

**BEFORE THE BOARD OF SUPERVISORS OF WEST PIKELAND TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA**

**IN RE: APPLICATION OF THE ADHI PARASAKTHI CHARITABLE MEDICAL  
EDUCATIONAL SOCIETY OF NORTH AMERICA FOR  
CONDITIONAL USE APPROVAL TO EXPAND ITS RELIGIOUS USE TO  
CONSTRUCT A TEMPLE AND AUXILIARY BUILDING (ON TAX PARCEL  
NUMBERS 34-4-55 AND 34-4-55.1) LOCATED ON THE EAST SIDE OF CONESTOGA  
ROAD, HAVING AN ADDRESS OF 1496 CONESTOGA ROAD)**

**DECISION AND ORDER**

The Applicant, the Adhi Parasakthi Charitable Medical Educational Society of North America (“the Applicant”) requests Conditional Use Approval, pursuant to Section 502.C.4 of the West Pikeland Township Zoning Ordinance, necessary to expand its religious use of a parcel of land on the east side of Conestoga Road (Route 401), tax parcel numbers 34-4-55 and 34-4-55.1, having an address of 1496 Conestoga Road (collectively the "Property"). Eight evenings of hearings were conducted all of which are collectively referred to herein as the "Hearing".<sup>1</sup> The Applicant proposed Conditional Use approval requesting a single conditional use to expand its religious use of the Property beyond the special exception granted on April 11, 2002, by the West Pikeland Township Zoning Hearing Board (“the Special Exception Approval”).<sup>2</sup> The Applicant seeks to expand the Special Exception Approval to permit now a 26,370 square foot temple and a 9,100 square foot auxiliary building. [August 19, 2008 N.T. at 21, 22].<sup>3</sup> The Applicant recognizes its obligation to return to the Board of Supervisors for any changes or modifications to the Special Exception Approval. [August 19, 2008 N.T. at 42; Exhibit 3, Condition 12]

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<sup>1</sup> The hearings occurred on August 19, 2008, October 21, 2008, November 5, 2008, November 25, 2008, December 4, 2008, December 18, 2008, January 8, 2009 and January 15, 2009.

<sup>2</sup> The West Pikeland Township Zoning Hearing Board has already determined that ACMEC’s use of the Property is for church or similar place of worship.

<sup>3</sup> The ACMEC Project Statement represented that ACMEC “plans to construct a new 27,000 square foot temple and an auxiliary support building”.

Present at the Hearing were the Board Chairman, Robert Shemonsky, and Board Vice-Chairman Richard Bright and Board Members Harold Hallman, William Cracas and Robert Barker.<sup>4</sup> Also present were Township Solicitor, Guy A. Donatelli, Esquire, Township Secretary, Joan Matthews and Township Engineer, Robert Johnston. Richard N. Lipow, Esquire, represented the Applicant. Prior to and during the Hearing, various property-owners, identified on the attached Exhibit “A”, requested and were given party status without objection. Two additional parties, Lawrence and Susan O’Donnell, were represented by Fronefield Crawford, Esquire. Another additional party, Green Valleys Association, was represented by George Wilmer, Esquire.

All members of the Board have reviewed the Application, testimony and exhibits, and after careful consideration make the following:

**I. FINDINGS OF FACT**

**THE APPLICANT**

1. The Applicant is a religious organization and one of many Hindu sects. [August 19, 2008 N.T. at 15]
2. ACMEC has nine Board members and its spokesman during the Hearing, Sriram Adhimoolam (“Sriram”), is the head of its finance committee. [November 5, 2008 N.T. at 4]
3. “ACMEC” is an acronym for Adhi Parasakthi Charitable Medical Educational and Cultural Society of North America. [August 19, 2008 N.T. at 16]
4. The Applicant is the legal owner of the Property, tax parcel numbers 34-4-55 and 34-4-55.1, by deed recorded November 21, 2001. [August 19, 2008 N.T. at 18]
5. Irrespective of its name, there are no medical facilities or educational institutions operated or contemplated at the Property. [August 19, 2008 N.T. at 16]; [November 5, 2008

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<sup>4</sup> On two occasions, a Board member was unable to attend a hearing. All parties agreed to permit all Board members to participate in this decision as long as they have reviewed the notes of testimony of the hearing dates missed.

N.T. at 60, 63]. The only charitable activity might be a food bank. [November 5, 2008 N.T. at 60]<sup>5</sup>

6. The Applicant has practiced its religion at the Property since 2000, and the practice and the frequency have not changed since 2002. [August 19, 2008 N.T. at 16]

7. The Applicant wishes to continue its religious use of the Property for themselves and their children and beyond. [August 19, 2008 N.T. at 17]

8. The Applicant conducts regular meetings on the Property once a month in which approximately five (5) families participate. [August 19, 2008 N.T. at 16, 54]

9. The congregation size and membership has been flat and has not increased since 1999-2000. [August 19, 2008 N.T. at 18, 28-29]

10. Although there is a larger Hindu population than just ACMEC members, Applicant could offer no testimony in response to questions regarding anticipated future membership of ACMEC. [August 19, 2008 N.T. at 28-29, 34]

11. There are no limits on the number of members who can join ACMEC. [August 19, 2008 N.T. at 57]

12. The congregation is spread out and geographically diverse. [August 19, 2008 N.T. at 16]; [November 5, 2008 N.T. at 5]

13. There are no more than fifteen (15) members at the site [August 19, 2008 N.T. at 16] and on the weekend the maximum number of attendees has been five families. [August 19, 2008 N.T. at 37, 84]

14. The congregation is spread from Long Island, New York to Northern Virginia. [August 19, 2008 N.T. at 17-18]

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<sup>5</sup> Any conditional use approval will require that no medical or educational services or training will be permitted at the Property.

15. There are eight (8) families within a 20-mile radius. [August 19, 2008 N.T. at 17, 27]

16. There are 29 families within a 60-mile radius. [August 19, 2008 N.T. at 11, 27]

17. Applicant estimates that there are 200 to 250 families that are members of the ACMEC religion nationwide. [November 5, 2008 N.T. at 10]

18. There has been a yearly festival at the Property since 2002 in which roughly 200 people participate. [August 19, 2008 N.T. at 16, 37, 65]<sup>6</sup>

19. The Applicant is not affiliated with any other Hindu temple. [August 19, 2008 N.T. at 17]

20. Currently, the congregants worship in the farmhouse on the Property, but there are no statues in place. [August 19, 2008 N.T. at 25]

21. The Hindu in ACMEC worships individually; there is no priest, just the Hindu and his prayer. [August 19, 2008 N.T. at 25]<sup>7</sup>

22. The Hindu in ACMEC, men and women alike, can enter the sanctorum and offer praises at any time. [August 19, 2008 N.T. at 28]

23. Anyone can attend temple. [November 5, 2008 N.T. at 57]

### **THE 2002 ZONING HEARING BOARD DECISION**

24. On September of 2001 the Applicant sought Special Exception Approval from the West Pikeland Zoning Hearing Board (“the ZHB”) to operate a place of worship at the Property.

25. ACMEC indicated on its application for Special Exception that the maximum number of members would be 50 people. [August 19, 2008 N.T. at 81; Exhibit 3, p.5, No. 28]

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<sup>6</sup> In 2001, when the Guru visited the Property, there were over 1000 in attendance. [November 5, 2008 N.T. at 69] The Applicant represented that in the event of anticipated outdoor festivals, it would comply with all Township laws. [August 19, 2008 N.T. at 40]

<sup>7</sup> Occasionally a person may take turns administering to the needs of the temple and the people who visit. [November 5, 2008 N.T. at 24-25]

26. On September 25, 2001 and January 22, 2002, the Applicant participated in hearings in which certain representations were made regarding the use of the Property and the anticipated future use of the Property (“the ZHB Hearing”). [November 5, 2008 N.T. at 42, Exhibit A-3; Exhibit O-5]

27. At the ZHB Hearing, ACMEC’s representative was a gentleman identified as Muthu. [November 5, 2008 N.T. at 24-25]

28. Muthu testified at the ZHB hearing that the Guru looked at a 33,000 square foot temple and the Guru instructed ACMEC not to build it but “to build a small place of worship and do some farming over there [referring to the Property]”. [November 5, 2008 N.T. at 44]

29. Muthu further testified to the ZHB that ACMEC had no plan to build a 36,000 square foot building on the Property, that it was not going to be and that “it was gone forever...It was our proposal but the Guru said no”. [November 5, 2008 N.T. at 45; Exhibit O-6]

30. Muthu further testified that the purpose of buying the Property was “to put a small temple. It may cost, like 500,000, because my house costs somewhere around 300,000”. [November 5, 2008 N.T. at 46]

31. Muthu further testified that the “small temple” would not be 10,000 square feet but “somewhere around, like, 5000 square feet”. [November 5, 2008 N.T. at 50]

32. Muthu further testified that ACMEC needed 5000 square feet “[b]ecause we’re going to have a sanctum. It’s going to be a flat surface for people there inside, which we have the 5,000 square feet including not just the living area, includes the bathroom facilities and everything”. [November 5, 2008 N.T. at 53]

33. Sriram agreed that Muthu’s testimony was accurate and truthful, and that at the time of the ZHB hearings “the large temple was out, should never be built and a small temple should be built”. [November 5, 2008 N.T. at 47, 53]

34. Sriram was not a witness at the ZHB Hearing, but believes Muthu's reference to the smaller temple was a reference to a smaller center temple within the larger structure. [August 19, 2008 N.T. at 44]<sup>8</sup>

35. At some point ACMEC was considering a 10,000 square foot temple. [November 5, 2008 N.T. at 54; Exhibit O-10]

36. The ZHB granted the special exception for the religious use of the house located on the Property with fourteen specific conditions, one of which was that the proposed use and activities on the Property would be substantially in accordance with the testimony and exhibits presented to the ZHB. [Exhibit 3; Exhibit 3, Condition 1]<sup>9</sup>

37. Some of those conditions were not met. For example:

(a) ACMEC never installed the all weather permanent parking area or all weather pavement, as required by Condition 2. [November 5, 2008 N.T. at 77]

(b) Access to the Property was to be by means of the existing driveway irrespective of steep slopes and shall be modified to allow the passage of 2 vehicles, as provided in Condition 4. [December 18, 2008 N.T. at 33]

38. Certain parties to the ZHB hearing did not appeal the ZHB decision; those parties believed the testimony of the Applicant that a 33,000 square temple would not be built, that a 5000 square foot temple was livable and that the Applicant would repair the house and worship there, as the Applicant testified. [January 8, 2009 N.T. at 21] [December 18, 2008 N.T. at 17, 20, 39, 40]

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<sup>8</sup> While the Board of Supervisors understands why Sriram might construe the meaning of the word "temple" in this fashion, a complete account of Muthu's testimony compels the conclusion that he was referring to the entire structure ("everything") and not just the karavarai, the temple that houses the main deity.

<sup>9</sup> Protestants argue that these conditions can only be modified by the ZHB. However, as a result of the zoning change within the Township since the issuance of the Special Exception Approval, jurisdiction to determine these types of conditional uses has been transferred to the Board of Supervisors. Accordingly, the Board of Supervisors believes it has the jurisdiction to address the requests being made by Applicants but is cognizant of the importance of the prior hearing before the ZHB and the ZHB's decision.

39. Nor did the Applicant appeal the ZHB Decision or the imposition of the conditions on the approval, nor was there any evidence in the record to suggest that the Applicant believed the conditions were unfair, overbearing, unreasonable or inconsistent with the proposed use of the Property.<sup>10</sup>

40. “Nothing has changed” for the Applicant since the testimony of Muthu on September 25, 2001, or since the April 11, 2002 Special Exception Approval to the time of the current conditional use application to the Board of Supervisors. [August 19, 2008 N.T. at 42]; [November 5, 2008 N.T. at 40]

### **THE CURRENT PROJECT**

#### **A. General Characteristics**

41. Although nothing has changed and membership has been flat, the Applicant believes the current structure on the Property is too small for the needs of the congregation. [August 19, 2008 N.T. at 22]

42. The Applicant seeks to expand the Special Exception Approval to permit now a 26,370 square foot temple and a 9,100 square foot auxiliary building. [August 19, 2008 N.T. at 21, 22]; [October 21, 2008 N.T. at 11, 12]

43. The Applicant anticipates one employee with the hours of operation being 10:00 a.m. to 7 p.m. [August 19, 2008 N.T. at 36, 55]

44. The Applicant’s plans show 104 parking spaces. [August 19, 2008 N.T. at 56]; [October 21, 2008 N.T. at 11]<sup>11</sup>

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<sup>10</sup> The imposition of these conditions without opposition from Applicant to secure the Special Exception Approval is noteworthy; generally, an applicant may not secure the benefits of an approval with conditions and later expect those conditions to be excused. Appeal of Busik, 759 A.2d 417 (Pa. Cmmw. 2000)

<sup>11</sup> The Township engineer expressed its uncertainty and concern as to how the number of parking spaces was determined other than an assumption that use of the new facility would be the same as the current use. [Exhibit B-15G, comment 4]

45. The Applicant's engineer chose the maximum rated capacity of the largest room (the auxiliary building), 200 people, to develop parking. [October 21, 2008 N.T. at 19, 57]

46. The Applicant did not provide any testimony on the maximum rated capacity of the temple area (however, as set forth herein, other witnesses for other parties did attempt to provide such testimony).

47. The number of parking spaces was determined by Section 1203 E of the West Pikeland Zoning Ordinance – .5 parking spaces per seat using the auxiliary building with a maximum rated capacity of 200 people, which provides for 100 parking spaces. [October 21, 2008 N.T. at 19]<sup>12</sup>

48. The height of the light fixture in the parking lot will not exceed 14 feet. [October 21, 2008 N.T. at 76]<sup>13</sup>

49. The Property will also be improved with storm water facilities, including three rain gardens. [October 21, 2008 N.T. at 11, 22]<sup>14</sup>

50. The Applicant's engineer testified that one component of the discharge of storm water violated the 100 foot setback requirement for discharge and would need a waiver for this requirement. [October 21, 2008 N.T. at 41-42]

51. The Applicant's engineer testified that the storm water management system otherwise complies with all applicable regulations. [October 21, 2008 N.T. at 21]

52. The Property is also being improved with screening pursuant to the Ridge Line Protection Ordinances. [October 21, 2008 N.T. at 26]

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<sup>12</sup> Any approval would require a condition that the Applicant must abide by the capacity limitations Applicant set for itself, 200 people, or be subject to a notice of violation and a cease and desist order. [November 5, 2008 N.T. at 57]

<sup>13</sup> Any other lighting on the property or on the buildings, such as door or exit lights, would be subject to all Township codes and ordinances. [October 21, 2008 N.T. at 76]

<sup>14</sup> Adequate inspections and maintenance of the three rain gardens, at least annually and after large storms, would be a condition of any approval, as will the requirement that the water discharged will be filtered to prevent discharge of pollutants into the wetlands. [October 21, 2008 N.T. at 98-99]

53. The Applicant's engineer testified that the screening complies with all ridgeline protections. [October 21, 2008 N.T. at 26]<sup>15</sup>

54. The Applicant is closing the spring located on the Property (so that it continues feeding to the wetlands) consistent with approvals received from the Pennsylvania Department of Environmental Protection and the Army Corps of Engineers (per letter dated January 6, 2009 authorizing "enclosure of an existing springhouse") and has recorded a conservation easement on the wetlands adjacent to the project area protecting them in perpetuity. [October 21, 2008 N.T. at 31, 32, 94-95; Exhibit A-10]

55. The Applicant's engineer testified that a well had been drilled on the Property roughly four years ago and that the well yield was adequate for the project through an Evans Mill Environmental report (although the record is not clear what that water use will be or whether it will be satisfactory for the sprinkler system, the drinking and sewer needs of the building or the maintenance of the outdoor plantings). [October 21, 2008 N.T. at 31; Exhibit A-6 Tab 10]<sup>16</sup>

56. The project will be serviced by an on-lot septic system consisting of a primary and alternate absorption area and a dosing tank and would be a little larger than what one would see for a home. [October 21, 2008 N.T. at 40-41; Exhibit A-6 Tab 7]

57. The Township Engineer noted in its zoning review of the plan and recommended certain conditions of any approval. [Exhibit B-13G]

58. The Township Engineer's conditional use plan review indicated that issues had been addressed and information provided to demonstrate the feasibility of the proposed

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<sup>15</sup> Adequate ridgeline and other screening, including the maintenance and replacement thereof, would in any event be a condition of any approvals. [October 21, 2008 N.T. at 116, 128-129, 138]

<sup>16</sup> Applicant did provide testimony that there would be reservoirs sufficient for sprinkling both buildings but that the Applicant did not explore public water. [October 21, 2008 N.T. at 79-80] However, the Applicant should explore the availability of public water, its proximity, cost and availability as part of any further development of the Property. Furthermore, the Township Engineer noted that the "response regarding transmissivity and nearby distance-drawdown is not satisfactory". [Exhibit B-15G, comment 5] The Township has significant concerns that the Evans Mill assumptions are not valid and that the area of impact may be greater than the 100 feet to the boundary of the Property and will impact wells within 300 feet of the on-site well.

development for the conditional use application, however, further opined that a more detailed review will be required during preliminary land plan review and in no way approved the present configuration. [October 21, 2008 N.T. at 48]; [Exhibit B-13G]

B. The Temple

59. The Chester Springs Property is the only ACMEC worship center in North America. [November 5, 2008 N.T. at 8, 11]

60. The proposed temple, which is called a Sakthi Peetam, will be the only temple for this Hindu sect in the United States.<sup>17</sup> [August 19, 2008 N.T. at 33]; [November 5, 2008 N.T. at 23]

61. Sriram testified that if the temple is not built the ACMEC congregation would not be able to fully freely and adequately worship. [August 19, 2008 N.T. at 26]

62. If built, it will become the only Sakthi Peetam outside of India. [November 5, 2008 N.T. at 24]

63. The exterior of the temple will look like a Hindu temple because the outside appearance is central to religious observance. [August 19, 2008 N.T. at 68]

64. The temple architecture was done in India by the Guru and the architect. [November 5, 2008 N.T. at 29-30]

65. The height of the roof will be 20 feet; the height of the tallest spire will be 55 feet. [October 21, 2008 N.T. at 16]<sup>18</sup>

66. The size of the temple is a function of the number of deities. [August 19, 2008 N.T. at 53, 86]

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<sup>17</sup> There are smaller places of Hindu worship called mandrams. [November 5, 2008 N.T. at 22] The “real temples” for ACMEC are called Sakthi Peetams. [November 5, 2008 N.T. at 22]

<sup>18</sup> The height of the buildings and the spires complies with the Township’s zoning ordinance.

67. However, members of ACMEC who follow this religion pray in their homes and “could just sit at home and pray, that’s also perfectly fine”. [August 19, 2008 N.T. at 86]; [November 5, 2008 N.T. at 9]

68. When praying in a house, the members of ACMEC can pray just with photos. [November 5, 2008 N.T. at 20]

69. The 26,370 square foot size of the temple is driven by the number of stone deities ACMEC prefers – as designed, there is a main deity, Adhi Parasakthi, in her own structure called a karavarai and is surrounded by the supporting multiple smaller deities. [August 19, 2008 N.T. at 22]

70. ACMEC’s religious practices dictate that if there is a main temple of a certain size, there are auxiliary temples that have to be of a certain size and it cannot be closer than a certain distance from the main deity. [August 19, 2008 N.T. at 23] [November 5, 2008 N.T. at 40]

71. There was no evidence that the proportions or the distances are written down or whether they are strictly within the Guru’s discretion. [November 5, 2008 N.T. at 35]

72. The members of ACMEC take the Guru’s word for the special requirements for temples and the distances are not within the ACMEC witness’ expertise. [November 5, 2008 N.T. at 36, 40]

73. ACMEC initially proposed many more deities than now planned but it was growing out of proportion and the congregation “reduced it to what the minimum that the congregation felt they could live with for the foreseeable future”. [August 19, 2008 N.T. at 24]

74. According to ACMEC’s representative, ACMEC’s original plan had too many deities and was much larger so ACMEC scaled it down to the level it felt comfortable. [November 5, 2008 N.T. at 32]

75. ACMEC made a decision as to the number of deities it thought was practical; there is no evidence that that number of deities is required. [August 19, 2008 N.T. at 30]

76. The Applicant has the statue plan that has been brought from India for the main deity, which cannot be installed within the current house because it does not meet the minimum requirements of what they think it should be. It is being stored at a home in a van and it is used during festival. [August 19, 2008 N.T. at 26]

77. Worship is completely inside the temple; the Hindu prays first to the main deity and then prays to the other deities, after which you sit, meditate and exit the temple. [August 19, 2008 N.T. at 31]

78. There is no seating in the temple. [October 21, 2008 N.T. at 55]

79. Anyone may enter the temple. [August 19, 2008 N.T. at 32-33]

80. The Applicant did not offer an occupancy calculation for the temple. Under the International Building Code, section 1004.1.1, a calculation of occupancy for the temple (which does not contain fixed seating) based upon net floor area of 19,685 would allow 1,312 occupants at its least dense. [January 8, 2009 at N.T. 37]

81. The tall spire is atop the main deity's temple and the smaller spires are atop the smaller deities. [August 19, 2008 at N.T. at 24]<sup>19</sup> The spires are decorative. [November 5, 2008, N.T. at 39]

82. The spires shall be sandstone in color. [October 21, 2008 N.T. at 134]

#### B. The Auxiliary Building

83. There is also an auxiliary building planned for use as offices, meeting rooms, a dining area, a residential type kitchen, shower stalls and restrooms.<sup>20</sup> [August 19, 2008 N.T. at 21, 35, 36]

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<sup>19</sup> There will be no bells in the spires, or lights on the spires or will the spires be up-lighted. [August 19, 2008 N.T. at 59]; [October 21, 2008 N.T. at 46, 48, 78] In any event these restrictions would be a condition of any approval for this project.

84. The auxiliary building of 9,100 square feet is needed because people will travel distances to visit the temple and will need a place to calm down before they go into the temple.

[August 19, 2008 N.T. at 21]

85. The auxiliary building is where people will wash up before they go to temple because people will be coming from far away. [August 19, 2008 N.T. at 36]

86. The auxiliary building has no fixed seating. [October 21, 2008 N.T. at 54]

87. The Applicant offered a maximum rated occupancy of the auxiliary building at 200 people. [October 21, 2008 N.T. at 19,57]

88. Under the International Building Code, section 1004.1.1, a calculation of occupancy for the auxiliary building (which does not contain fixed seating) based upon net floor area of 2,073 would allow 138 occupants as a banquet facility and 296 occupants as a lecture hall type assembly space. [January 8, 2009 N.T. 33, 36-38, 39]<sup>21</sup>

89. The auxiliary building will not have a church school or engage in medical training or procedures. [August 19, 2008 N.T. at 34, 55]

90. It will have temporary seating for 200-205 people, will be used for weddings within the congregation and may house some equipment. [August 19, 2008 N.T. at 35, 55, 63, 78-79]

91. The auxiliary building will not be used for over-night stays or bingo-type games. [August 19, 2008 N.T. at 26, 55]

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<sup>20</sup> There is a significant lack of record specificity regarding the restrooms and the amount of sewage capacity which will be necessary for the use of the auxiliary building; at one point there was evidence of 7 to 9 and as many as 19 bathrooms (reduced to 1 through stipulation of Applicant's counsel), and the Township Engineer has noted that the Applicant had not submitted the sewer studies necessary to analyze the sewer capacity needs. [January 8, 2009 N.T. at 5; January 15, 2009 N.T. at 114] Indeed, the design of the sewer system is not complete. [October 21, 2008 N.T. at 84] Applicant does not contest that the facility is overbuilt for lavatories and will be revised. [January 8, 2009 N.T. at 29] Furthermore, the Applicant's engineer seemed to testify that there would be an average weekly water use of 150 gallons (24 gallons per day). [October 21, 2008 N.T. at 63] It would appear that the International Building Code (Table 403), Chapter 4, provides in this situation one lavatory for every 200 people. [January 8, 2009 N.T. at 5] Without some estimated usage and effluent flow based upon sound data, however, the Board has no basis by which to address these basic concepts of land use.

<sup>21</sup> At full occupancy, the combined number of occupants of the temple and the auxiliary building would be 1,608. [January 8, 2009 N.T. 39]

92. The size of the auxiliary building is designed to the maximum size of the congregation. [August 19, 2008 N.T. at 22]

93. The maximum size of the full congregation affixed to this site is 250 people [August 19, 2008 N.T. at 19-20] although parking spaces were determined per seat using the auxiliary building with a maximum rated capacity of 200 people. [October 21, 2008 N.T. at 19]

D. Access

94. The Property is accessed by a single driveway off of Route 401.

95. The Applicant does not anticipate the driveway use changing and no parking will be permitted along the driveway. [August 19, 2008 N.T. at 43]; [October 21, 2008 N.T. at 80]<sup>22</sup>

96. The Applicant intends to widen the driveway to 50 feet to comply with the width requirements. [October 21, 2008 N.T. at 81]

97. The Applicant has an HOP for a low volume driveway for the Property from PennDOT. [August 19, 2008 N.T. at 39]; [October 21, 2008 N.T. at 93; Exhibit 6]

98. The low volume driveway permit provides for 25 to 750 cars per day. [October 21, 2008 N.T. at 102, 150]<sup>23</sup>

**THE PROPERTY**

A. The Plan Restrictions

99. Discussion of the Property and the current Project is not possible without addressing the Wilson Farm Subdivision restrictions on the Property, approved by the West Pikeland Board of Supervisors on a set of plans dated October 19, 1998. [Exhibit O-13]<sup>24</sup>

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<sup>22</sup> This would be a condition of any approval.

<sup>23</sup> There was testimony that the driveway should have acceleration and deceleration tapers of 50 feet and that the driveway intersection should have a level D of service or better, both of which shall be conditions of any approval.

<sup>24</sup> The Board believes that it is required to take these restrictions into account and enforce them when addressing this conditional use request. And, in any event, the requirement that the “[c]onditions of this subdivision plan regarding developable areas should be considered binding” was a requirement of the Pennoni September 21, 2001 review letter, paragraph 6, incorporated into Special Exception Approval at Condition 11.

100. On December 21, 1998, a subdivision plan for the Property was recorded in the Chester County Recorder of Deeds, Book-14724, Page 1, which has been referred to during the Hearing as the Wilson Farm Subdivision plan. [Exhibit O-13]

101. There is no restriction contained in the Property's deed; the only restrictions are contained on the subdivision plan.

102. The Wilson subdivision plan had two areas of relevance to the instant application [October 21, 2008 N.T. at 90]:

- (a) Tract 1 containing 12.26 acres, and;
- (b) Tract 2 containing 12.27 acres. [October 21, 2008 N.T. at 90]

103. The lot currently being used by the Applicant, and which is the subject of the instant application, is identified on the Wilson Farm subdivision plan and is restricted by the following language: "no development shall be permitted beyond this cross-hatched boundary". [October 21, 2008 N.T. at 11]; [November 25, 2008 N.T. at 8]

104. The cross-hatched area consists of approximately 2.68 acres. [ Exhibit O-21]<sup>25</sup>

105. As conceded by the Applicant's engineer, Joseph Hunt, the temple's location on the Property was determined by the development restrictions on the Property. [October 21, 2008 N.T. at 25]<sup>26</sup>

106. There is no other place where the Applicant could have sited the temple and satisfied the current restrictions on the Property. [October 21, 2008 N.T. at 29]

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<sup>25</sup> One of Protestant's witnesses, qualified as a professional land planner, suggested that the building coverage and the lot coverage within the cross-hatched area were somehow limited by the restrictions on the Wilson subdivision plan because the current zoning ordinance excluded from these calculations existing open space restricted from further development. [December 4, 2008 N.T. at 77, 80-81] This opinion was not given by any other civil engineer engaged by the Protestants or any party nor was it noted by the Township's Engineer. The Board defers determination of limits on the lot coverage or building coverage on the site for land development upon submission of a plan consistent with the conditions set forth in this Decision and Order.

<sup>26</sup> This is not surprising – the restrictions contained on the subdivision plan, having gone through a formal and public subdivision process and having been incorporated into the approvals are to be enforced by the Township. Doylestown Township v. Teeling, 635 A.2d 657, 661 (1993).

107. The Applicant's engineer testified that the note on the plan is very specific that no development shall occur outside the permitted area. [October 21, 2008 N.T. at 43]

108. The Applicant's engineer testified that this restriction would not permit the facility or its other improvements to expand. [October 21, 2008 N.T. at 82-83]

109. The Applicant's engineer admitted that certain facilities and the three storm water rain gardens were outside the development area. [October 21, 2008 N.T. at 52, 58]<sup>27</sup>

110. The Township engineer has noted that Sheet 5 of 13 of ACMEC's plans "shows parking and storm water management outside the buildable area restriction". [Exhibit B-15G, comment 28]

C. Location and characteristics of the Property

111. The Property is located along Route 401, in a residential area composed entirely of single-family homes of various ages, sizes and styles surrounded by open space. None of the surrounding buildings are as large as the proposed temple. [October 21, 2008 N.T. at 10, 28, 72]

112. A number of the surrounding properties are subject to conservation easements limiting number of lots, lot sizes and building envelopes. [December 18, 2008 N.T. at 5, 6]

113. The surrounding area is rural, residential and agricultural. [December 18, 2008 N.T. at 5, 6]<sup>28</sup>

114. The Property is composed of 24 ½ gross acres made up of two lots. [October 21, 2008 N.T. at 10, 12-13]

115. The Property contains wetlands and is within close proximity of Lower Pine Creek, a high quality stream, and is within its watershed. [passim]

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<sup>27</sup> There was much testimony and argument presented by the parties relating to the meaning of the word "development" and the intentions of the drafters of the plan relating to the meaning of the plan notes. Although the testimony and arguments were useful to the Board to highlight the language contained on the subdivision plan, the Board believes that the meaning of the plan notes is clear – that there should be no man-made improvements outside of the cross-hatched area and that the remainder of the Property should remain undisturbed.

<sup>28</sup> Although as one proceeds north on Route 401 to Opperman's Corner (the intersection of Route 113 and Route 401) there are several commercial uses, but that area is remote to the Property.

116. Currently, the Property is improved with an old farmhouse, a barn in very poor condition, a springhouse, an old outhouse, a shed and the remnants of an old greenhouse, all of which are planed to be demolished by the Applicant.<sup>29</sup> [October 21, 2008 N.T. at 10, 35, 36]

117. There is no way to build the temple proposed and retain these structures. [October 21, 2008 N.T. at 36]

118. The barn on the Property does not look like a Hindu temple, is never used by the Applicant and is not going to be incorporated into its practices. [August 19, 2008 N.T. at 19]

119. The Applicant regards the barn as an unclean place, which the Applicant would not use as a place of worship. [August 19, 2008 N.T. at 19-20]

120. Currently the Applicant uses the farmhouse located on the Property. [August 19, 2008 N.T. at 19]

121. There is also a springhouse and a small shed on the Property. [August 19, 2008 N.T. at 21]

122. The Property is also improved with a driveway, which was installed as part of an effort to comply with a requirement of the Special Exception Approval (but which was evidently constructed outside of the old driveway in contravention of the Special Exception Approval. [August 19, 2008 N.T. at 21]<sup>30</sup>

123. The Property is located in the RC – Residential and Conservation District. [October 21, 2008 N.T. at 13]<sup>31</sup>

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<sup>29</sup> These structures are historically classified as Class 2 resources. [October 21, 2008 N.T. at 11, 33]

<sup>30</sup> It appears that the Township did not seek to prevent this improper construction because the Township engineer approved it, as required by the Special Exception Approval.

<sup>31</sup> Within this zoning district, churches or similar places of worship are permitted by conditional use pursuant to section 502.C.4 of the West Pikeland Township Zoning Ordinance.

C. Area and Bulk Analysis

124. Applicant's engineer testified that based upon the Township's Zoning Table (Exhibit A-6, Tab 5) the following were in compliance with the Township's zoning ordinance regulations as they relate to the RC District:

- (a) lot width;
- (b) front, side and rear setbacks;
- (c) building coverage;
- (d) lot coverage;
- (e) height; and
- (f) steep and moderate slopes. [October 21, 2008 N.T. at 12-16]

125. Comment 18 of the Township's engineer's review of August 15, 2008 indicates that the revised storm water management system indicates an outfall, the construction of which is shown to impact very steep slopes and the Zone One wetland buffer which is prohibited by ordinance and the special exception approval conditions granted in 2002 and that further and more detailed review will be required during preliminary planning review. [October 21, 2008 N.T. at 70; Exhibit A-6, Tab 13; Exhibit B-15G, comment 18]

126. Comment 19 of the Township's engineer's review of August 15, 2008 indicates that the parking lot area impacts very steep slopes which is prohibited by ordinance and the special exception approval conditions granted in 2002 and that further and more detailed review will be required during preliminary planning review. [October 21, 2008 N.T. at 70; Exhibit A-6, Tab 13; Exhibit B-15G, comment 19]

127. The Applicant has committed to satisfying all comments and concerns of Mr. Johnston's August 15, 2008 fourth review letter. [October 21, 2008 N.T. at 81]

128. The O'Donnell Protestants presented the testimony of Pamela Stevens, a civil engineer, who presented a technical review of the Applicant's conditional use plans.<sup>32</sup> [November 25, 2008 N.T. at 7; Exhibit O-15]. Other than the following items, she found no other issues with the Applicant's conditional use plan that could be testified to with any certainty [November 25, 2008 N.T. at 53]:

- (a) There was development outside of the limited cross-hatched boundary including the on-lot sanitary sewer, its septic tank, dosing tank and the line feeding it,<sup>33</sup> the driveway<sup>34</sup>, the majority of the storm water management features, including the three rain gardens and the infiltration beds, various utilities, landscaping, lighting, sidewalk and erosion control features, all requiring grading, filling and excavation. [November 25, 2008 N.T. at 9]
- (b) The erosion and sedimentation pollution control plan required to comply with the various regulatory agencies encroach into the riparian Zone One buffer, which is a no disturbance zone, as do landscaping trees, silt fencing, other erosion controls, relocation of a utility pole, and a new water service line. [November 25, 2008 N.T. at 13, 27; Exhibit O-14]<sup>35</sup>
- (c) There could be an encroachment by parking spaces upon the riparian zone two greater than 20 percent and the conditional use plan should recalculate that 20 percent criteria. [November 25, 2008 N.T. at 29]

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<sup>32</sup> The O'Donnells also presented the testimony of a qualified land planner, Wayne Grafton, who agreed with Ms. Stevens that there was activity occurring outside the development areas, such as sewage disposal, sewage lines, storm water facilities, turnarounds for large vehicles and driveway systems amounting to 2.537 acres. [December 4, 2008 N.T. at 73, 74]

<sup>33</sup> This witness identified a plan for 19 toilets, wash areas, a shower and a kitchen, leading to questions of true flow to this system. [November 25, 2008 N.T. at 9]

<sup>34</sup> The Board questions whether a driveway is intended to be included as "development", although recognizes that Applicant's plan is to widen the driveway.

<sup>35</sup> These activities violate zoning ordinance 802.B.5.a as it is a no disturbance zone.

- (d) Due to the lack of species identification, there is uncertainty as to whether certain landscaping is compatible with the wetlands. [November 25, 2008 N.T. at 14]
- (e) Concern over the closing of the spring (an issue mooted by the issuance of permits by DEP and the January 6, 2009 letter of the Army Corps of Engineers. [November 25, 2008 N.T. at 20]
- (f) Concern that the demolition of the barn, springhouse would affect the historic resources of the Township (Section 804D.1). [November 25, 2008 N.T. at 22, 23]<sup>36</sup>
- (g) All of the class II historic structures are being demolished when section 1612 of the West Pikeland Township Zoning Ordinance requires that the proposed use be sited in a manner sensitive to natural resources and consistent with the natural resource protection standards of Article 8, which includes the Historic Preservation Overlay District. [November 25, 2008 N.T. at 23]
- (h) The new driveway might have encroached upon the two riparian buffers when built in 2006. [November 25, 2008 N.T. at 31]<sup>37</sup>
- (i) The minimum access drive under the zoning ordinance according to section 1208.F.2 is 24 feet. The widening of the driveway to 22 feet, or 24 feet, would encroach into the riparian buffers and would encroach on the 15-foot setback at the closest property line corner of an adjacent property in violation of Section 1206.A. [November 25, 2008 N.T. at 34]

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<sup>36</sup> There has been no approval of the zoning officer or the Historical Commission for the demolition of these structures; rather the issue was left for this Board in this hearing. [November 25, 2008 N.T. at 26]

<sup>37</sup> It is apparently unclear whether the current driveway currently exists in the condition it existed in 2002 as referenced in the special exception. [November 25, 2008 N.T. at 31]

- (j) Minimum modification that impacts on the natural resources has not been met. [November 25, 2008 N.T. at 31]
- (k) Absence of the existing features of acceleration and deceleration tapers of 50 feet as per the PennDOT's review letter for the HOP requiring such lanes pursuant to Section 1111.B.3 on the conditional use plans. [November 25, 2008 N.T. at 32, 54]
- (l) Absence of loading areas pursuant to 1211.B.2 on the conditional use plan.<sup>38</sup> [November 25, 2008 N.T. at 33]
- (m) Removal of the specimen trees would violate section 802.B.6.a.3 (Natural Resources). [November 25, 2008 N.T. at 36, 41]

### **THE WITNESSES**

129. The Applicant presented the following witnesses: (1) Sriram; (2) Joseph Hunt, a licensed civil engineer; (3) Erin Smith; (4) Frank Tavani, a licensed engineer, and; (5) Thomas Kummer, RLA, a landscape architect.

130. The O'Donnell Protestants, in addition to their own testimony, presented the following witnesses: (1) Pamela J. Stevens, a licensed civil engineer; and (2) Wayne Grafton, a certified land planner.

131. Green Valleys Association presented Michele Adams, P.E., a civil engineer as a witness.

132. The Board permitted Mr. Hunt, Ms. Stevens, Ms. Smith, Mr. Tavani, Mr. Kummer and Ms. Adams to testify as experts in their fields.

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<sup>38</sup> The absence of such a loading area would have to be permitted by conditional use. Zoning Ordinance Section 1211B.1 [December 5, 2008 N.T. at 26, 27]

133. Many of the residential neighbors questioned Applicant's and Protestant's witnesses and presented their own testimony, comments, thoughts, concerns and suggestions to the Board both in testimony and in written submissions. [Hearing record, passim].

134. The residential neighbors presented comments, thoughts, concerns and suggestions on the following topics and areas:

- (a) Impacts to and flooding of the Pine Creek and the Pine Creek watershed [January 15, 2009 N.T. at 4];
- (b) Adverse impacts on the Clinger Moses Mill Complex [January 15, 2009 N.T. at 5];
- (c) Prior inconsistent representations of the Applicants at the ZHB Hearing regarding the size of a temple of 5000 square feet [January 15, 2009 N.T. at 7, 76];
- (d) Failure to adhere to the ZHB conditions imposed on the Special Exception Approval [January 15, 2009 N.T. at 9];
- (e) The inadequate size of the parking lot [January 15, 2009 N.T. at 9];
- (f) The intensity of use of the property and the potential number of attendees [January 15, 2009 N.T. at 11, 78, 88];
- (g) The nature and size of the project being out of character with the surrounding community [January 15, 2009 N.T. at 36, 37]
- (h) The size and scale of the project and its appropriateness for the Property [January 15, 2009 N.T. at 13, 77, 85];
- (i) The conflicts between the project and the spirit and intent of the zoning regulations regarding the RC Zoning District [January 15, 2009 N.T. at 14];

- (j) The plan restrictions on the Property [January 15, 2009 N.T. at 74]
- (k) The concerns of the West Pikeland Land Trust and the project's conflict on the conservation and stewardship of open spaces that are environmentally sensitive, agriculturally productive and historically significant [January 15, 2009 N.T. at 85]
- (l) The lack of information or studies on the need and criteria for septic and on-site water. [January 15, 2009 N.T. at 112-114]

135. Other public comments relied upon the testimony of experts relating to the effect of the project and its insensitivity to the downstream organisms and the high quality stream into which the storm water would ultimately flow. For example, Green Valleys Association presented Michele Adams who noted concerns that:<sup>39</sup>

- (a) The rain gardens would not capture much more water than what was around them [January 15, 2009 N.T. at 34, 46];
- (b) The closure of the spring might affect the flow of water into the wetlands [January 15, 2009 N.T. at 25];
- (c) There would be discharge of pollutants into the Lower Pine Creek and associated wetlands from the impervious surfaces [January 15, 2009 N.T. at 36, 37];
- (d) The change of temperature from surges in storm water would be detrimental to the aquatic community from the microbial level up [January 15, 2009 N.T. at 37, 46, 58];
- (e) Lack of ground water recharge [January 15, 2009 N.T. at 38];

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<sup>39</sup> It is important to note that Ms. Adams did not offer a technical review of the storm water management system and was not presented to, or qualified to, comment upon the adequacy of the storm water management system's compliance with applicable municipal regulations.

- (f) The engineering of a system that can assure that pollutants can be captured [January 15, 2009 N.T. at 58];
- (g) An increase in flow of storm water [January 15, 2009 N.T. at 66], and;
- (h) Building and parking within proximity to the wetlands so that there is no room for storm water management. [January 15, 2009 N.T. at 69]

### **THE EXHIBITS AND MEMORANDA**

136. Over the course of the Hearing, the exhibits identified on the attached Schedule B were offered and admitted at the Hearing.

137. The Board also accepted briefs and other legal memoranda (in various formats) from counsel on issues considered important to them as well as written submissions from other parties and community members.

### **DISCUSSION**

#### **A. Burden of Proof**

There can be little disagreement regarding the burden in the instant case. The MPC provides that a zoning ordinance may contain “provisions for conditional uses to be allowed or denied by the governing body pursuant to public notice and hearing . . . and pursuant to express standards and criteria set forth in zoning ordinances.” In re: Appeal of Thompson, 896 A.2d 659, 670 (Pa. Cmwlth. 2006) (quoting Section 603(c)(2) of the MPC, 53 P.S. §10603(c)(2)). A conditional use is nothing more than a special exception which falls within the jurisdiction of the municipal governing body rather than the zoning hearing board. *Id.* (quoting Collier Stone Company v. Zoning Hearing Board for the Township of Collier, 710 A.2d 123 (Pa. Cmwlth. 1998)).

A conditional use is one specifically recognized by the legislature as consistent with the zoning plan. Northampton Area School District v. East Allen Township Board of Supervisors,

824 A.2d 372, 376 (Pa. Cmmw. 2003) (quoting Bailey v. Upper Southampton Township, 690 A.2d 1324 (Pa. Cmmw. 1997)). As such, it is presumed that the particular type of use does not, of itself, adversely affect public interest. *Id.* Therefore, a conditional use application should be granted unless it is proven that the impact on the public is greater than that which might be expected in normal circumstances. *Id.*

An applicant seeking conditional use approval must demonstrate compliance with the express standards and criteria of the ordinance that relate specifically to the conditional use. Thompson, 896 A.2d at 671. The Applicant also has the burden to persuade the Board that its proposed use of the Property will not cause any negative impacts of a type or to a degree not usually associated with uses located and operated in the usual manner. The applicant therefore has both the burden of persuasion as well as the burden of presenting evidence that the proposal complies with the terms of the ordinance. Bray v. Philadelphia, Z.B.A., 410 A.2d 909 (Pa. Cmmw. 1980). If the applicant fails to meet these burdens, the application should be denied. If the applicant meets the specific requirements, it has made out its *prima facie* case and the application must be granted unless the objectors present sufficient evidence that the proposed use has a detrimental effect on the public, health, safety and welfare. Thompson, 896 A.2d at 670.

B. Religious Land Use and Institutionalized Persons Act of 2000.

Superimposed on this application is the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). The Board of Supervisors views RLUIPA as applicable to the instant application, and like the ZHB Special Exception Approval, believes that when dealing with a land use issue involving a religious use of land (as is the instant case), RLUIPA requires that local zoning regulation cannot substantially burden religious exercise unless that burden is the least restrictive means of furthering a compelling governmental interest. 42 U.S.C. § 2000cc(a)(1). But RLUIPA does not demand that a Township ignore its zoning ordinance. Both counsel have directed the Board to the opinion of Living Water Church of God v. Township of Meridian, 258

F.3d 729 (6<sup>th</sup> Cir. 2007), in which the definition of “substantial burden” was defined as a “significant pressure which directly coerces the religious adherent to conform his or her behavior accordingly” and impose a “significantly great restriction or onus upon such exercise”. *Id.* at 735-736. In Living Water, the Sixth Circuit did not require the municipality to disregard its own zoning ordinance when the religious organization wanted to construct a place of worship the town considered too large. To the contrary, the Sixth Circuit held that the town’s decision not to allow a religious facility to be increased in size did not place a substantial pressure on the religious institution to violate its beliefs violate, nor did it violate RLUIPA. *Id.* at 739

The record is replete with testimony from the Applicant that ACMEC currently worships at the Property yet prefers a larger facility. ACMEC acquired the Property aware of the plan restrictions and requested and received its Special Exception Approval with the understanding that the place of worship would be the historic farmhouse. Accordingly, the Township’s zoning regulations are not to be ignored as their enforcement does not substantially burden Applicant’s practice of its religion. However, the Board, as set forth below, is not foreclosing or denying the right of ACMEC to expand.<sup>40</sup> The Board believes that by permitting certain expansion of the religious use on the Property, with conditions, as set forth below, it is accommodating the proposed religious use while mitigating the adverse effects on the surrounding community to the greatest extent possible. Genesis Assembly of God v. Davies, 208 A.D.2d 627, 628, 617 N.Y.S.2d 202, 202 (2d Dep’t 1994); Young Israel of N. Woodmere v. Town of Hempstead Bd. of Zoning Appeals, 221 A.D.2d 646, 647, 634 N.Y.S.2d 199, 201 (2d Dep’t 1995); Islamic Soc’y of Westchester & Rockland, Inc. v. Foley, 96 A.D.2d 536, 537, 464 N.Y.S.2d 844, 845 (2d Dep’t 1983). Jewish Reconstructionist Synagogue of North Shore v Incorporated Vil. of Roslyn Harbor, 38 NY2d 283, 290, (N.Y. 1975), cert den 426 U.S. 950 (1976).

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<sup>40</sup> It is in this way which the instant case is distinguished from Church of the Hills v. Township of Bedminster, 2006 WL 462674 (D.N.J. Feb. 24, 2006) and Westchester Day School v. Village of Mamaroneck, 417 F.Supp.2d 477 (S.D.N.Y 2006), which denied the school the ability to expand. In the instant case, the expansion is being permitted with conditions.

The Board's concerns are more than aesthetic concerns, and its determination is not based upon any perceived inconvenience to the community – there is no condition contained anywhere in this Decision and Order which compels the structure to look like anything other than a Hindu temple or utilize objective engineering principles to which all other property owners would have to adhere – but whether it is a temple, a home, a municipal facility or a commercial use, the plan as currently constituted presents an intensity of development on a piece of ground that simply cannot accommodate it.

## II. CONCLUSIONS OF LAW

1. The Board has jurisdiction to render a decision on the Applicant's Conditional Use Application pursuant to Section 913.2 of the Pennsylvania Municipalities Planning Code (the "MPC"), 53 P.S. §10913.2.

2. The Applicant has standing as the legal owner of the Property.

3. The Applicant is a religion and as such meets the definition under Section 501C.4 of the West Pikeland Township Zoning Ordinance; the Board concludes that the Applicant has the same status as determined in the Special Exception Approval.

4. The Applicant has not demonstrated substantial burden on the free exercise of its religion at the Property as a result of the present configuration of its worship facilities. To the contrary, the testimony of the Applicant, both at the Conditional Use Hearing and the ZHB Hearing established that the members of the ACMEC congregation (which is at its highest is estimated by Applicant at 200 to 250 families nationally) are able to worship at the Property (although only 5 families do so on a regular basis).

5. The size of the temple and auxiliary building as presented by the Applicant bears no relationship to the anticipated use of the facilities planned, nor was there evidence that established that the size of the temple or the number of deities in the temple was dictated by anything other than the preferences of the congregation.

6. While the Applicant seeks to construct a Sakthi Peetam, the Property as configured, as impacted by environmental and historical resources and as restricted by the Wilson subdivision plan simply cannot accommodate one, as set forth more fully below.

A. Technical deficiencies

7. The conditional use plan contains development outside of the cross-hatched boundary, including the on-lot sanitary sewer, its septic tank, dosing tank and the line feeding it, the majority of the storm water management features, including the three rain gardens and the infiltration beds, various utilities, landscaping, lighting, sidewalk and erosion control features, all requiring grading, filling and excavation. The Township is enforcing the plan restriction limiting development within the cross-hatched boundary. Doylestown Township v. Teeling, 635 A.2d 657 (1993)

8. The widening of the driveway to 22 feet, or 24 feet, would encroach into the riparian buffers and would encroach on the 15-foot setback at the closest property line corner of an adjacent property in violation of Section 1206.A.

9. The revised storm water management system indicates an outfall, the construction of which is shown to impacts very steep slopes and the Zone 1 wetland buffer, which is prohibited by ordinance and the special exception approval conditions granted in 2002. [Section 802.B.5.a; Comment 18 of the Township's engineer's review of August 15, 2008] Furthermore, Section 411.z of the West Pikeland Township Stormwater Management Ordinance 2005-202 dated May 16, 2005, establishes discharge point setback requirements based on drainage area. A ten (10) acre or greater drainage area requires a 100 foot setback from the property line, which is violated by the instant plan.

10. The parking lot area impacts very steep slopes which is prohibited by ordinance and the special exception approval conditions granted in 2002. [October 21, 2008 N.T. at 70;

Exhibit A-6, Tab 13; Exhibit B-15G, Comment 19 of the Township's engineer's review of August 15, 2008]

11. The erosion and sedimentation pollution control plan required to comply with the various regulatory agencies encroach into the riparian Zone One buffer, which is a no disturbance zone, as do landscaping trees, silt fencing, other erosion controls, relocation of a utility pole, and a new water service line, prohibited by Section 802.B.5.a.

12. There is an absence of loading areas pursuant to Section 1211.B.2 on the conditional use plan.

13. An incomplete sewer study, absence of record evidence regarding the restrooms and the amount of sewage capacity which will be necessary for the use of the auxiliary building (ranging anywhere from 1 under the International Building Code (Table 403), Chapter 4 to 19 lavatories contained on the conditional use plan) or sewer studies necessary to analyze the sewer capacity needs is in violation of Section 1612.D.1.m and makes it impossible to calculate this development component.

14. There has been an inadequate response regarding how much water can be transmitted horizontally (transmissivity) and nearby distance-drawdown is not satisfactory. [Exhibit B-15G, comment 5] The Board of Supervisors has significant concerns that the Evans Mill assumptions are not valid and that the area of impact may be greater than the 100 feet to the boundary of the Property and will impact wells within 300 feet of the on-site well. The Applicant's engineer seemed to testify that there would be an average weekly water use of 150 gallons (24 gallons per day). [October 21, 2008 N.T. at 63] However, the water usage at this site has not been identified to the satisfaction of the Board as it relates to water utilization and the issues of irrigation, plant maintenance, kitchen, showers, sinks and commodes.

15. Applicant failed to follow conditions of the Special Excerption Approval including the relocation of the driveway and the failure to install a parking surface.

16. Removal of the specimen trees would violate Section 802.B.6.a.3 (Natural Resources); there was no evidence that their removal is essential to eliminate a hazardous condition or to do otherwise would not be economically feasible or permit lawful use of the lot.

17. The landscaping plans, as presented, and as growth is anticipated in the near future, fail to comply with the effective visual screen required by Section 1109 of the West Pikeland Township Zoning Ordinance and as further defined in section 630 of the West Pikeland Township Subdivision and Land Development Ordinance.

B. Failures of General Conditional Use Criteria

18. The current plan violates Section 1612.D.1.c. The total building area of 35,470 square feet is unprecedented in size and scale, not located in an area for which the lot is suited (as it impacts the most environmentally sensitive area on the Property), is not consistent with the nature of land uses existing on immediately adjacent properties and is not designed in a manner which compliments the appearance and character of the neighborhood, as it is eliminating class II historic structures including the farmhouse currently used for worship and is creating an artificially level surface utilizing extreme site reconstruction resulting in an elevated and massive structure many times as large as any other structure currently existing in the area. The project as proposed overwhelms the surrounding community and alters, not compliments, the character of the neighborhood. In an effort to address the pre-existing plan restrictions on the site, the Applicant has taken buildings that are too large for the site and has been compelled to locate them within close proximity to wetlands and property lines and within very steep slopes.

19. The current plan violates Section 1612.D.1.f. as the proposed use is not in the public interest nor will it serve the health, safety, morals and general welfare of the Township.

Although the Applicant genuinely believes that membership of the congregation will remain flat, the size and scale of the project portends potential use that will overwhelm the resources of the Township. ACMEC will permit anyone to worship at its proposed facility and to become a member. Common sense demands the consideration of the potential use of a temple and auxiliary building of 35,470 square feet, which will almost certainly be the obvious choice for more expansive and intense use which the Property and the surrounding infrastructure (roads, sewer, water) simply cannot accommodate.

20. The current plan violates Section 1612.D.1.h. as the proposed new construction and the proposed change in the existing buildings will not be compatible with and in keeping with the existing character of the neighborhood. Simply put, the structures are too large for this site. And to make the space necessary to construct them the Applicant is demolishing class II historic resources, which until now have been adequate for the practice of Applicant's religion and has served as the house of worship approved by the Special Exception Approval.

21. The current plan violates Section 1612.D.1.i. as the proposed use does not reflect an environmentally sensitive approach to land planning and design, is not sited in a manner sensitive to existing site conditions, including streams, vegetation, and other natural resources, and is not consistent with the natural resource protection standards of Article 8, Resource Overlay Districts. The development of the site does not reflect sound environmental or land planning; rather it reflects the realities of the current development restrictions on the Property and then attempts to design around them.

22. The current plan violates Section 1612.D.1.k. as any widening of the driveway will increase the encroachment on very steep slopes and into the zone two riparian buffer.

23. The current plan violates Section 1612.D.1.l. as there is no evidence that the sanitation and public safety programs shall be adequate or that there is any information to

establish that a certificate of adequacy of sewage and water facilities from the governmental health agency can be provided.

24. The Applicant has not met its burden of persuasion by demonstrating that the proposed use will not cause any negative impacts of a type or to a degree not usually associated with similar uses located and operated in the usual manner.

25. Nor has the Applicant demonstrated that there is sufficient land area available to be able to effectively screen the proposed use from adjoining uses.

26. Nor has the Applicant demonstrated through credible testimony and evidence that sufficient safeguards will be implemented, to remove any potential adverse influences that the proposed use may have on adjoining uses.

### **DECISION**

This site is simply not suited for the size and scale of development proposed by the Applicant. Despite the manifest deficiencies of the instant plan and the proposed project's clear adverse impacts upon the Property and the surrounding community, the Board recognizes the right of the Applicant to worship and its desire to construct a Hindu temple at the site. Accordingly, the Board of Supervisors of West Pikeland Township hereby grants the Application only for the limited purpose of allowing the Applicant to continue its use of the Property for a religious use as set forth in the Special Exception Approval and further subject to the conditions below.<sup>41</sup> For purposes of these conditions, the term "Applicant" shall mean ACMEC, all legal and equitable owners of the Property, and all successors in interest to the Property.

1. The Application is approved, pursuant to Section 501.C.4 of the West Pikeland Township Zoning Ordinance, only to the extent of allowing the Applicant to continue the current use of the Property as a church or place of worship as set forth in the Special Exception

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<sup>41</sup> These conditions shall be set out on the recorded final plan of any land development approvals.

Approval. This Decision and Order does not approve any specific land development plan or site design nor does it approve any request for a demolition permit.

2. No other conditional use approval is authorized other than the specific approval contained in paragraph 1 above and is limited to the use and conditions set forth in the Special Exception Approval.

3. Should the Applicant wish to further develop the Property, the Applicant shall be required to seek further land development approval for any improvement, and shall submit an application and plan for land development approval for development of the Property consistent with the following engineering standards:

- a. A single structure not to exceed 5000 square feet;
- b. Any development (defined as any manmade improvement upon the Property) shall be limited to within the cross-hatched boundary identified on Exhibit O-13;
- c. Maximum rated occupancy of any structure shall be determined at land development pursuant to a recognized occupancy standard and the aggregate rated occupancy for all structures shall not exceed 200 people and shall be supported by adequate parking;
- d. Sufficient parking (either current or held in reserve) to accommodate special events anticipated at the Property;
- e. Facilities related to sewage capacity and water use (i.e. bathrooms, sinks, kitchen etc.) shall be limited to those necessary to accommodate 200 people, those limits to be determined by the Board of Supervisors during land development in its sole discretion;

- f. No up-lighting or other type of lighting on the exterior of the building or any spires except for necessary door and exit safety lighting. All lighting shall otherwise be compliant with the Township lighting ordinance.
- g. No bells or other sound emitting devices on the exterior of the building except for those specifically identified as a safety alarm;
- h. Installation of a storm water filtration system to prevent the discharge of pollutants into the wetlands or onto adjoining properties;
- i. Adherence to best practices as it relates to the discharge of storm water into the Pine Creek watershed and surrounding wetlands to be determined at land development;
- j. An adequate inspection and maintenance program of all storm water management systems including any rain gardens;
- k. Adequate screening, ridgeline protection and installation of mature trees, and preservation of specimen trees, of sufficient size to fully buffer visibility from Route 401, Skyline Drive and the adjoining property currently owned by Jacob Yasgur, including a maintenance and replacement plan and the establishment of an escrow account, at land development, to assure compliance with this condition;
- l. No disturbance of any steep slopes or riparian buffer zones (absent a variance issued by the West Pikeland Zoning Hearing Board).

In addition to the conditions herein, review and approval of said application and plan shall be in accordance with all of the other applicable ordinances, standards, specifications and regulations of West Pikeland Township and all other agencies with jurisdiction over any aspect thereof.

4. This approval is granted in light of all testimony presented at the Hearing. The Applicant is strictly bound by all of the commitments and representations made in the testimony.

Applicant may only submit its land development plan for development of the Property in conformity with all of the conditions set forth herein.

5. Except as set forth herein, ingress and egress to the Property, hours of operation, signage, lighting, storm water, wetlands, flood district and flooding concerns, health concerns, and traffic concerns shall be addressed and determined at the land development stage in accordance with all federal, state or local regulations, including the requirements and approvals of FEMA, PADEP, CCCD, PennDOT, the Chester County Health Department and West Pikeland Township and any other applicable codes, regulations or ordinances.

6. The Board of Supervisors shall address the issue of interior sprinklers during land development and shall determine their adequacy and the adequacy of water for that system at that time.

7. The Applicant shall limit its hours of operation to between 10:00 A.M. and 7:00 P.M. and extinguish all parking and driveway lighting by 10 P.M.; there shall be no motion activated lights; there shall be no overnight stays at the Property.

8. The Applicant shall secure the following variances, waivers or other approvals prior to filing a land development plan:

- a. Any variances (or agreements with adjoining property owners) necessary for its driveway to encroach within any minimum setback set forth in the West Pikeland Township Zoning Ordinance Section 1206.A;
- b. Any variances (or agreements with adjoining property owners) necessary for its storm water discharge to encroach within any minimum setback set forth in the West Pikeland Township Zoning Ordinance;
- c. Any variances (or agreements with adjoining property owners) necessary for its erosion and sedimentation pollution control, landscaping trees, utility pole

and new water service line to encroach within riparian zone one buffer set forth in the West Pikeland Township Zoning Ordinance Section 802.B.5.A;

d. Any approvals to eliminate a loading area for the project as required by Section 1211B.1.

9. Record a restriction on the Property, in form and substance satisfactory to the Township Solicitor that prevents any further development of the Property.

10. No portion of the Property shall be utilized as a soup kitchen or a commercial establishment, such as a rental for functions such as banquets, wedding receptions, parties or other gatherings without specific approval for specific time periods from the Board of Supervisors.

11. Applicant may conduct its yearly festival at the Property as it has since 2002, provided Applicant secure specific approval for specific time periods and for any portable or temporary structures from the Board of Supervisors and make adequate arrangements, at Applicant's sole expense, as determined by the Township Code Enforcement Officer, Police Chief and/or Township Engineer for the safety of the Applicant and the surrounding community and the regulation of noise and refuse.

12. Any application for land development shall contain a study analyzing the availability of public sewer to the site.

13. At land development, Applicant shall establish to the satisfaction of the Board of Supervisors, that it has explored the availability of public water, its proximity, cost and availability as part of any further development of the Property. Furthermore, at land development, Applicant shall establish to the satisfaction of the Board the impact of the Applicant's on-site well and its use upon wells within 300 feet of the on-site well.

14. At land development, Applicant shall establish to the satisfaction of the Board of Supervisors the precise amount of sewage capacity and water needs which will be necessary for the use of the Property, and shall include as part of that 1) a complete design of the system; 2) evidence of sewer studies necessary to analyze Applicant's sewer capacity needs; 3) water usage calculation for the interior facilities, the sprinkler system, and the exterior/landscaping water needs.

15. With respect to traffic improvements, Applicant shall:

a. complete construction at its own expense and acceleration and deceleration tapers of 50 feet each as per the PennDOT's review letter for the HOP requiring such lanes pursuant to Section 1111.B.3;

b. design and maintain its traffic conditions at Route 401 and the driveway to a level of service D or better;

c. establish at land development that the road improvements to accommodate the development as proposed by Applicant are adequate;

d. install at Applicant's sole expense any road signs, permitted and approved by PennDOT, determined by the Board of Supervisors at land development to protect the safety of drivers and pedestrians utilizing the Property;

e. comply with all PennDOT and Township Traffic Engineer requirements as determined during land development;

f. be responsible, at its sole expense, for all future road improvements necessitated by the use of the Property, and;

g. prohibit parking along the driveway.

14. Signs shall only be permitted upon the Property in compliance with West Pikeland's Township's sign ordinance.

15. Except as expressly modified or clarified by the foregoing Decision and Order and Conditions, review of and decision on land development plans for the proposed project shall be in accordance with all otherwise applicable standards, specifications and regulations of the Township and all other agencies with jurisdiction over the Property.

16. Applicant shall satisfy, at land development, all recommendations of the Township's Historical Commission as it relates to the barn and house.

17. Contemporaneously with the recording of the final land development plan, the Applicant shall record against the Property a restrictive covenant, in form and substance satisfactory to the Township Solicitor, prohibiting the use of the Property for the manufacture, display, sale and/or distribution of drug paraphernalia or pornography.

18. The Applicant shall, by recorded instrument in form and substance satisfactory to the Township Solicitor, hold the Township harmless and indemnify the Township against all claims and demands of any nature whatsoever, including the cost of defense thereof, resulting from alleged damage to persons or property on account of the erosion and sedimentation and storm water management facilities constructed or improved in connection with the development which is the subject of this conditional use approval.

19. ACMEC shall not engage in any medical or educational services or training at the Property.

20. The final land development plan for the proposed development of the Property shall not be approved until all conditions of this approval have been met by notations on the plan or otherwise; and all review and other fees due and owing to the Township have been paid in full.

21. Any use or proposed use of the Property inconsistent with this Decision and the above conditions shall require reapplication to the appropriate Township Board or Commission

to request approval of any proposed change. Any condition of this Decision may be enforced as a Zoning Ordinance violation in accordance with the applicable provisions of the Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code; or may be enforced by any other available legal or equitable remedy.

22. The Applicant shall express to the Board in writing within seven days of its receipt of this Decision and Order its agreement to the above conditions or the Application is denied; the Board expressly finding and concluding that the Application in the absence of compliance with the said conditions is inconsistent with the objective criteria set forth in the applicable provisions of the Township Zoning Ordinance.

WEST PIKELAND TOWNSHIP  
BOARD OF SUPERVISORS

By: \_\_\_\_\_  
Robert Shemonsky, Chairman

By: \_\_\_\_\_  
Richard Bright, Vice Chairman

By: \_\_\_\_\_  
William Cracas, Member

By: \_\_\_\_\_  
Harold M. Hallman, III, Member

By: \_\_\_\_\_  
Robert Barker, Member

ATTEST:

\_\_\_\_\_  
Steve Ross Township Manager

DATE: March 16, 2009