

BEFORE THE LONDON GROVE TOWNSHIP BOARD OF SUPERVISORS
CHESTER COUNTY, PENNSYLVANIA

IN RE: **CONDITIONAL USE APPLICATION OF HERITAGE BUILDING
GROUP, INC.**

DECISION OF BOARD OF SUPERVISORS OF LONDON GROVE TOWNSHIP

In 2002, Applicant Heritage Building Group, Inc. filed an application seeking conditional use approval in connection with a proposed 374-unit townhome development on 76.81 acres of land adjacent to Glen Willow Road in London Grove Township known as tax parcel no. 59-05-0126.

Public hearings were held by the Township Board of Supervisors in connection with the application on December 16, 2002, January 22, 2003, March 6, 2003, April 10, 2003, May 12, 2003, July 16, 2003, August 26, 2003, September 22, 2003, October 30, 2003, February 23, 2004 and March 22, 2004.

The London Grove Township Board of Supervisors hereby APPROVES the conditional use application of Heritage Building Group, Inc. subject to the following list of CONDITIONS:

CONDITIONS

SEWER

1. This approval is conditioned upon the Township's receipt of DEP approval to include the property in the Township's Act 537 Plan.
2. Applicant acknowledges that the Municipal Authority's existing collection, conveyance, treatment and disposal system does not have adequate capacity for this development. Inclusion of this property into the Municipal Authority's sewer system will require an upgrade to the treatment and spray irrigation system. Applicant will pay its pro rata share of the cost to upgrade the treatment and

disposal components of the Municipal Authority's system, including land acquisition, design, permitting and construction.

3. If the Municipal Authority does not have adequate funding for the acquisition of land, design, permitting and construction of the treatment and disposal facilities necessary for the sewage generated by this development, the Applicant shall provide necessary funds. Should capacity beyond the needs of this development be provided, the Applicant would be eligible for reimbursement under the Municipal Authorities Act.

The Authority has reserved the right to request that the Applicant provide land, in an area approved by the Authority, suitable for spray irrigation of the wastewater generated by the development. The Applicant must obtain a DEP Part II Permit for the spray irrigation land. The Authority has also reserved the right to review all field work and hydrogeological analyses associated with preparation of the Part II permit application as well as the Part II Permit application. The Part II Permit Application will contain final design drawings in accordance with the LGTMA Standards and/or the Municipal Authority Engineer's approval. Buffers associated with the wetted spray area will be screened. All costs incurred by the Municipal Authority during the review of the field work, preparation of the Part II Permit Application and observation of the construction of facilities will be the responsibility of the Applicant. The Applicant will only be granted approval for the number of homes (a home is defined as a single family home generating 225 GPD of sewage, whether detached, attached, townhouse, condo or apartment) the spray land can accommodate on an annual average basis. For example, if the spray land permitted capacity is 900gpd, the number of homes equals 4. All spray lands, buffers, rights of way, etc. will be dedicated to the LGTMA, at no cost to the LGTMA, in accordance with other items contained herein.

4. Applicant's subdivision and land development plans shall provide a layout of the proposed sanitary sewer system that demonstrates the ability to provide safe, efficient and permanent facilities for the collection and conveyance of the sewage generated by the development to the Authority's collection and treatment system. Applicant agrees to pay for the design, permitting and construction costs for the collection and conveyance of sewage generated by this development to the Authority's system. Applicant further agrees to pay for the design, permitting and construction costs associated with upgrading the Authority's collection and conveyance facilities that are overloaded by the sewage generated from this development.
5. Applicant shall provide all easements, rights-of-way or property acquisitions required to install sewer infrastructure, both on and off the developed property. All such property shall be offered to the Municipal Authority for dedication and shall be free and clear of all liens and encumbrances. An Environmental Site Assessment on each property shall be provided for Municipal Authority review.

6. Applicant shall apply to the London Grove Municipal Authority for plan and permit review and approvals on the Municipal Authority's forms, including all applicable application fees and escrow deposits during land development plan review and construction.
7. Applicant shall design all sewer infrastructure in accordance with the Municipal Authority's Standard Specifications and Details for Water Mains and Sanitary Sewers.
8. Applicant shall be responsible for paying the then current sewer tapping fee at the time the subdivision plan is recorded or if requested by the Municipal Authority, provide money necessary for the Municipal Authority to acquire land for spray irrigation.

WATER

9. The Applicant shall provide for the cost of the design, permitting and construction of a 12" water main from Lake Road and Raymond Avenue to the site generally following Lake Road to Baltimore Pike, east on Baltimore Pike to the existing Wawa water main and then from the existing Wawa water main along Route 41 then north to the site.
10. Applicant shall provide additional facilities, including a 500,000 gallon elevated storage tank and associated piping or a ground level tank, UL rated booster pumping station with backup power on a minimum of one acre of land to be located north of the tract and south of Route 1, on parcel 59-5-124.1 N/F Robert J. and Bonnie Kenney, Deed Book 4345 page 128. The grade elevation of the site shall be no less than 380 feet above sea level. If the land is unobtainable, Applicant agrees to provide one acre of land, with a minimum grade elevation of 380 feet, within the proposed development.

The LGTMA and LGT reserve the right to select the style of tank, color scheme and logo, review the tank design, have facilities for cellular communications, observe construction, etc. At the sole discretion of the LGTMA, a ground level storage tank of same size and UL rated fire pumping system may be installed to provide for fire flow comparable to the fire flow provided by the elevated tank. All facilities will require approval from the Fire Marshall and be designed in accordance with the most current AWWA and NFPA standards. All facilities, piping, land and easements shall be offered to the LGTMA, at no cost to the LGTMA, in accordance with other items contained herein. All costs incurred by the LGTMA during the design, permitting and observation of the construction of these facilities will be the responsibility of the Applicant.

11. Applicant shall provide all easements, rights-of-way or property acquisitions required to install water infrastructure, both on and off the developed property. All such property shall be offered to the Municipal Authority for dedication and

shall be free and clear of all liens and encumbrances. An Environmental Site Assessment on any property offered for dedication shall be provided for Municipal Authority review.

12. Applicant shall design all water infrastructure in accordance with the Municipal Authority's Standard Specifications and Details for Water Mains and Sanitary Sewers. Water mains within the development shall be looped with no dead end mains.
13. Applicant shall apply to the London Grove Municipal Authority for plan and permit review and approvals on the Municipal Authority's forms, including all applicable application fees and escrow deposits during land development plan review and construction.
14. Applicant shall be responsible for paying the then current water tapping fee at the time the plan is recorded.

STORMWATER MANAGEMENT

15. Applicant shall have a Pennsylvania registered geologist/hydrologist determine whether water seepage through the ground in the area located approximately 500 feet northwest of the existing house is a natural spring, intermittent swale or watercourse.
16. Applicant shall perform percolation tests at all proposed infiltration facilities both prior to submission of the preliminary plan and after construction is complete and the contributing drainage areas are stabilized. If perc rates are less than during design, the developer must take corrective action as designated by the Township.
17. Applicant shall provide for a minimum ten (10) foot wide access way around the infiltration berms to allow for construction and future maintenance.
18. Applicant shall comply with the storm water management comments in the URS review letters.
19. Applicant agrees that no infiltration device may be used as a sediment trap and all infiltration devices shall be located "offline" of discharges from sediment traps.
20. Applicant agrees to plant the bottoms of the infiltration berms with vegetation as recommended by Township consultants.

FENCING, BUFFERING AND LANDSCAPING

21. Applicant shall submit land development plans which provide for a 75-foot perimeter buffer around the property. The Township will not oppose variance applications to allow the following in buffer areas: (i) stormwater grading; (ii)

grading to eliminate retaining walls; (iii) landscaping; (iv) infiltration berms in locations to be approved by the Township Engineer; (v) active recreation; (vi) fencing and (vii) walking trail.

22. Applicant shall submit a landscaping plan, which provides for landscaping within all open space, buffer, storm water management and retaining wall areas. Retaining walls that are over six (6) feet in height shall be landscaped at the bottom and on tier.
23. Applicant shall landscape the crest of the open hill near Route 1 in accordance with the URS comment letters of March 1, 2004 and September 10, 2003..
24. Applicant shall install fencing on Applicant's property along the perimeter of the property adjacent to the Trutt property of a construction and material to be agreed upon by Applicant, the Township and the State Police. The height of the fence shall be a minimum of 10' (if approved by the Zoning Hearing Board). If the applicant is required to seek a variance for a fence of that height they shall be required to do so and the Township will support the application. Plantings that do not exceed the height of the fence shall be required along the development side of the fence. Said fence and landscaping shall be acceptable to the State Police and Township.
25. The Township and the developer shall work together in good faith to discuss and address retaining wall, yard area and storm water management issues as raised in the URS review letters for lots 32-37 and 108-121.
26. Applicant will comply with URS comment 30 of March 1, 2004 and comment 31 of September 10, 2003.

PARKING

27. Parking for the apartments shall be as described in comment 29 of the March 1, 2004 URS letter and comment 30 of the September 30, 2003 URS letter. In the townhouse area of the development, if a minimum of a 25' wide cartway is provided, on-street parking is permitted on one side of the street only. If a minimum of a 26' wide cartway is provided, parking is permitted on both sides of the street.

The number of parking spaces for the entire development may be less than required by Township Ordinance under the following circumstances:

- a. The agreed to cartway width option as described above results in more total parking than required by Ordinance for off-street parking; and
- b. The number of total spaces provided is acceptable to the Township; and
- c. The applicant seeks and receives a variance. The Township will support the applicant in its variance request.

HISTORIC HOUSE

28. Applicant shall retain and renovate the historic house located on the property near Glen Willow Road in accordance with the recommendations of the Township Historical Commission.
29. The property shall be developed so that the view of the historic house from Glen Willow Road will be preserved and remain unobstructed by buildings or structures.
30. Applicant shall preserve a perimeter of 25 feet of open space surrounding the house.
31. Applicant shall be permitted to use the building for no more than three apartments.
32. Applicant shall work in good faith with the Township Historical Commission and its consultant to resolve the outstanding matters contained in the April 9, 2003 Wise Preservation Planning letter.
33. Prior to performing any renovations to the House, Applicant shall document the structure and the area of historic significance around the structure through the use of a qualified historic consultant.

ROAD ISSUES

34. Applicant shall provide road access to Route 41. The Township shall approve the location, design and specification of the road. The applicant shall be responsible for all costs associated with acquiring and constructing this road and intersection access.
35. The applicant shall provide to the Township a revised Traffic Impact Study that accounts for trip redistribution to the second access and determines whether additional improvements are required. The applicant shall be obligated to construct the improvements identified in the revised Study.
36. The applicant shall improve Glen Willow Road to meet the PennDOT Resurfacing, Restoration and Rehabilitation (3R) Design Criteria, contained in PennDOT Publication 70M, Guidelines for the Design of Local Roads and Streets.
37. The intersection of Glen Willow Road and the development access shall be constructed as a roundabout per the May 1, 2003 letter from Traffic Planning and Design.

38. Applicant shall comply with the following during land development: Comments 1-9 in the February 18, 2004 TPD letter, Comments 1-9 in the September 4, 2003 Traffic Planning and Design letter; Comments 11-16 of the April 8, 2003 Traffic Planning and Design letter, Comments 17-24 of the October 23, 2002 Traffic Planning and Design letter.
39. The applicant shall contribute an amount equal to \$1000 multiplied by the peak hour afternoon vehicular trips identified by Traffic Planning and Design. This contribution shall be in addition to the physical road improvements required by this decision.

RECREATION

40. Applicant shall provide a minimum of four tot lots and one picnic area as active recreation for the development. The Parks and Recreation Board shall comment on the locations and equipment and the Board of Supervisors shall approve of these items.
41. Applicant shall provide the recreation fee to the Township as required by Township ordinance.

LIGHTING

42. Applicant shall submit a lighting plan, which complies with the Township's current lighting ordinance requirements and shall utilize the Township-selected light standard to be uniform with the other new developments.
43. Applicant shall comply with the points raised S. Stubbe letter dated November 5, 2003.

NOISE/GLARE

44. The Applicant shall install sound mitigation devices in connection with the proposed homes near U.S. Route 1.

ZONING

45. Applicant shall ensure that the rear yards do not extend into the 75' perimeter.

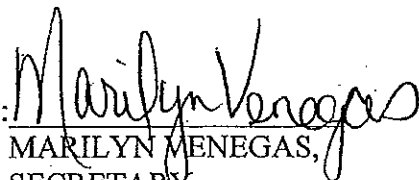
MISCELLANEOUS

46. Applicant shall pay all outstanding plan review charges, including but not limited to engineering, traffic engineering and legal review charges within 30 days of the conditional use decision.
47. Applicant's Land Development Plans shall designate waste and recycling removal areas. These areas shall be located so as not to interfere with traffic and/or parking. These areas shall be screened with a solid fence and landscaping on at least three sides in accordance with URS comment letters of March 1, 2004 and September 10, 2003.
48. Applicant understands that the plans show a maximum number of dwellings and there is no guarantee that this number will be approved during the land development process.
49. Applicant shall submit a Phase I Environmental site assessment.
50. Installation of any utilities along Glen Willow Road, in addition to the general construction vehicle access generated by the construction of this development, will cause significant damage to this road. Applicant shall reconstruct Glen Willow Road after the community has been constructed. Applicant shall provide the Township with a professionally prepared video and audio transcript of the road's condition before construction is begun. This will act as a documented record of the physical condition of Glen Willow Road.
51. The roads of the development, regardless of whether public or private, must be designed and constructed to Township standards.

Date: 10-6-04

LONDON GROVE TOWNSHIP
BOARD OF SUPERISORS

ATTEST:


MARILYN MENEGAS,
SECRETARY


THOMAS D. HOUGHTON, CHAIRMAN

CERTIFICATE OF SERVICE

I, WILLIAM P. LINCKE, ESQUIRE, Solicitor for London Grove Township Board of Supervisors, hereby certify that on this date, true and correct copies of the foregoing Decision have been served upon the parties listed below in the manner indicated below their names:

Heritage Building Group, Inc.
Attention: President
3326 Old York Road
Suite A 100
Furlong, PA 18925

Via Regular Mail

Marc B. Kaplin, Esquire
Kaplin Stewart
350 Sentry Parkway
Building 640
Blue Bell, PA 19422

*Via Regular Mail and
Facsimile at 610-260-1240*

Date: October 7, 2004

BEATTY LINCKE

BY: William P Lincke
WILLIAM P. LINCKE, ESQUIRE

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: Marc B. Kaplin, Esquire
Gregg I. Adelman, Esquire
Attorney ID Nos. 04465, 84137
350 Sentry Parkway, Bldg. 640
P.O. Box 3037
Blue Bell, PA 19422
(610) 260-6000

Attorneys for Appellant
Heritage Building Group, Inc.

IN RE: APPEAL OF HERITAGE BUILDING :	IN THE COURT OF COMMON
GROUP, INC. FROM THE DECISION DATED :	PLEAS OF CHESTER COUNTY,
OCTOBER 6, 2004 OF THE BOARD OF :	PENNSYLVANIA
SUPERVISORS OF LONDON GROVE :	
TOWNSHIP :	No.
:	
:	LAND USE APPEAL
:	

CERTIFICATE OF SERVICE

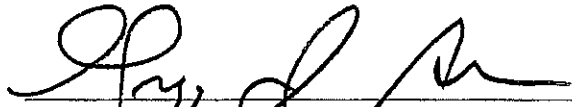
I, Gregg I. Adelman, Esquire, do hereby certify and attest that on November 4, 2004 a true and correct copy of the foregoing Notice of Appeal was served, via first class mail, postage prepaid, upon the following parties:

William P. Lincke, Esquire
Beatty Lincke
2 West Market Street, 6th Flr.
West Chester, PA 19382

Vincent Mancini, Esquire
414 E. Baltimore Pike
Media, PA 19063

Solicitor for London Grove Twp.

Attorney for Nancy Truitt



Gregg I. Adelman, Esquire



RECEIVED OCT 28 2002

October 23, 2002

Board of Supervisors
London Grove Township
372 Rose Hill Road, Suite 100
West Grove, Pennsylvania 19390

Re: Yeatman Conditional Use

Dear Supervisors:

We have reviewed the Conditional Use Plan, dated September 17, 2002, for the above referenced project, as prepared by Langam Engineering and Environmental Services, 500 Hyde Park, Doylestown, PA for applicability to the Conditional Use requirements. The property is a parcel of 76.81 +/- acres, with 16.43 +/- acres zoned RH and 60.38 +/- acres zoned RM. The proposed use is to create 91 new rental units and keep an existing house with 3 existing rental units in the RH District. The remaining property is proposed to have 293 fee simple townhouse units for a total of 387 units.

For the Conditional Use Hearing, we have the following comments:

1. Section 601.A.2 states that in the RM District, multi-family residential use, exclusive of apartments and condominiums, of less than 25 units is a use by right.
2. Section 601.B.1 allows multi-family development of more than 25 units, exclusive of apartments and condominiums, when authorized as a Conditional Use by the Board of Supervisors.
3. Section 602.C provides area and bulk requirements for all Conditional Uses in the RM District. Subsection 602.C.a states that, in the absence of public or community sewer and water, the Rural Residential District area and bulk regulations shall apply for each dwelling unit.
4. Section 801.B.1 allows residential developments of more than 25 units when authorized as a Conditional Use by the Board of Supervisors. The plan show 3 existing rental units to remain in an existing building, but also shows several buildings that are not noted "To Be Removed". The Plan should provide the use for each.
5. Section 802.C provides area and bulk requirements for all Conditional Uses in the RH District.
6. Sections 601.B. and 801.B refer to Article 2209 for Conditional Uses.
Section 2209.A states that feasibility of water supply, sanitary sewage disposal, and storm drainage control should be demonstrated.

The Applicant states in the Utilities Impact Statement that "Public sewer service is available through the London Grove Township Municipal Authority. The project site is located within the Township's Act 537 service area as well as the Phase I service area (cost of one EDU= \$8,300)." The Applicant should contact the Municipal Authority. Public meetings were held and this parcel was not included in the Phase I area. Development of this site may require redesign of the Avonwheel Pump Station and force main, Clay Creek Pump Station and force main, and the Inniscone Treatment Plant. The current fees apply only to those parcels in the Phase I area.

URS Corporation
1200 Philadelphia Pike
Wilmington, DE 19809
Tel: 302.791.0700
Fax: 302.791.0708

CC: Applicant ✓
Schwartz

The Applicant states in the Utilities Impact Statement that "Public water is available through the London Grove Township Municipal Authority. The proposed development's potable and fire flow needs will be served by a series of water mains---." The Applicant should contact the Municipal Authority. A stubbed water main is presently located on Lake Road, almost 2 mile from this site. The line to Wawa, London Grove Village, Avonwheel Estates, etc. is to be constructed at some time in the future, but the timing has not been set. With 387 additional units proposed, and the potential for other connections along the proposed line, the Applicant should be required to provide design calculations to assure that proper flow and pressure is maintained throughout the system. Looping of the system should be part of the design.

The Applicant states in the Utilities Impact Statement that "The development will increase the amount of runoff generated by the increase of impervious surfaces proposed on the tract. The increase will be controlled and released by a series of detention/retention/infiltration basins-----." Storm drainage control is discussed under Sections 1710 and 1711 below.

Section 2209.D.1 refers to Article XIX.

Section 1900 states that any if any entity proposes accesses with the potential to interfere with the safe and efficient flow of traffic, and improvements are required by the Township or DOT, the entity shall be responsible for the design, construction and costs.

Section 1902.D requires minimum internal access drives to be 18' wide for multi-family. The Plan proposes 25' cartways and a 50' boulevard cartway.

Section 1904 requires existing paths and trails to be preserved or, if none exist, a pedestrian and/or equestrian trail network shall be established.

Section 1906.E states that parking spaces for residential dwellings shall be within 100' of the unit. Units 293 - 306 appear to have parking beyond 100'. Also, units 307 - 324 and 385 - 387 have 21 units, but only 41 spaces.

Section 2209.D.4 discusses the requirement for the Applicant to address traffic circulation and entrances to the site. Due to safety concerns on these roads, TPD should review the facts that Glen Willow is presently a local road with limited traffic and the stop condition at the intersection with Route 41 (a State road) is difficult and site distance is limited. Placing 387 units, or almost 4000 trips per day, will greatly affect this road and intersection.

Section 2209.D.5 requires safe and convenient pedestrian access and may also include trails for access to the open space area. Trails do not appear to be shown. The Parks and Recreation Board should review and provide recommendations to the Board per Ordinance 70H-00.

Section 2209.D.6 requires evidence that adequate screening between the lands in question and surrounding residential uses. This is also to preclude any glare from lighting or noise beyond the property. In this case, there are residential units along the east side, but there is also Route 1 behind some of the units and the State Police Barracks, District Court, and driving range along the west and south sides. There is also undeveloped land of Nancy Truitt to the west and lands of Woodsglen Group and Keeney to the north.

7. Section 2209.D.8 refers to Article XVII

Section 1702 provides regulations for signs. A portion of the site is proposed for apartments.

Section 1705 provides buffering standards and requires a Landscaping Plan. A Landscape Plan is provided on drawing 24.00, showing removal of some trees and proposes installation street trees and some landscaping at the buildings. The street trees appear to be in the right-of-way and the plan does not appear to show any buffer plantings.

Section 1706 provides Lighting Standards and requires that all lighting be effectively shielded. A Lighting Plan has been provided, sheet 25.00. The Township may provide some guidance, however the Applicant must demonstrate compliance.

Section 1708 requires the Applicant to demonstrate the ability to provide safe, efficient and permanent facilities for the collection, treatment and disposal of sanitary sewage generated by the tract. See comment above.

Section 1709 requires the Applicant to demonstrate a safe and efficient permanent water supply. See comment above.

Section 1710 & 1711 provide Stormwater Quantity and Quality Standards. The project must be designed to the Township Stormwater Management Ordinance. The Plan shows six stormwater basins, several of which are over 100' wide and two are over 11' deep. Basin 3 is cut 13' below existing grade. The Township has experienced problems with large, deep infiltration basins. Construction equipment work directly in the bottom and deep water tend to cause compaction of the infiltration area. Also, the calculations indicate an increase in drainage area 1 and 3 for the 2-year storm event, which discharges directly off site. The calculations show routing of the basins, but no details of the outlet structures were provided. The stormwater management proposed by this plan does not appear to meet the intent of the Stormwater Management Ordinance.

Sections 1713, 1714, & 1726 require a Traffic Impact Study for projects that exceed 25 units. We did not receive a Traffic Impact Study. If one is available, it should be reviewed by TPD.

Section 1716 requires Fire Marshal review. This project will require extension of the water system; therefore, the Applicant should provide volume and pressure calculations to assure that proper fire protection will be provided.

Section 1717 & 1721 provide requirements for noise and glare.

Section 1728 requires a Recreation Impact Study. The Parks and Recreation should review per Ordinance 70H-00

Section 1729 requires a Fiscal Impact Analysis. The Township should review this.

Section 1730 requires an Environmental Assessment Report. We did not receive a copy of this report. The report should address the Township's Geology and Selected Wells map, which indicates that portions of the site may be affected by a Fault Line, Cockeysville Marble and Pegmatite Precambrian formations. There also appears to be a well site on this parcel.

8. Section 602.C.3.c and 802.C.3.b note that natural resource constraints and site limitations may preclude reaching the maximum densities indicated. Per the definition of Net Tract Area, roads, easements and steep slope areas have been netted out, but the area within the exterior perimeter of retention/detention basins and wetlands, floodplains, etc., which are also under prohibitory building restrictions, should also be netted out.

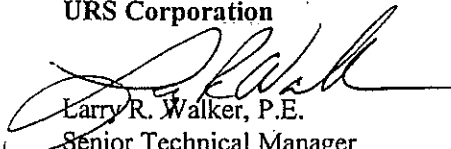
The calculation for open space should be in addition to these areas. The definition for total open space states "Provided, however, that where open space is both common and conservation -----, the total open space required shall not be reduced below the sum total of the required common open space, plus the required conservation open space, -----, separately computed."

9. Section 1503.C establishes the uses permitted by right in the Precautionary Slope portion (15% to 25% slopes) of the Steep Slope Conservation District. Roads do not appear to be a use permitted by right. Section 1504 provides uses permitted by Special Exception. Roads are included, when no practical alternative exists. The Applicant should demonstrate why the roads need to go through steep slopes.
10. Article XVI deals with Historic Resource Protection. According to the records of the London Grove Township Historical Commission, there is some historic significance attached to tax parcel 59-5-126. The Township should review this situation for acceptability.
11. The plan shows several outparcel properties along the north boundary. These parcels appear to be cut off from access by this parcel and Route 1. SLDO Section 501.E.27 requires street extensions necessary to provide connections to adjoining contiguous or undeveloped areas.
12. The pavement sections, shown on sheet 21.20, do not appear to meet Township standards.
13. The details indicate curbs are to be used on all streets.
14. The Plan does not appear to show or define any riparian areas.
15. The Utility Plan indicates that approximately 14 of the sanitary sewer are over 15' deep.
16. The plan does not appear to show unit or footprint sizes or the lot sizes. There is a chart with ranges. We were unable to check these.
17. There appear to be many retaining walls throughout the site. Generic details are provided on Sheet 29.01.
18. Chester County Planning should review this plan.

The Township should consider requiring the full Land Development process as a Condition to this project, if approved.

Sincerely,

URS Corporation



Larry R. Walker, P.E.

Senior Technical Manager

cc: John Spangler, Esq.



**LONDON GROVE TOWNSHIP
BOARD OF SUPERVISORS**

**APPLICATION FOR
CONDITIONAL USE HEARING
of
HERITAGE BUILDING GROUP, INC.**

**PROPOSED MULTI-FAMILY DEVELOPMENT
OF YEATMAN TRACT**

Prepared by:

John A. Jaros, Esquire
Riley Riper Hollin & Colagreco
312 West State Street
Kennett Square, PA 19348
(610) 444-8800

September 18, 2002

APPLICATION FOR CONDITIONAL USE HEARING

London Grove Township, Chester County, PA

DATE: September 18, 2002

APPLICANT:

Name Heritage Building Group, Inc.

Address 3326 Old York Road
Suite A 100
Furlong, PA 18925

Telephone 215-794-0550

OWNER, IF DIFFERENT:

Name Yeatman Brothers Properties

Address 600 Baker Station Road
West Grove, PA 19390

Telephone 610-869-3595

LEGAL REPRESENTATION:

Name John A. Jaros, Esquire

Address Riley Riper Hollin & Colagreco
312 West State Street, 2nd Floor
Kennett Square, PA 19348

Telephone 610-444-8800

ARCHITECT/ENGINEER/SURVEYOR INFORMATION

Architect: Heritage Building Group, Inc. Engineer/Surveyor: Langan Engineering & Environmental Services, Inc.
500 Hyde Park
Doylestown, PA 19801
(215) 348-7101

ARE PLANS AND/OR CALCULATIONS INCLUDED:

N

TAX PARCEL NUMBER(S) 59-5-126 **ACRES** 76.81

STREET ADDRESS 1220 Glen Willow Road

ZONING DISTRICT RM & RH

STRUCTURES OVER 50 YRS?

N

FLOODPLAIN PRESENT? Y

STEEP SLOPES PRESENT?

N

Location _____

Location _____

APPLICATION FEE: \$2,500. (to be included) As per Resolution 232, "Should the cost to the Township for processing an application, including but not limited to the cost of engineering and legal reviews, exceed the fees specified herein, the Applicant is required to pay the additional costs." NOTE: CHECKS RETURNED FOR NSF WILL NECESSITATE CANCELLATION OF THE HEARING.

I have read the above, completed the form and understand and agree to all terms:- to the extent provided by applicable law, including, without limitation, the Pennsylvania

SIGNED: HERITAGE BUILDING GROUP, INC.

Municipalities Code.

By: _____

COMPANY

DATE APPLICATION & FEE RECEIVED:

DATE OF HEARING:

**CONTENTS OF APPLICATION FOR CONDITIONAL USE HEARING
OF HERITAGE BUILDING GROUP, INC.**

1. Application for Conditional Use Hearing.
2. Notice to All Applicants Filing Applications to Develop Land in London Grove Township and Reimbursement Form.
3. Stormwater Management Report, dated September 17, 2002, prepared by Langan Engineering & Environmental Services, Inc.
4. Traffic Impact Study, dated August 30, 2002, Langan Engineering & Environmental Services, Inc.
5. Utilities Impact Study, dated September 16, 2002, Langan Engineering & Environmental Services, Inc.
6. Analysis of the Fiscal and Recreation Impact, dated September 9, 2002, prepared by David C. Babbitt & Associates.

**LONDON GROVE TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA
 NOTICE TO ALL APPLICANTS FILING APPLICATIONS
 TO DEVELOP LAND IN LONDON GROVE TOWNSHIP
 AND
REIMBURSEMENT FORM**

The Township requires all Applicants filing applications for subdivision and/or land development to pay the costs incurred by the Township in the processing of the application and the review of plans by professionals (see Township Resolution #232). Such professionals include, without limitation, the Township Engineer, Township Solicitor, and/or Traffic Engineer/Consultants, and/or Land Planning Consultant (the "consultants"). The plans to be reviewed include, without limitation, sketch and/or preliminary, and/or final plans, soil erosion and sedimentation control plans, landscape plans, lighting plans, and other documents and submissions pertaining to land development (the "Plans").

The Township shall be reimbursed by the Applicant for any costs incurred for review of Plans made by the Township's Consultants and for inspections of construction work made by any Consultant. Further, the costs of any conference held with any Consultant at the request of an Applicant and/or his Architect, Consultant or Engineer also must be borne by the Applicant. Invoices will be presented for all reimbursable fees at the then current contract rate. (Township Engineer's rates, per current contract are attached.)

Before making the first contact with any Township Consultant, the Applicant must sign this notice acknowledging receipt of this notice and the obligation to pay upon presentation of invoices. All invoices are payable upon receipt and carry a 1 1/2% monthly finance fee on the unpaid balance.

Yeatman Tract
 London Grove, Chester County, PA
 Conditional Use/Special Exception
 Plans

_____ Title of the Plan Being Submitted

_____ Signature of Applicant

_____ Date

J.S. Tuler
 9/11/02

I have read this notice, and I am aware of the costs to be paid by me. I agree to pay such costs to the extent provided by applicable law, including, HERITAGE BUILDING GROUP, INC. without limitation,

_____ Name of Applicant the Pennsylvania Municipalities Code.
 3326 Old York Road, Suite A 100
 Furlong, PA 18925

_____ Address

215-794-0550

_____ Telephone Number

215-794-8636

_____ Facsimile and/or email



THE COUNTY OF CHESTER



COMMISSIONERS: _____

PLANNING COMMISSION
 Government Services Center, Suite 270
 601 Westtown Road
 P.O. Box 2747
 West Chester, PA 19380-0990
 610-344-6285
 FAX: 610-344-6515

Post-It™ brand fax transmittal memo 7671		# of pages > 5
To M VENEGAS	From GLENN BENTLEY	
Co. LONDON GROVE TWP	Co. C. C. P. C.	
Dept.	Phone # 610 344 6285	
Fax # 610 345 0455	Fax # 610 344 6515	

October 28, 2002

Marilyn Venegas, Township Secretary
 London Grove Township
 372 Rosehill Road, Suite 100
 West Grove, PA 19390

Re: Yeatman Tract Conditional Use
 # 3331- London Grove Township

Dear Ms. Venegas:

The Chester County Planning Commission has examined the conditional use proposal for London Grove Township as a planning service, although it is not required by Act 247, the Pennsylvania Municipalities Planning Code (MPC) as amended. The referral for review was received by this office on October 4, 2002.

This report compares the conditional use to the requirements set by your zoning ordinance. Compliance with the conditions set forth in your ordinance should be clearly verified by agents of your municipality. If this proposal does not meet all of the required conditions, it should not be approved.

The MPC, permits the Board of Supervisors to "attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as you may deem necessary to implement the purposes of this act and the zoning ordinance" (Section 603(c)(2)). We advise the municipality to do so if necessary.

We offer the following comments in considering the proposed land use as it relates to your ordinance:

CONDITIONAL USE DESCRIPTION

- The applicant proposes to construct 387 townhouse units served by 8,831 linear feet of new road on a 76.81 acre site. The proposed development is located in the RM-Residential Medium Density & RH Residential High Density zoning districts and will be served by public water and sewer service.

Area Evaluation:

Existing Land Use:	Agriculture
Adjacent Land Use:	North: Transportation/Route 1 Bypass East: Residential/Agriculture/Undeveloped South: Agriculture/Recreation West: Institutional/State Police Barracks/District Court
Site Zoning:	RM-Residential Medium and RH Residential High

Celebrating 40 Years of Service
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October 28, 2002

Re: Yeatman Tract Conditional Use
3331- London Grove Township

Adjacent Zoning: North: AP Agricultural Preservation (north of Route 1)
East: RH Residential High
South: CG Commercial, General
West: CI Commercial, Interchange

Comprehensive Plan: The Future Land Use Plan, Figure 8.1 in the 1992 London Grove Township Comprehensive Plan indicates that the site has been designated for medium and high density residential uses.

The 1996 Chester County Comprehensive Plan, *Landscapes*, designates the area of the proposed development as an **Urban Landscape**. Urban Landscapes serve as a focal point for economic, cultural and transportation activities. They also serve as major population centers with all required infrastructure and human services in place to support higher density populations. The Landscapes Plan encourages housing rehabilitation, infill development and economic development within the Urban Landscape. The proposed use is consistent with the guidelines for the **Urban Landscape**.

Circulation: The site has road access to Route 41 using Glen Willow Road.

Water and Sewer: The site is to be served by public water and sewer.

CONDITIONAL USE COMMENTS:

Access and Circulation:

2. As the Township and the developer are aware, PennDOT is currently conducting studies related to safety and capacity issues on Route 41. Proposed solutions to these issues could result in improvements to the existing Route 41 alignment or realignment of the highway. Alternative realignment routes have been identified starting south of Avondale and bypassing the Borough to the west. While the path of all of published realignment routes will not directly impact this site, relocation of the highway will affect access to the development. We recommend that the applicant contact PennDOT for more information about proposed improvements to Route 41.

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Page: 3

October 28, 2002

Re: Yeatman Tract Conditional Use

3331-- London Grove Township

3. We acknowledge that a Traffic Impact Study is required for all residential developments with more than 25 units as outlined in Section 1713. This requirement is part of the land development process, we suggest that the study be conducted in advance of the land development process, so that the Township has access to the findings and recommended solutions during the Conditional Use hearings.
4. The proposed residential development has the potential to significantly affect local circulation patterns. The site is accessed from Glen Willow Road, which is a local service road with issues related to pavement width, geometry, stream crossings and major turning movement problems at its intersection with Route 41 located just north of the Avondale Borough line. Significant improvements to Glen Willow Road will be necessary to accommodate the amount of traffic that this development will generate. A second road access point to the site should be considered, we suggest that the applicant contact the adjoiners south of the site to create a second access to link to London Way. If a second road access cannot be created, then an emergency access should be mandatory.
5. We also suggest that signalization of the intersection of Glen Willow Road and Route 41 may be necessary to accommodate turning movements.

Linking Landscapes:

6. We acknowledge the provision of sidewalks throughout the proposed development. The applicant and the Township should consider how pedestrian links could be established to connect the site to Avondale, to the commercial uses on the east side of Route 41 and the proposed retail uses on the west side of Route 41.

Natural Features:

Hydric Soils:

7. The site contains areas of hydric (wet) soils (GnB2-Glenville and LaB-Lawrence) which have limitations to development. These limitations include drainage problems due to low permeability, low runoff rates and sub-surface saturation. When construction takes place on these soils, it interferes with the natural drainage of the land. If construction occurs on this site, on-site alterations to existing drainage patterns should be carefully inspected to insure that off-site drainage conditions are not negatively affected.

Steep Slopes:

A portion of the site contains moderate to steep slopes which are proposed to be regraded.

8. Slopes in excess of 25 percent should be protected by maintaining at least 80 percent of the area in undisturbed cover. Slopes of 15 to 25 percent should be protected by maintaining at least 70 percent of the area in undisturbed cover. For 8-15 percent slopes, erosion and sedimentation control plans for development should be carefully inspected to ensure that they control potential erosion on the site.

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October 28, 2002

Re: Yeatman Tract Conditional Use

3331- London Grove Township

Overall Design:

9. We acknowledge that the Proposed Open Space Calculations shown on sheet 3 of the plan indicates that the total percentage of open space is 62 percent of the site. The Township should verify the open space calculations and that the area that is designated as open space on the plan is consistent with all ordinance standards. It appears that much of the designated open space area is encumbered by steep slopes and stormwater facilities, we suggest that this design would not accommodate active recreation at a development where young families with children could be expected to be the majority of the community population.

Stormwater Management:

10. The Township engineer should verify that the design and capacity of the proposed stormwater facilities conforms to ordinance provisions.

Zoning Considerations:

11. The ordinance indicates that for developments with greater than 25 dwelling units sited in the RM-Residential Medium density zoning district the design should be clustered in accordance with Section 302.J, the Township should verify that the proposed configuration is consistent with the cluster design provisions.

Lighting:

12. The Township engineer should verify that the design and location of any proposed external lighting conforms to ordinance requirements.

Fire Protection:

13. The Township Fire Marshall should verify the design and location of all proposed fire-fighting facilities.

Signs:

14. The Township should verify that the submission meets all ordinance requirements related to the location, size and lighting of signs.

RECOMMENDATION: Because of the scope of the proposed development and the potential impacts on the Avon Grove region, we recommend that the Township consider the following when formulating conditions:

- A Traffic Impact Study should be conducted prior to finalization of the conditional use hearings to provide the Township with comprehensive survey of access, safety and congestion issues and the consultant's recommended responses to the identified issues.

Page: 5.

October 28, 2002

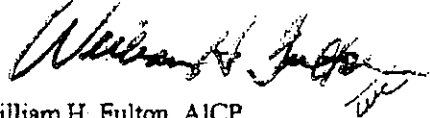
Re: Yeatman Tract Conditional Use

3331- London Grove Township

- The Township should consider the need for Traffic Impact Fees and/or other methods to fund extensive road improvements to accommodate traffic generated at the site.
- The Township should determine if the plan meets the active recreation needs for the prospective residents.
- The Township should determine if the plan provides for logical extension of utility lines.
- The Township should ensure that the submission meets the intent of all open space requirements.
- The Township should ensure that the submission meets all ordinance and design standards requirements prior to taking action.

Approval of this conditional use does not imply approval of the proposed subdivision or land development plan, nor release the requirement of the applicant to submit a subdivision or land development plan under other ordinances of the municipality.

Sincerely,



William H. Fulton, AICP
Secretary

WHF/GPB/kp

cc: Constance W. Alegranti, Board of Supervisors Chairman
Steve Brown, Township Manager
Megan Lalli, Planning Commission Chairman
Sue Pulcher, Planning Commission Secretary
URS Associates

RILEY RIPER HOLLIN & COLAGRECO

A PROFESSIONAL CORPORATION

312 West State Street

Second Floor

Kennett Square, PA 19348

610-444-8800

Fax: 610-444-6599

MEMORANDUM

TO: FILE

FROM: JONATHAN A. JORDAN

DATE: December 10, 2002

RE: HERITAGE BUILDING GROUP – YEATMAN TRACT

SUBJECT: 12/2/02 MEETING WITH TOWNSHIP STAFF

ATTENDEES:

1. Nick Casey – Heritage Building Group ("HBG")
2. Jason Lang – HBG
3. Steven Brown – London Grove Township ("LGT")
4. Greg Elko – Langan Engineers ("Langan")
5. Jason Englehardt – Langan
6. Susan Phillips – Langan
7. John Jaros – Riley Riper Hollin & Colagreco ("RRHC")
8. Larry Walker – URS Tatman & Lee ("URS")
9. Gerald Baker – Traffic Planning & Design ("TPD")
10. Karen Crossan – London Grove Township Municipal Authority ("Municipal Authority")

1. Walker was asked whether he reviewed HBG's special exception application, he had not.
2. Phillips noted that she would be sending out a revised traffic report later in the week, which will address TPD's comments.
3. Jaros gave an overview of the project and proceeded to summarize the points in the URS review letter of October, 2002.

serve the Yeatman tract. Brown agreed to provide HBG with a copy of the feasibility study.

9. Elko explained the stormwater management system for the property. The basins are designed for infiltration up to a 10 year storm with storms of greater magnitude being released by infiltration and conveyance off-site. Walker said the Township has had problems with large basins (e.g., at Inniscrone). The equipment used to dig the larger basins tends to break down the soil structure. The Township prefers surface infiltration and small berms – no more than 2 feet of water at a time during any storm. The weight of the 10 feet of water causes soil compaction. We should consider having infiltration closer to the source. If we can control the full 2 year storm with infiltration, it will control the 100 year storm where it leaves the site. Neither Brown nor Walker believed that the Township would prevent HBG from installing stormwater management facilities with the 75 foot perimeter buffer. Walker did not think there was any reliable way to prevent sedimentation and soil structure breakdown in deeper basins – he has seen failures where alternative methods were used (e.g., layers of sand, super silt fence, separate sedimentation basin). Brown and Walker will show Elko examples of what has and has not worked in terms of stormwater management.
10. Walker discussed the presence of Cockeysville marble on Boomer's driving range. The Township does not want a solution cavity to set up, or to have untreated water going into the aquifer, or any structural issues. HBG has a geotechnical report, which is to be provided to Langan and RRHC. Elko noted that HBG will incorporate the geotechnical engineer's recommendations into notes on the final land development plan. Walker said that the report should be evaluated in terms of the effect of the Cockeysville marble and limestone on HBG's ability to do stormwater infiltration.
11. The Township's well map indicates the presence of a well on the property. Brown could not find a copy of the well map to show us. Walker will have it faxed to Langan.
12. Lang indicated that an environmental assessment report is being prepared. The Zoning Ordinance requires an applicant to submit an environmental assessment report at least 20 days prior to the Township' decision deadline.
13. Brown wondered whether HBG could consolidate homes and concentrate the open space into a central location so that it is not fragmented. One of the roads into the steep slope area might be avoided if HBG can obtain a waiver from the limitation against single access roads greater than 50 feet or which serve more than 20 units. Walker and Brown indicated that these limitations have been waived in the past (e.g., Lamborn property). Walker noted that HBG may want to stay farther away from the driving range because of bright lights and stray golf balls. Casey noted that before HBG can commit to moving buildings, it would need direction from the Township in terms of the parking requirements.
14. Walker said that, if the internal streets are to be dedicated, the Supervisors clearly prefer swales to curbing. The proposed development is a bit unusual for the Township, because

of the large number of driveways. There may be stormwater pipes under the driveways. With a 10 foot swale, the sidewalk would be closer to the units.

15. Casey asked whether screening and landscaping were permitted in the 75 foot buffer. Walker said that screening and landscaping were encouraged within this buffer. Walker also noted that street trees cannot be located within the dedicated road right-of-way.
16. Section 1706 requires adequate light shielding. Brown has not yet sent the lighting plan to the Township lighting consultant, Stan Stuebbie. Boomer's driving range lights do not meet the ordinance. The notes on the plan and the approval minutes are unclear.
17. Section 1716 requires a fire marshal review, Lang spoke with the fire marshal, Tom Glass, who was waiting to get a copy of the plan.
18. There is a question as to whether the proposed development can provide suitable active recreation, or whether a fee in lieu must be paid. HBG needs to meet with Eric Schott of the Parks and Recreation Board.
19. Detention basins must be netted out of net tract area calculations. Infiltration basins need not be netted out.
20. The Yeatman tract is on a list maintained by the Township historic society, although Walker is not sure why. He believes all structures over 50 years old are on the list. HBG needs to contact the historical society.
21. Two parcels along the Route 1 By-Pass appeared to be landlocked. Brown would prefer not to have roads to these properties. HBG may need a waiver from SALDO Section 501.E.27.
22. Walker said that deep manholes present a maintenance problem for the Township. The Municipal Authority does not want a pump station. If HBG can do gravity, 15 foot cuts will be looked upon more favorably.
23. Elko will add the footprints of the units to the plan.
24. Walker noted that retaining walls have been an issue at Inniscrone. Englehardt noted that if grading is permitted within the 75 foot permitted setback, many retaining walls can be eliminated (particularly around the perimeter). Brown requested that Langan and HBG look into terra mesh for the retaining walls.
25. Phillips described the revisions within the updated traffic report and addressed the items in TPD's October, 2002 review letter. She needs to set up a meeting with PennDOT regarding the proposed traffic signal at Glen Willow Road. Township would like a second access, either full or possibly just emergency. HBG has had discussions with neighbors about getting easements, but so far there has been no progress.

Memo

To: Planning Commission
From: Steven C. Brown - Township Manager
Date: February 21, 2003
Re: Heritage/Yeatman Conditional Use - Major Issues

The purpose of this memorandum is to provide a list and brief description of the major issues concerning this plan. The issues are not listed in any particular order.

1. **Sewer Service/Act 537 Planning** - Heritage was advised by URS that only 50 EDU's are remaining at the Inniscrone plant. Their Act 537 planning will be complicated by that fact and they and other developers should assist in devising alternatives, as it will speed the process. Heritage could be asked for land, but it is not likely. URS is to have preliminary alternatives prepared by the end of March.
2. **Alternative Plan** - Heritage will present an alternative plan that removes the cul-de-sac in northwestern-most corner of the property, provides overflow parking largely by perpendicular spaces to street (2.6 spaces per dwelling), added three tot lots and one picnic area, makes the basins meet the ordinance design standards (3' deep, 30' wide) and eliminates a short link of road down from hill to loop which prevents disturbance to steep slope.
3. **Use of Perimeter Buffer** - Two infiltration berms/basins are shown within buffer on the alternative plan. If they are not permitted in that location, they will either seek a Zoning Ordinance amendment or variance.
4. **Parking** - The ordinance requires four (4) spaces per dwelling unit; Heritage has provided 2.8 spaces per dwelling overall. They have stated that they could provide four (4) spaces dwelling, but would then go back to the original plan that uses infiltration basins.
5. **Infiltration Basins** - The original plan showed large deep basins, which Heritage believes to meet the ordinance. It is my opinion that those types of infiltration structures do not meet our ordinance.
6. **Historic House** - I have asked Heritage to "flip flop" the first apartment building with a parking area so as not to block view of house as you enter the property.

7. **Second Access** - Heritage has been requested to provide a full, second access. To date they have not had success in securing a route through neighboring property.
8. **Road Improvements** - These need to be determined as well as the improvements needed to provide them with adequate site access. For example, Glen Willow Road to Route 41 may require improvement. Another possibility is to join with the two shopping centers and make improvements to Route 41.
9. **Open Space** - Heritage has been asked to consolidate open space in the northwest corner of the property rather than scatter it throughout the development.
10. **Natural Lands Trust Alternative** - Natural Lands Trust has prepared an alternative sketch plan. What is Heritage's reaction? The plan is density-neutral and provides the open space in the northwest portion of the site and creates a central "green" to help organize and focus the development.
11. **Recreation** - To date, Heritage has proposed the three tot lots and one picnic area as the active recreation for the development. They would provide the remainder of their obligation by way of a fee.
12. **Water Service**- The Municipal Authority has requested that they loop the water system out to Route 41.
13. **Buffering and Landscaping**- The same ordinance provision that would not allow basins in the perimeter buffer would not permit landscaping. The township and Heritage should determine how landscaping and buffering could be provided in the buffer. Heritage should also study the views of the property from Route 1 to determine if buffering is needed.

2.21.03PCMemo RE Heritage/YeatmanCU

KAPLIN STEWART MELOFF REITER & STEIN, P.C.

By: Marc B. Kaplin, Esquire
Gregg I. Adelman, Esquire
Attorney ID Nos. 04465, 84137
350 Sentry Parkway, Bldg. 640
P.O. Box 3037
Blue Bell, PA 19422
(610) 260-6000

Attorneys for Appellant
Heritage Building Group, Inc.

DAVID L. HAYES
FILED
NOV 11 PM 4:09

**IN RE: APPEAL OF HERITAGE BUILDING
GROUP, INC. FROM THE DECISION DATED:
OCTOBER 6, 2004 OF THE BOARD OF
SUPERVISORS OF LONDON GROVE
TOWNSHIP**

IN THE COURT OF COMMON
PLEAS OF CHESTER COUNTY
PENNSYLVANIA

No. 04-08887

LAND USE APPEAL

NOTICE OF APPEAL

Appellant Heritage Building Group, Inc. ("**Heritage**"), by and through its attorneys, Kaplin Stewart Meloff Reiter & Stein, P.C., hereby appeals from the October 6, 2004 Decision ("**Conditional Use Decision**") of the London Grove Township Board of Supervisors ("**Board**") approving Heritage's application for conditional use approval, and, in support thereof avers as follows:

1. Heritage is the equitable owner of approximately 76.81 acres of land located at 1220 Glen Willow Road, Avondale, London Grove Township ("**Township**"), Chester County, Pennsylvania ("**Property**").
2. 60.38 acres of the Property is located in the Township's Residential Medium ("**RM**") Zoning District and 16.43 acres of the Property is located Residential High ("**RH**") Zoning District.
3. Heritage proposes to develop the Property as a 374 multi-family unit (townhome) rental community ("**Proposed Development**").
4. Under Sections 601.B.1 (RM Zoning District regulations) and 801.B.1 (RH

Zoning District regulations) of the Township Zoning Ordinance, multi-family developments of twenty-five (25) or more dwelling units are permitted when authorized as a conditional use in accordance with Section 2209 of the Township Zoning Ordinance.

5. On September 18, 2002, Heritage submitted to the Township an application for conditional use approval ("**Conditional Use Application**") to construct the Proposed Development on the Property.

6. The Conditional Use Application was accompanied by an engineered plan entitled "Yeatman Tract-Site Plan" prepared by Langan Engineering dated September 17, 2002, last revised July 9, 2003 ("**Conditional Use Plan**"), a copy of which is attached hereto as **Exhibit "A"**.

7. Public Hearings on Heritage's Conditional Use Application were held before the Board on December 16, 2002, January 22, March 6, April 10, May 12, July 16, August 26, September 22 and October 30, 2003 and February 23 and March 22, 2004 (collectively, the "**Hearings**").

8. At the Hearings, Heritage introduced forty-six (46) exhibits (Exhibits "A-1"- "A-38" and Exhibits "2004-1"- "2004-8") in support of its Conditional Use Application.

9. On October 6, 2004, after several extensions granted by Heritage, the Board voted to approve Heritage's Conditional Use Application subject to fifty-one (51) conditions, a copy of the written decision of which is attached hereto as **Exhibit "B"** ("**Conditional Use Approval**").

10. Under Pennsylvania law, a governing body may attach such reasonable conditions to the grant of a conditional use permit, in addition to those expressed in the zoning ordinance, as it may deem necessary to implement the purposes of the MPC in the zoning ordinance. Levin v. Board of Supervisors of Benner Township, Centre County, 669 A.2d 1063 (Pa. Cmwlth. 1995).

11. Under Pennsylvania law, when a particular use is permitted by conditional use, it is presumed that the local legislature has already determined that such use satisfies local concerns for the general health, safety and welfare and that such use comports with the intent of the zoning ordinance. See, Appeal of Brickstone Realty, 789 A.2d 333 (Pa. Cmwlth. 2001).

12. Under Pennsylvania law, the conditional use process is limited to the consideration of the propriety of the use of the Property and not the design details of the proposed development. *Such issues are to be addressed further along in the permitting and approval process*. See, Schatz v. New Britain Township Zoning Hearing Board of Adjustment, 596 A.2d 294 (Pa. Cmwlth. 1991); Appeal of Brickstone Realty, 789 A.2d 333 (Pa. Cmwlth. 2001).

13. Under Pennsylvania law, in order to be entitled to the approval of its conditional use application, an applicant is required to demonstrate that the proposed use complies with the specific requirements for conditional use approval set forth in the Zoning Ordinance. See, Susquehanna Township Board of Commissioners v. Hardee's Food Systems, Inc., 59 Pa. Cmwlth. 479, 430 A.2d 367 (1981).

14. Under Pennsylvania law, the following general limitations are placed upon the Board's authority to impose conditions upon the grant of conditional use approval:

a. The Board's power to impose conditions is limited to situations where the proposed use will have an adverse impact on the health, safety and welfare of the community sufficient to justify the denial of the conditional use. Edgmont Township v. Springtown Lake Montessori School, Inc., 154 Pa. Cmwlth. 76, 622 A.2d 418 (1993);

b. The Board may not impose a condition upon a conditional use approval that nullifies the use granted. Young Men & Women's Hebrew Association v. Monroeville, 429

Pa. 283, 240 A.2d 469 (1968);

c. The Board may not impose a condition that is more restrictive or imposes obligations upon an applicant that are greater than those implied under the Township's ordinance requirements. Mann v. Lower Makefield Township, 160 Pa. Cmwlth. 208, 634 A.2d 768 (1993);

d. Conditions may be imposed only upon a finding the proposed use would have a greater detrimental impact upon the health, safety or welfare of the community than would a "normal" use of the same type. Orthodox Minyan of Elkins Park v. Cheltenham Township Zoning Hearing Board, 123 Pa. Cmwlth. 29, 552 A.2d 772 (1989); Appeal of Martin, 108 Pa. Cmwlth. 107, 529 A.2d 582 (1987);

e. A board may not attach a condition to a special exception that essentially serves a non-zoning purpose. Kulak v. Zoning Hearing Board, 128 Pa. Cmwlth. 457, 462, 563 A.2d 978, 980 (1989);

f. Conditions may not be imposed based upon aesthetic reasons. Medinger's Appeal, 377 Pa. 217, 226, 104 A.2d 118, 122 (1954);

g. Conditions imposed upon conditional use approval may not be vague, or without guidelines for its enforcement. Wegman Application, 7 D. & C. 3d (C.C.Pl. 1978);

h. The Board may not require that an applicant construct off-site improvements, or dedicate land for off-site improvements as a condition of conditional use approval. 53 P.S. §503-A(b); Municipality of Monroeville v. Prin, 680 A.2d 9 (Pa. Cmwlth. 1996).

15. Conditions 1, 3, 4, 5, 8, 9, 10, 11 and 14 ("**Contested Sewer/Water Conditions**") set forth in the Approval are improper, unlawful and constitute an abuse of the Board's discretion. Specifically:

a. The Contested Sewer/Water Conditions seek to impose obligations upon Heritage that are beyond the requirements of the Township Ordinance and are, therefore, beyond the Board's power to impose;

b. Certain of the Contested Sewer/Water Conditions improperly require Heritage to make off-site improvements;

c. Certain of the Contested Sewer/Water Conditions improperly require Heritage to pay certain fees, acquire land and property rights owned by third parties, dedicate land and property rights and/or make certain contributions which the Board does not have the authority to require;

d. Certain of the Contested Sewer/Water Conditions require compliance with vague and subjective criteria;

e. Certain of the Contested Sewer/Water Conditions serve essentially non-zoning purposes; and

f. Certain of the Contested Sewer/Water Conditions impose specific design and permitting requirements that are beyond the scope of the conditional use process and are therefore improper.

16. Furthermore, the Board attached other unreasonable and improper conditions to the Approval that were not supported by citations to the record, not supported by substantial evidence, constituted an abuse of discretion and are contrary to Pennsylvania law with respect to a conditional use approval. Specifically, the Board improperly and unreasonably conditioned the Approval as follows:

a. Condition #15 of the Approval requiring Heritage to have a Pennsylvania registered geologist/hydrologist determine whether water seepage through the ground in the area

located approximately 500 feet northwest of the existing house on the Property is a natural spring, intermittent swale or watercourse is improper and unreasonable because there is no conditional use requirement that such testing be performed. Furthermore, Heritage's Wetland Scientist, Dr. Thomas D. Cordrey, tested the area in question on February 28, 2002 and again on October 15, 2003 and determined that the area was not a watercourse or wetland. Dr. Cordrey's October 20, 2003 letter was introduced by Heritage as Exhibit "A-38".

b. Condition #19 of the Approval requiring Heritage not to use infiltration devices as sediment traps is improper and unreasonable because there is no provision in the Township Ordinance that prevents such usage and the Township Engineer's testimony confirmed that the Township Ordinance does not prohibit infiltration devices to be used as sediment traps.

c. Condition #22 of the Approval requiring Heritage to landscape at the bottom of each tier of all retaining walls over six (6) feet in height is improper and unreasonable because there is no Township Ordinance provision that requires the bottom or tiers of retaining walls to be landscaped.

d. Condition #23 of the Approval requiring Heritage to landscape the crest of the open hill near Route 1 is improper and unreasonable because there is no Township Ordinance provision requiring such landscaping, such a condition is not supported by any evidence in the record and may require Heritage to acquire third party property rights and/or make off-site improvements.

e. Condition #24 of the Approval requiring Heritage to install 10-foot high fencing along the perimeter of its property adjacent to the Truitt property is improper and unreasonable because there is no Township Ordinance provision requiring such fencing and such a condition is not supported by any credible evidence in the record.

f. Condition #26 of the Approval requiring Heritage to provide adequate screening under Section 2209.D.6 of the Township Ordinance is improper and unreasonable because Section 2209.D.6 refers to the adequate screening of a “facility” from other residential uses. The Proposed Development is not a “facility” and, therefore, the Township Ordinance does not require such screening.

g. Condition #27 of the Approval requiring Heritage to design the parking areas in accordance with Sections 1902.B.3 and 1906.D of the Township Ordinance is improper and unreasonable to the extent that the internal roads of the Proposed Development remain private and not public roads.

h. Condition #27 of the Approval requiring Heritage to provide 4.0 parking spaces per multi-family unit is improper and unreasonable because Section 1908 of the Township Ordinance only requires 2.0 parking spaces per single-family and two-family dwellings. However, the Conditional Use Plan provides 4.0 parking spaces per multi-family unit.

i. Condition #28 of the Approval requiring Heritage to retain and renovate the historic house located on the Property near Glen Willow Road as per the Township Historical Commission recommendation is improper and unreasonable to the extent that such recommendation suggests retaining and renovating the historic house for a use other than the existing 3-unit apartment house.

j. Condition #33 of the Approval requiring Heritage to document the structure and the historic significance of the historic house located on the Property prior to performing any renovations is improper and unreasonable because there is no such requirement under the Township Ordinance and the historic house is being preserved as part of the Proposed

Development.

k. Condition #34 of the Approval requiring Heritage to provide direct road access to Route 41 is improper and unreasonable because the Property only has public street frontage on Glen Willow Road and Heritage has already provided an access for the Proposed Development onto Glen Willow Road. There is no requirement for a second access to the Proposed Development under the Township Ordinance. Moreover, Heritage would have to acquire property rights from third parties in order to obtain direct access from the Proposed Development to Route 41 and it is improper and unreasonable for the Board to condition the Approval upon Heritage acquiring property rights of third parties.

l. Condition #35 of the Approval requiring Heritage to prepare a revised Traffic Impact Study accounting for a direct road access to Route 41 from the Proposed Development is improper and unreasonable to the extent that no such direct access to Route 41 from the Proposed Development is ever obtained.

m. Condition #36 of the Approval requiring Heritage to improve Glen Willow Road to meet PennDOT 3R Design Criteria is improper and unreasonable because such improvements are unlawful off-site improvements and there is no Township Ordinance provision requiring Heritage to make such improvements to Glen Willow Road.

n. Condition #38 of the Approval requiring Heritage to comply with certain Township Traffic Consultant review comments during land development is improper and unreasonable to the extent that such review comments pertain to the installation of a traffic light at the intersection of Route 41 and Glen Willow Road, as such traffic signal may not be warranted or approved by the Pennsylvania Department of Transportation.

o. Condition #39 requiring Heritage to pay a traffic impact fee of \$1,000 per

each peak hour afternoon vehicular trip identified by the Township Traffic Consultant is improper and unreasonable because the Township has not performed and enacted an Act 209 Study nor does the Township Ordinance provide for or require the payment of a traffic impact fee for new land developments.

p. Condition #40 requiring Heritage to provide a minimum of four tot lots and one picnic area is improper and unreasonable because the Township Ordinance does not satisfy the requirements of Section 605 of the MPC with respect to imposing a recreational impact fee nor does the Township Ordinance require a specific number of recreational areas, but rather only requires the submission of a Recreation Impact Study which Heritage did submit as part of the Conditional Use Application. Regardless, Heritage intends to provide four tot lots but no picnic area as part of the Proposed Development.

q. Condition #44 requiring Heritage to install sound mitigation devices for the proposed multi-family units (townhomes) to be located near Route 1 is improper and unreasonable because there is no requirement under the Township Ordinance to provide such sound mitigation and there is no evidence in the record to support such a condition.

r. Condition #46 requiring Heritage to pay all Township review fees, including engineering, traffic engineering and legal review fees, within 30 days of the conditional use decision is improper and unreasonable because the Township has no authority under the MPC or Pennsylvania law to charge Heritage for Township review, engineering, legal or consulting fees incurred in connection with a conditional use application.

s. Condition #49 requiring Heritage to submit a Phase I Environmental site assessment report is improper and unreasonable because there is no provision under the Township Ordinance requiring Heritage to submit a Phase I Environmental report nor is there

any evidence in the record supporting such a condition.

t. Condition #51 requiring Heritage to construct and design the internal roads of the Proposed Development to Township standards is improper and unreasonable because Heritage does not intend to dedicate the internal roads to the Township and the roads will be designed, configured and used according to the Conditional Use Plan, the materials used to construct the roads will conform to Township specifications and Heritage will modify the design of the internal roadways to widen the cartway width to 26 feet as per Condition #27 of the Approval.

WHEREFORE, Appellant Heritage Building Group, Inc. respectfully requests that this Court enter an Order affirming this Land Use Appeal, striking Conditions #1, 3, 4, 5, 8, 9, 10, 11, 14, 15, 19, 22, 23, 24, 26, 27, 28, 33, 34, 35, 36, 38, 39, 40, 44, 46, 49 and 50 of the Approval, and granting such other relief as is just and proper.

Respectfully submitted,

**KAPLIN STEWART MELOFF REITER &
STEIN, P.C.**

Dated: November 4, 2004

By: 

Marc B. Kaplin, Esquire

Gregg I. Adelman, Esquire

Attorneys for Appellant
Heritage Building Group, Inc.

Handwritten mark resembling the letter 'F'.

IN RE: APPEAL OF
HERITAGE BUILDING
GROUP, INC. FROM THE
DECISION DATED
OCTOBER 6, 2004 OF THE
BOARD OF SUPERVISORS
OF LONDON GROVE
TOWNSHIP

IN THE COURT OF COMMON PLEAS
CHESTER COUNTY, PENNSYLVANIA

NO. 04-08887

Land Use Appeal

OFFICE OF THE
PROTHONOTARY
CHESTER CO. PA.

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FILED

Marc B. Kaplan, Esquire, Attorney for Plaintiff Heritage Building Group Inc.
Vincent B. Mancini, Esquire, Attorney for Intervener Nancy Truitt
William P. Lincke, Esquire, Attorney for London Grove Township Board of Supervisors

DECISION

Appellant, Heritage Building Group, Inc. is the equitable owner of 76.81 acres of land located at 1220 Glen Willow Road, London Grove Township (the "Township"), Chester County, Pennsylvania, currently a mushroom farm and associated buildings, a dwelling house and open fields (the "Property"). It is located in two contiguous zoning districts as established by the London Grove Township Zoning Ordinance of 1995, as amended (the "Ordinance"). Some 60.38 acres are located within the Township's Residential, Medium ("RM") Zoning District, and 16.43 acres are located in the Township's Residential, High ("RH") Zoning District. The applicable regulations governing development in each such district are found respectively in Articles VI, Sections 600 through 602, and VIII, Sections 800 through 802 of the Ordinance.

Heritage filed a conditional use application with the Supervisors (the "application") on September 18, 2002 seeking to develop the Property, identified in the record as the Yeatman Tract, proposing the construction of a development consisting of 374 attached dwellings, 260 units of which are proposed for fee simple ownership and will be located in the RM District and 94 units of which are proposed for rental occupancy and will be located in the RH District (the "Proposed Uses" and/or Development"). Sections 601.B.1 and 801.B.1 of the respective District regulations permit multi-family development of twenty-five (25) or more such dwelling units when approved as a conditional use by the Township's Board of Supervisors (the "Board" or "Supervisors") in accordance with the conditional use regulations of Article XXII, Section 2209 of the Zoning Ordinance.¹

Heritage's conditional use application was accompanied by a plan, later amended, entitled the "Yeatman Tract Site Plan", and was followed by

¹ The use regulations of both the RM and RH Districts are somewhat confusing as written. Ordinance §601.8.1 permits "multi-family development of twenty-five (25) or more dwelling units, exclusive of apartments and condominiums." The terms "multi-family dwelling" and "development" are separately defined in Ordinance §200, the former being "a building designed for and occupied exclusively as a residence for two (2) or more households living independently of each other" and the latter being "the division of a parcel of land into two (2) or more lots..." Ordinance §801.8.1 permits "residential developments of twenty-five (25) or more dwelling units". A "dwelling unit" is defined as one residence "forming a single habitable unit with a private access and facilities which are used or intended to be used for living, sleeping, cooking and eating exclusively by one (1) family". While the term, "residential development" is not separately defined, Section 801.A.1 permits by right a wide variety of residential dwelling types.

eleven (11) public hearings before the Board, culminating in the Board's written decision dated October 6, 2004 approving Heritage's application, without making findings of fact and legal conclusions, subject to 51 conditions, twenty-eight (28) of which were originally the subject of this Appeal². It is noted that a period of six and one-half months elapsed between the close of the record and the Board's written decision, dated October 6, 2004. However, timeliness of the decision is not raised in the appeal, it appearing that the mandate imposed by the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, reenacted December 21, 1988, P.L. 1329, No. 170 ("PaMPC"), that the decision be rendered within 45 days of the last hearing, was extended by agreement of the parties.³ Heritage's Appeal was timely filed on November 4, 2004, following which I heard oral argument and remanded the case to the Board to make findings of fact and conclusions of law, absent in the decision, supporting its disputed conditions. In the interim, the parties sought to

² In addition to the ten hearings at which testimony was taken, four additional hearings were convened and immediately continued without testimony. These occurred on November 12 and December 10, 2003 and January 12, 2004. Additionally, no testimony was taken at the first scheduled hearing on December 16, 2002, and was continued at Heritage's request until January 22, 2003, the first night of actual testimony. The record was closed with Heritage's agreement on March 22, 2004.

³ The Board's Decision does not address its extended delay in rendering its Decision. Heritage's written appeal acknowledges that several extensions of the required decision date were granted by it to the Board. See Appeal, p.2, paragraph 9. The Board's Decision was, therefore, timely made.

settle the appeal, and with the court's assistance several in-court conferences were conducted in an effort to resolve the disputed conditions. The parties reached an impasse and upon my order the Board filed its "Findings of Fact and Conclusions of Law" with the court on September 20, 2006. At the behest of the parties, there followed additional efforts on their part to circulate and reach a settlement agreement, which resulted in the Board's agreement to remove all but three of the previously imposed conditions of approval, leaving their resolution, if required, for the land development approval process. The court was so notified on March 19, 2007, confirmed by telephone conference with counsel for the parties.

Applicable Law:

Where the court receives no additional evidence in a land use appeal from a decision of a board of supervisors, the standard of review is whether the board committed an abuse of discretion, an error of law, or made findings that are not supported by substantial evidence, that is, relevant evidence grounded in the record that a reasonable mind might accept to support a relevant conclusion. *Newtown Board of Supervisors v. Greater Media Radio Co.*, 587 A.2d 841 (Pa. Cmwlth.1991); *Ruf v. Buckingham Township*, 765 A.2d 1166 (Pa. Cmwlth.2001); *Valley View Civic Assn. v. Zoning Board of Adjustment*, 462 A.2d 637 (Pa. 1983).

An applicant is not bound to accept any conditions of approval that it finds unacceptable, and may treat a decision containing unacceptable conditions as a denial for purposes of appeal. *Clinton Solid Waste Authority v. Wayne Township*, 643 A.2d 1162 (Pa. Cmwlth.1994); *LTS Development, Inc. v. Middle Smithfield Township Board of Supervisors*, 862 A.2d 686 (Pa. Cmwlth.2004).

Conditional uses are much like special exceptions, but within the jurisdiction of the municipal governing body rather than the zoning hearing board. As such, a conditional use, like a special exception, is really a legislatively approved permitted use and is presumptively consistent with the public health, safety and welfare. *Bailey v. Upper Southampton Township*, 690 A.2d 1324 (Pa. Cmwlth. 1997); *Sheetz v. Phoenixville Borough Council*, 804 A.2d 113 (Pa. Cmwlth.2002); *Talkish v. Zoning Hearing Board of Harborcreek Township*, 738 A.2d 50 (Pa. Cmwlth.2001).

The knotty issue that confronts the court in the instant case is whether and the extent to which the appealed from conditions are unreasonable. If they are articulated in the language of the Ordinance, absent a legality challenge to the cited provision, they are presumptively reasonable, as long as reasonably applied. Otherwise, to the extent not specifically articulated in the Ordinance, to be reasonable they must find

support in the record made before the Board as necessary to implement the purposes of the Ordinance. PaMPC §603 (c) (2), 53 P.S. sec.10603 (c) (2) states that zoning ordinances may provide for conditional uses to be allowed or denied by the governing body "pursuant to express standards and criteria" stated in the ordinance, subject to such reasonable conditions and safeguards other than those stated in the ordinance as may be imposed by the governing body to implement the purposes of the zoning ordinance. This statutory authorization is implemented in § 2209.A of the Ordinance in the following pertinent language:

"In granting a Conditional Use, the Board of Supervisors of London Grove Township may attach such reasonable conditions and safeguards, in addition to those expressed in the Ordinance, as it may deem necessary to implement the purpose of the Zoning Ordinance." Those purposes are stated in Ordinance §101.

Reasonable conditions imposed by a board will be upheld on appeal if the governing body is able to demonstrate that the conditions are reasonably related to health, safety or welfare of the public within the context of the factual record. *Clinton Solid Waste Authority v. Wayne Township, supra*; *Levin v. Board of Supervisors of Benner Township*, 669 A.2d 1063 (Pa. Cmwlth.1995), affirmed, 689 A.2d 224 (1997); *LTS*

Development, Inc. v. Middle Smithfield Township Board of Supervisors, supra.

There are, however, caveats to this general proposition. For example, conditions may be stricken that are inconsistent with Department of Environmental Resources regulations, *Clinton, supra*; or where a condition is preempted by other regulatory authority having jurisdiction, *Levin, supra*; or where a condition constitutes a taking without just compensation, *Board of Supervisors of West Marlborough Township v. Fiechter*, 566 A.2d 370 (Pa. Cmwlth. 1989); or where the municipality requires the developer to pay for off-site traffic improvements absent its adoption of a traffic impact fee ordinance, *Municipality of Monroeville v. Prin*, 680 A.2d 9 (Pa. Cmwlth 1996); PaMPC §503-A(c), 53 P.S. sec. 10503-A(c); or where the governing body imposes conditions which it is impossible for the applicant to meet. *Council of Middletown, Delaware County v. Benham*, 523 A.2d 311 (Pa. 1987).

Finally, it must be remembered that the purpose of a conditional use application is the approval of the use of land under the regulations established in the municipality's zoning ordinance, and not the development of land, the regulation of which is the province of the governing body within the context of a separate subdivision and/or land

development application submitted under the municipality's subdivision and land development ordinance ("SALDO"). While it is common practice for municipal officials to negotiate conditions of approval with a land use applicant relating to SALDO requirements during the conditional use process, an applicant is not required to agree in advance to land development conditions unless the subject matter is regulated in the zoning ordinance. *In Re: Application For Conditional Use Approval of James Saunders*, 636 A.2d 1308(1994).

Contested Conditions:

The conditions remaining for resolution by the court and my determination of them are as follows.

(1) Condition #24 requires Heritage's installation at its expense of a ten feet high fence, with plantings the height of the fence along the development side of the fence, acceptable to the Township and the Pennsylvania State Police. The design and construction of the fence would be subject to the approval of Heritage, the Township and the Pennsylvania State Police, who lease a building located on adjacent property owned by Nancy Truitt, which they use as the Avondale State Police Barracks. Truitt proposed that the fence be installed at Heritage's expense on her property and maintained by her adjacent to the southwest corner of Heritage's

development, to provide security for the State Police facility, which is located near the proposed location of townhouses and their parking areas. Lieutenant Dennis Dougherty, the Avondale station commander, testified to security concerns, indicating that the State Police look to Truitt as their landlord to absorb the costs of security measures such as the proposed fence under these circumstances. Heritage contends that the condition is unreasonable and improper because it is unsupported by any Ordinance requirement and is based on Truitt's speculative concern of prospective danger to State Police officers from snipers positioned on the development property, as well as easy access from the development to their secure facility, where criminal defendants are often processed. Truitt cites a notorious incident in 1972 when two Kennett Square borough police officers were murdered from ambush at night as they prepared to enter the Kennett police station upon returning there from patrol. The sniper was positioned on an adjoining property. The fence would extend a distance of some 600 lineal feet along the property boundary, be installed closer to the State Police facility to take advantage of topography, and would require approval by the Township's zoning hearing board. N.T.10-30-04, pp. 11-45.

As authority for imposition of this condition, the Township cites Ordinance §2209.C.2, pertaining to standards for review of conditional uses, which requires compliance with standards for review applicable to special exceptions. Section 2107.A. 5 & 13 governing standards for special exceptions and §2209.D.6 governing standards for conditional uses respectively require that consideration be given to adequate screening between the proposed use and residentially zoned districts and uses to screen out glare, noise and unwanted views, and authorizes the imposition of conditions reasonably necessary to safeguard the health and safety of nearby property owners, including as enumerated in §2107.A.13, aesthetic considerations. While a municipality may include aesthetic factors in the exercise of its zoning powers, standing alone they cannot justify zoning decisions. *Berman v. Board of Commissioners*, 608 A.2d 585 (Pa. Cmwlth. 1992); *Lombardozzi v. Millcreek Township Zoning hearing Board*, 829 A.2d 779 (Pa. Cmwlth. 2003); *Clinton, surpa*. Although the fence does not involve aesthetic considerations, is the stated condition otherwise justified?

Requiring a developer to install or pay for off-site improvements usually arises as an issue in the context of subdivision/land development applications. PaMPC § 503-A (b), 53 P.S. § 10503-A (b) generally prohibits this practice. For example, in *CACO Three, Inc. v. Board of*

Supervisors of Huntington Township, 845 A.2d 991 (Pa. Cmwlth. 2004), appeal denied 860 A.2d 491; the court rejected the township's attempt to require the developer to provide for fencing of the entire perimeter of an abandoned quarry located on adjacent property, even though the developer proposed fencing off its own property from the quarry site. The quarry owner had denied permission to access its property for such purpose. In that context, it has also been held that a development plan cannot be denied based on general, non-specific standards, such as the potential danger to the health, safety and welfare. *Sluffer v. Plymouth Township*, 379 A.2d 1060 (Pa.Cmwlth.1977). Does § 2209.A of the Township's Ordinance permitting the Board to attach reasonable conditions to a conditional use approval, as authorized by PaMPC §603(c)(2), enlarge the Township's power to impose a condition it is precluded from imposing under its land development ordinance? I think not in this instance for several reasons. First, there are no specific standards in the Ordinance that impose any such fencing requirement. The Sections relied upon cited above are general in nature and do not impose any objective criteria or requirements to guide the Board in imposing a condition of this sort. Buffering standards described in Ordinance §1705 state no requirement that screening be placed beyond the limits of the development property. I

note that Heritage's plan depicts a 75 feet wide boundary-buffer setback on its property in the area of the State Police Barracks. Second, the fence criteria was derived solely from Ms. Truitt and not from any criteria stated in the Ordinance or demonstrable requirement related to height or length. Rather, it was assumed by the Board that the fence as thus proposed would be necessary, adequate and appropriate to provide a safety barrier between the development and the State Police Barracks for the officers' protection, without any testimony supporting the technical adequacy of the proposed fence or real consideration given as to whether the fence, as proposed, would serve its intended purpose. I do not question the need for the troopers to be insulated from attack or intrusion, nor do I reject the notion of some protective barrier as may be determined necessary by the State Police on Truitt's property; however, it is unreasonable to require Heritage to pay for an off-site improvement that really has no relationship to its development, does not fund a community-based need affected by the development, financially benefits primarily a single adjoining property owner, and is not governed by any standards or criteria described in the Ordinance. Police stations typically exist within the community, without being insulated from the community. Third, the condition requires zoning hearing board approval without specifying why such approval is necessary,

presumably because Ordinance §1704.A. proscribes walls in excess of 6 feet in height in required yards. The decision and Board findings do not address the ramifications of a potential denial by the zoning hearing board of such an application upon the conditional use, nor does it address the fact that the proposed relief relates to property over which Heritage has no control. Condition #24 will be stricken.

Conditions #28 and #33 are related and require Heritage to retain and renovate an historic house located on the Property near Glen Willow Road as recommended by the Township's Historical Commission and to "document" the structure and its historical significance prior to such renovation. Conditions #29 through 32 flow from these and are thus also related. The Township cites Ordinance §2701.A.14, applicable to conditional uses through §2208.C.2, in support of these conditions, which directs the Supervisors to give consideration to the impact the conditional use will have upon on-site historic resources. The historic house circa 1815 located on the Property is presently used as a three-unit apartment building, a use that Heritage intends to retain and the Township-imposed conditions specifically allow. Heritage objects, however, to the Supervisors' requirement that it preserve the building and present a plan to the Township Historical Commission for the building's restoration as suggested

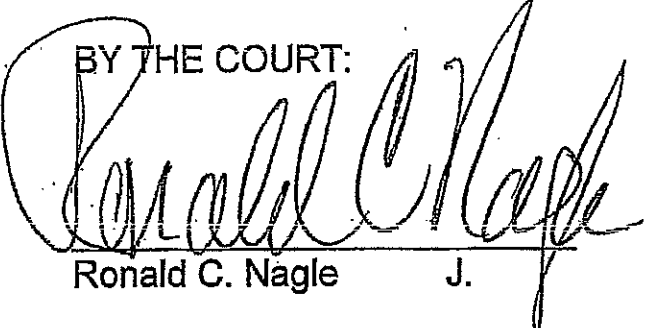
by its April 9, 2003 correspondence, but that Heritage first "document" the structure and its historical significance prior to such restoration. See Exhibit 2004-9. To the extent the condition permits the Commission to dictate interior historic restoration of the building, I believe the Supervisors have exceeded their authority. *United Artists Theatre Circuit, Inc. v. City of Philadelphia*, 595 A.2d 6 (Pa. 1991). The Township's pertinent regulations are primarily devoted to discouraging the demolition of historic resources, not a concern here, but do not otherwise establish any power in the Township to dictate or control the interior renovation of an historic building. However, the requirement that Heritage at least "document" the building's interior historic features if it intends to eradicate them by rehabilitation or renovation is reasonable. In such case, photographing and otherwise documenting those historic features are clearly accepted antecedents to preserving at the very least an historic record of the structure. As to preservation of the exterior historic aspects of the structure, I believe the Supervisors are within their reasonable authority to the extent renovations and/or repairs are necessary. See §1606 governing standards for rehabilitation. Although the Commission's April 9, 2003 correspondence recites that the Township does not have an historic preservation ordinance, Article XVI of the Ordinance is devoted to "historic resource protection",

and the classification criteria stated in the Ordinance indicates the building qualifies as such. See §1602.A.2. Condition #30 requires the house be preserved within a perimeter of 25 feet of open space. That is not an unreasonable requirement and appears substantially accomplished or attainable within the context of the proposed plan, with some modifications. See §1606.A.2. Condition #29 requires the house be unobstructed from view from adjacent Glen Willow Road, also substantially accomplished on the plan. See §1606.A.2. Accordingly, conditions #28 through #33 are approved, except that condition #28 is revised as limited by this opinion. The court will retain jurisdiction to resolve serious differences. Accordingly, I enter the following:

ORDER

AND NOW, April 3, 2007 following argument and consideration of the briefs of counsel, condition #24 imposed by the Board to Heritage's conditional use approval is STRICKEN, and conditions #28 and #33 are APPROVED and AFFIRMED as modified by the foregoing Opinion.

BY THE COURT:



Ronald C. Nagle J.

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