

**FREDERICK COUNTY BOARD OF APPEALS**  
**STAFF REPORT FOR OCTOBER 22, 2020 @ 7pm**

**Case Number:** B-20-15 (B260333)

**Applicant:** James Eckfield (ADTEK Engineers, Inc.)

**Appeal:** Requesting approval of a Special Exception to allow Activity within a Floodplain under Sec.1-19-9.110 Activities within Floodplain District and Sec 1-19-9.120 Procedures for Activities Within the FEMA Floodplain

**Location:** Property is described as 6752 Hemlock Point Road, New Market MD 21774, Tax Map 69, Parcel 0111, Tax ID# 27514502, Zone PUD, Size .215 Acres

**Planning Region:** New Market

**Zoning District:** Planned Unit Development (PUD)

**Comp. Plan Designation:** Low Density Residential

**Applicable Code Sections:**

Sec. 1-19-3.210 Special Exception  
Sec. 1-19-6.100 Design Requirements  
Sec. 1-19-9.110 Activities within Floodplain  
District  
Sec. 1-19-9.200 Procedures for Activities Within the  
FEMA Floodplain

**Background:**

The subject parcel is zoned Planned Unit Development (PUD) and contains .215 acres. The subject property is located within the Lake Linganore PUD.

**Proposal:**

Requesting approval of a Special Exception to allow construction of a previously constructed wall within the FEMA Floodplain, in accordance with Section 1-19-9.120.A and Section 1-19-3.210 of the Frederick County Zoning regulations. (Attachment 1)

This floodplain reaches up from Lake Linganore and touches the corner of the existing home. (Attachment 2) The intent of this project is to construct a retaining wall that will raise the grade around the home so as to eliminate any future damage to the home as a result of 100-year storm events. (Attachment 3) The Eckfields understand that this improvement will not only require approval from the BOA, but also the County Permit Office and FEMA.

**General Criteria – Special Exception:**

All Special Exceptions are subject to the General Criteria found in Section 1-19-3.210 of the County Zoning Ordinance:

- (A) An application for a special exception may be made only by persons with a financial, contractual or proprietary interest in the property for which a special exception is requested.

*The Applicant, ADTEK Engineers, has a contractual relationship with the Owner of the Property.*

- (B) A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:

- (1) The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of Chapter 1-19.

*The Applicant states that the proposed use is consistent with the purpose and intent of the Comprehensive Plan and the Zoning Ordinance. The site is currently residential and will remain as such.*

- (2) The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located.

*The Applicant states that the construction of the wall will not change the operations of the existing residential use. (Attachment 3)*

- (3) Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those

inherently associated with the special exception at any other location within the zoning district.

*The Applicant states that this special exception request will not have an adverse effect on neighboring properties. The floodplain will remain unchanged as a result of this development.*

- (4) Parking areas will comply with the off street parking regulations of Chapter 1-19 and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

*The Applicant states that there is an existing driveway and parking at the home currently and that will not change as a result of this work.*

- (5) The road system providing access to the proposed use is adequate to serve the site for the intended use.

*The Applicant states that the adjacent road system will not be compromised in anyway as a result of this work.*

#### **1-19-9.120. Activities Within Floodplain District.**

##### **§ 1-19-9.120. PROCEDURES FOR ACTIVITIES WITHIN THE FEMA FLOODPLAIN.**

- (A) The Board of Appeals shall review the following activities within the FEMA floodplain: substantial improvements, substantial improvements due to existing structures substantial damage, replacement or relocated dwelling units (including manufactured homes), the addition of accessory buildings, the expansion or replacement of an existing nonconforming use, or development of an existing parcel of record lying totally within the FEMA floodplain. Applications to allow new structures or fill to be placed in the floodway shall not be considered. The Board of Appeals may grant an application for approval for activity within the FEMA floodplain when the Board specifically finds that:

- 1. Failure to grant the application for approval would result in exceptional hardship to the applicant.

*The Applicant states that it is the intent of this project to eliminate future risk to the home. Continuing to have the floodplain touch the house could create a future hardship to the Owner if not mitigated.*

2. The granting of an application for approval would not increase flood heights, add threats to public safety, result in extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances.

*The Applicant states that the base flood elevation in the vicinity of the home is at 321.50. while the addition of a wall may cause an increase in flood height it is anticipated to be well less than an inch and negligible. (Attachment 3)*

3. The granting of an application for approval would not allow new structures or fill to be placed in the floodway.

*The Applicant states that it is not the intent of this project to provide additional structures on the lot or within the floodplain.*

4. The granting of an application for approval is the minimum necessary considering the flood hazard to provide relief and that public funds may not be available to mitigate the results of the approval.

*The Applicant states that the wall is located in the area where the floodplain touches the existing home. It is not the intent of the project to provide excessive improvements within the floodplain. (Attachments 1 and 3)*

5. All new structures and substantial improvements to existing structures will have the lowest floor elevated to the greatest extent possible with respect to the 100 year flood elevation, but at least to the Flood Protection Elevation, and a FEMA elevation certificate filed. In addition, all structures, including manufactured homes, must be firmly anchored in accordance with acceptable engineering practices (i.e., FEMA publication 85 "Manufactured Home Installation in Flood Hazard Areas").

*The Applicant states that the finish floor of the home is at 322.68, but due to the slope of the lot the foundation is within the floodplain. Constructing the wall will eliminate this condition.*

6. The granting of a permit by the Maryland Department of the Environment if located within a FEMA floodplain.

*The Applicant states that an Elevation Certificate will be processed through FEMA as part of this project.*

7. The action is duly recorded with the deed of the property on which the application for approval is granted prior to the issuance of a building permit. Any expense incurred by the recording is the responsibility of the applicant.

*The Applicant states that a deed can be recorded prior to issuance of the building permit.*

8. The Board of Appeals shall not grant approval of the above activities for lots containing floodplain created after June 6, 1989.

*The Applicant states that the lots in this section of Lake Linganore were established by plat on August 9, 1971.*

(B) The Board of Appeals will notify the applicant of approval in writing through the Zoning Administrator. The decision of approval and findings shall include the notification that:

1. The issuance of a decision to allow construction of a structure below the 100 year flood level will result in increased premium rates for flood insurance.

*The Applicant understands this requirement.*

2. Such construction below the 100 year flood level increases risks to life and property.

*The Applicant understands this requirement.*

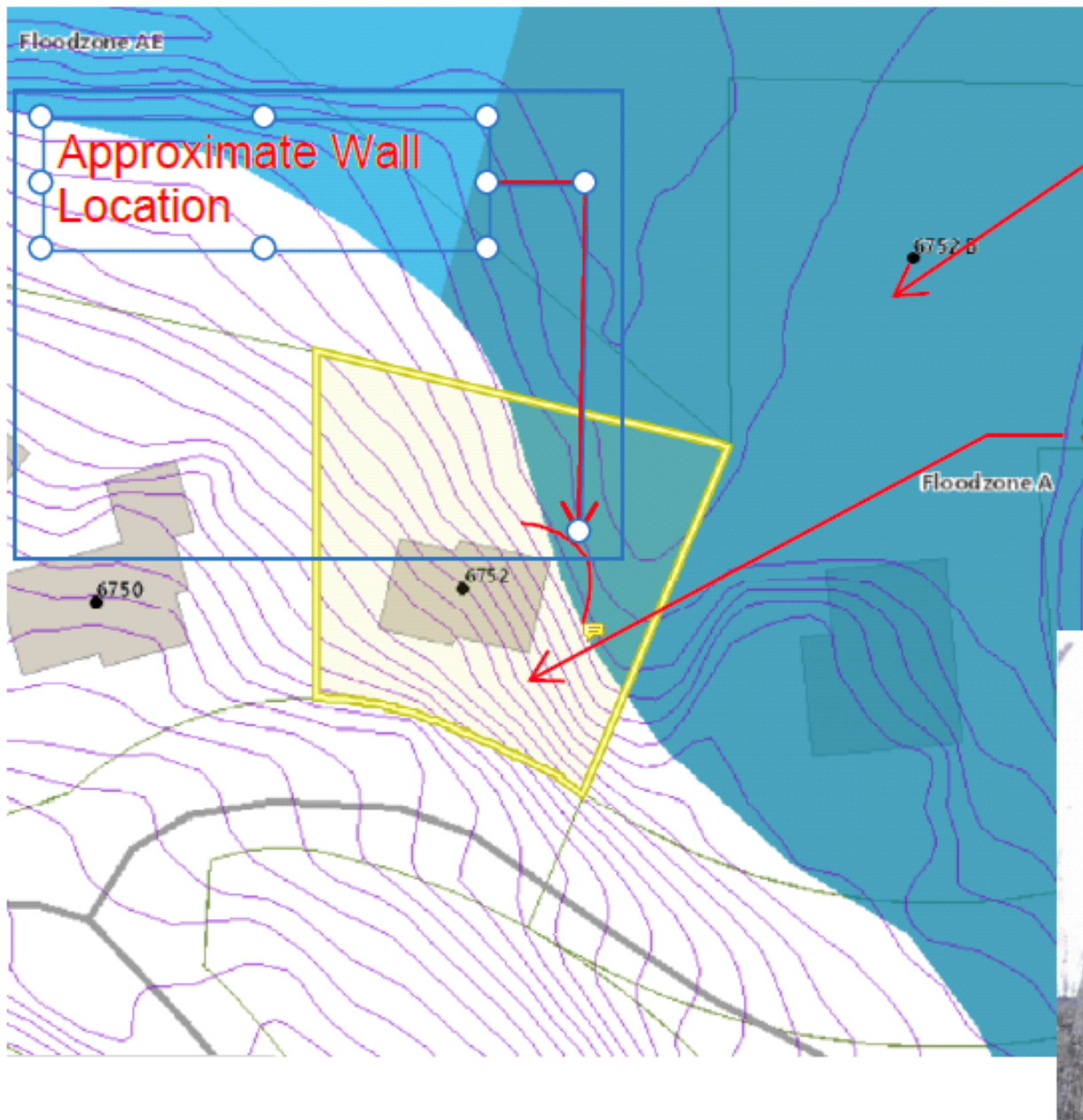
(C) The Board of Appeals will maintain a record of all decisions, including justification for their issuance, and the Zoning Administrator will report such decisions in the county biennial reports submitted to the Federal Emergency Management Agency.

*The Applicant understands this requirement.*

**Actions Needed:**

Staff requests that the Board review the general criteria for Special Exception under Sec. 1-19-3.210, and to allow Activity within a Floodplain under Sec.1-19-9.110 Activities within Floodplain District and Sec. 1-19-9.120 Procedures for Activities Within the FEMA Floodplain .

Attachment 1





Attachment 2



Rear of Home

Attachment 3



Constructed Condition



## Site Maps:

