- a. in accordance with the New Britain Township Comprehensive Plan and consisted with the spirit, purposes and intent of [the Zoning Ordinance];
- b. in the best interests of [New Britain] Township, the convenience of the community, the public welfare and be a substantial improvement to the property in the immediate vicinity;
- c. suitable for the property in question and designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance to the existing or intended character of the general vicinity;
- d. in conformance with all applicable requirements of [the Zoning Ordinance];
- e. suitable in terms of effects on highway traffic and safety with adequate access arrangements to protect streets from undue congestion and hazard; and

f. in accordance with sound standards of subdivision practice where applicable.

6. Regarding the specific criteria applicable to the required 35 feet planted buffer yard, Zoning Ordinance §27-2800(c) permits the waiver of the required on-site buffer yard where a sufficient buffer yard exists on the adjacent property.

7. Under Pennsylvania law, the Board shall refuse an application for special exception where opponents to the application establish by a preponderance of evidence that the application is contrary to the health, safety and morals of general welfare of the community at large.

8. If an applicant demonstrates that the proposal meets the specific and general criteria of Zoning Ordinance, and no evidence is presented that requires a finding that the proposal is detrimental to the public interest, the Board must find that the proposed community center use is permitted.

9. In this matter, no evidence was presented by any objecting or protesting party to show that allowing the existing planted buffer on the Parent Tract to satisfy the buffer required on the Property in connection with the Project is detrimental to the public interest.

10. The Board concludes that the existing plantings on the Parent Tract follow the entire length of the rear lot line proposed for the Property. The Board further concludes that the plantings within this are mature and dense, making this existing buffer more effective than new plantings.

11. The Board concludes that due to the existing conservation easement and riparian buffer protections regulating the stream, these existing plantings, or their replacements, will in all likelihood always be in place.

12. Subject to the conditions attached herein, utilizing the existing buffer on the Parent Tract for the Project, and waiving the required 35 feet wide planted buffer on the Property in connection with the Project, is in accordance with the New Britain Township Comprehensive Plan and is consistent with the spirit, purposes and intent of the Zoning Ordinance.

13. Subject to the conditions attached herein, utilizing the existing buffer on the Parent Tract for the Project, and waiving the required 35 feet wide planted buffer on the Property in connection with the Project, is in the best interests of New Britain Township, the convenience of the community, the public welfare and is a substantial improvement to the property in the immediate vicinity.

14. Subject to the conditions attached herein, utilizing the existing buffer on the Parent Tract for the Project, and waiving the required 35 feet wide planted buffer on the Property in connection with the Project, is suitable for the Property; and the buffer will be designed, constructed, operated and maintained in harmony with and appropriate in appearance to the general vicinity's character.

15. Provided the Project and the existing buffer on the Parent Tract are constructed, maintained and conducted in accordance with the conditions attached herein, the proposed buffer yard for the Project is suitable in terms of effects on highway traffic and safety.

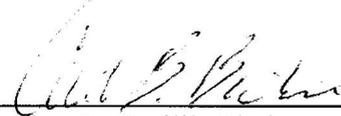
DECISION

AND NOW, this 30th day of JUNE, 2015, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicant's request for a special exception pursuant to Zoning Ordinance §§27-2800(c) and 27-3103 to waive the required 35 feet planted buffer area on the Property in connection with the Project due to the existence of the large planted buffer along the existing stream on the adjacent Parent Tract, subject to the following conditions:

1. The proposed Project and the buffer areas on the Property and on the Parent Tract shall be in accordance with drawings, testimony and representations made at the hearing.
2. This decision does not waive any requirements of any other applicable New Britain Township Ordinance(s); and the proposed use and all related improvements must meet all other applicable federal, state, county and New Britain Township regulations and codes.

NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD

DATE: 6/30/15



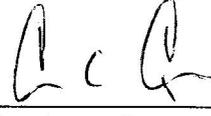
Catherine B. Basilio, Chair

DATE: 6/30/15



William Clarke, Member

DATE: 6/30/15



Chuck Coxhead, Member

Thomas J. Walsh III, Esquire
Solicitor, New Britain Township Zoning Hearing Board
2500 York Road, Suite 120
Jamison, 18929

Note to Applicant: This Decision is NOT an authorization to build. Zoning and building permits must be obtained from New Britain Township prior to the commencement of any construction or use activity.

SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application dated April 28, 2015. Attachments to Application: <ul style="list-style-type: none">• Deed dated January 16, 2013 between Webcraft LLC and Quad/Graphics Marketing LLC• Deed dated May 27, 2010 between Webcraft, LLC and SEPTA• Final Right-of-Way agreement dated October 22, 1968 between the Bucks County IDA and the Chalfont-New Britain Township Joint Sewage Authority• Buffer Exhibit Plan, dated April 28, 2015, prepared by Bohler Engineering• Agreement of Sale (redacted) between Prospect Acquisitions, L.P., and Quad/Graphics Marketing, LLC
B-2	Letter to The Intelligencer dated May 5, 2015 forwarding public notice of hearing for advertisement
B-3	Public Notice of the hearing on May 28, 2015
B-4	Proof of publication of public notice in 5/14/15 and 5/21/15 editions of The Intelligencer
B-5	Letter to Applicant and Attorney dated May 5, 2015 providing notice of the hearing
B-6	List of the record owners of all properties surrounding the Property
B-7	Affidavit of mailing to property owners – notice mailed on May 14, 2015
B-8	Affidavit of posting of public notice at property – notice posted on May 18, 2015 at 9:32 a.m.
B-9	Email message dated May 27, 2015 from Township Manager regarding Board of Supervisors grant of tentative approval for PRD
A-1	Copy of tentative approval resolution of PRD, dated May 18, 2015
A-2	Site Plan, dated February 25, 2015, prepared by Bohler Engineering
A-3	Aerial photograph of Property (Google Earth)
A-4	Photographs of existing buffer plantings overlaid on Site Plan