



BOARD OF SUPERVISORS
WORKSHOP
June 8, 2021
4:00 p.m.

AGENDA

LOCATION: This meeting will be held **virtually** – the meeting will be conducted via webinar. Any member of the public interested in participating in the meeting should email the Township at tscheivert@upperuwchlan-pa.gov for a link and a password to join in the meeting. If you require special accommodation, please call the Township office at 610-458-9400.

I.	Call to Order	Packet Page #
	A. Salute to the Flag	
	B. Moment of Silence	
	C. Inquire if any Attendee plans to audio or video record the Workshop	
	D. An Executive Session was held June 3, 2021 re: legal matter	
II.	Intermunicipal Transfer of Liquor License – Public Hearing, consider adopting Resolution	2
III.	Outdoor Aboveground Storage Tank Ordinance Amendments – Discussion	7
IV.	260 Moore Road Conditional Use / Adaptive Reuse Application – Introduction	18
V.	Townes at Chester Springs Escrow Release #4 / Final \$50,000	30
VI.	Windsor Baptist Church - Approve Land Development Agreement and Financial Security Agreement - Site Improvements Escrow \$253,321.20	31
VII.	Disposition of Property: Public Works Equipment ~ Authorize Advertisement	71
VIII.	Open Session	
IX.	Adjournment	



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MEMORANDUM

To:	Upper Uwchlan Township Board of Supervisors c/o Tony Scheivert, Township Manager
cc:	Gwen Jonik, Township Secretary Kristin S. Camp, Esquire
From:	Aristidis W. Christakis, Esquire
Date:	May 11, 2021
Subject:	Intermunicipal Liquor License Transfer Application for Garage Ventures, Inc.

On April 28, 2021, Garage Ventures, Inc. (“Applicant”) emailed Gwen Jonik, Township Secretary, to provide a draft of a Resolution effectuating the Board’s approval for an intermunicipal transfer of a restaurant liquor license to be used at the Epicurean Garage, 570 Simpson Drive. Because of the posture of the application, I thought it would be helpful to provide this Memorandum to the Board to explain the law and procedure.

Deadlines

Important Note: A “request for approval” of an intermunicipal transfer was received by the Township on April 28, 2021, therefore, the Board’s (45-day) **deadline for rendering decision is Friday, June 11, 2021**. In the event that the Board fails to render its decision by that date, the application will be deemed approved.

The Board has scheduled a hearing in this matter for June 8, 2021 at 4:00pm. I attach to this Memorandum a draft of the public advertisement for that hearing.

The 45-day deadline above is for rendering the decision, **not** commencing the hearing. This deadline can be extended by the Board for up to an additional sixty (60) days by sending the applicant written notice of such extension before June 11, 2021. So, if the hearing scheduled for June 8 is to be postponed or continued, the Township would need to provide this notice to the Applicant, in writing.

Statutory Introduction & History

The Pennsylvania Liquor Code governs liquor licenses in the Commonwealth, including requests for the intermunicipal transfer of liquor licenses. Such regulation is expressly set forth in Section 4-461(b.3) of the Pennsylvania Liquor Code, 47 P.S. § 4-461(b.3)).

The Liquor Code provides that when the number of restaurant or eating place liquor licenses exceeds one license per three thousand inhabitants in a municipality, the transfer must first be approved by the receiving municipal governing body. Section 4-461(b.3) states in pertinent part:

Upon request for approval of an intermunicipal transfer of a license or issuance of an economic development license by an applicant, at least one public hearing shall be held by the municipal governing body for the purpose of receiving comments and recommendations of interested individuals residing within the municipality concerning the applicant's intent to transfer a license into the municipality....The municipal body shall, within forty-five days of a request for approval, render a decision by ordinance or resolution to approve or disapprove the applicant's request for an intermunicipal transfer of a license....The municipality may approve the request. A decision by the governing body of the municipality to deny the request may not be appealed....Failure by the governing body of the municipality to render a decision within forty-five days of the applicant's request for approval shall be deemed an approval of the application in terms as presented unless the governing body has notified the applicant in writing of their election for an extension of time not to exceed sixty days. Failure of the governing body of the municipality to render a decision within the extended time period shall be deemed an approval of the application in terms as presented.

47 P.S. § 4-461(b.3) (*emphasis added*).

Hearing Procedures & Requirements

The Township must follow statutorily-prescribed measures for any such application, which afford the applicant his or her right to due process under the law. The Board should follow the following procedures when processing an intermunicipal liquor license transfer application:

- The applicant should have an opportunity to present their application and corresponding plans at a publicly-advertised hearing to the Board and those in attendance;
 - “Public Notice” for such hearing is defined in the Liquor Code as “notice published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and the place of the hearing and the particular matter to be considered at the hearing. The first publication shall not be more than 30 days, and the second publication shall not be less than seven days, from the date of the hearing.” 47 Pa. Stat. Ann. § 1-102.
 - Though a court reporter is not required under the law, it is recommended to have an accurate transcript in case of appeal;
- During the hearing, the Board should receive comments and recommendations of interested individuals residing within the municipality concerning the applicant's intent to transfer a liquor license into Upper Uwchlan Township;
 - The term “interested individuals” is not defined. Consequently, all Township residents wishing to comment on the application should be given that opportunity.
- After the hearing is closed, the Township, during its regular meeting, may vote to approve or deny the application for the intermunicipal transfer;

- The decision rendered by the Board for approval or denial of the application shall be adopted by resolution.
- The Board must render a decision within forty-five (45) days of the receipt of the application. However, if the Board notifies an applicant in writing within that forty-five (45) day timeframe of its election to extend the time for the decision, the Board may grant itself an extension of up to sixty (60) days of the date of written notification.
- Failure to render a decision within the timeframe established in the Act constitutes a deemed approval of the application in the terms presented by the applicant.

Standards for Approval/Denial

Prior to 2000, intermunicipal transfers of retail liquor licenses were prohibited. In 2000, the Pennsylvania Legislature amended the Liquor Code to permit retail liquor licenses of restaurant and eatery establishments to transfer those licenses into municipalities within the same county, provided that the governing body of the receiving municipality approved the transfer. The 2000 change to the Liquor Code created Section (b.3), which *originally* provided (in part), that a municipality “must approve the request unless it finds that doing so would adversely affect the welfare, health, peace and morals of the municipality or its residents.” And that “a decision by the governing body of the municipality to deny the request may be appealed to the court of common pleas in the county in which the municipality is located.” 47 P.S. § 4-461(b.3) (effective December 20, 2000 through February 20, 2006).

In 2006, Section 4-461(b.3) was further amended and currently provides that the governing body of the municipality “may approve the request,” and that “a decision of the governing body of the municipality to deny the request may not be appealed.” 47 P.S. § 4-461(b.3) (effective February 21, 2006 through the present day).

The Liquor Code is unclear as to the effect of the amendment to the Liquor Code and the amount of discretion that a municipality has when ruling on intermunicipal liquor license transfer requests. The Commonwealth Court, however, has provided guidance on the issue of whether a municipality can outright deny the transfer without any rationale or basis for its decision. In the case of *Giant Food Stores v. Penn Township*, the Commonwealth Court held that the applicant, Giant, had a right to appeal a denial by the municipality despite the language in the Liquor Code that suggests that no appeal exists. The Court agreed with Giant that the Township's decision to deny the intermunicipal transfer is an “adjudication” as such term is defined in the Local Agency Law, and that as such, the applicant has the right to appeal the agency's decision to the Court of Common Pleas under such law, 2 Pa.C.S. §§ 751-52.

In the upcoming hearing for an intermunicipal transfer of a liquor license, the Board would only have the right to deny approval of the transfer if there is substantial evidence presented that approval of the license would be harmful to the welfare, health, peace and morals of the municipality and its residents. The Board should be aware, however, that this is a heavy burden as the Commonwealth Court has held that the mere presence of a liquor license is not ordinarily detrimental to the welfare, health and morals of the inhabitants of the neighborhood. We caution the Board that in order to deny the application, there must be substantial evidence presented as to how approving the intermunicipal transfer would harm the public health, safety, and welfare.

If the Board wants to discuss this Memorandum and the law on intermunicipal transfers in advance of the hearing, this can be done in an executive session held before the hearing.



UPPER UWCHLAN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA
RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF SUPERVISORS OF UPPER
UWCHLAN TOWNSHIP, COUNTY OF CHESTER,
COMMONWEALTH OF PENNSYLVANIA, APPROVING THE
TRANSFER OF RESTAURANT LIQUOR LICENSE NO. R-18869
INTO UPPER UWCHLAN TOWNSHIP FROM MALVERN

WHEREAS, the Pennsylvania Liquor Code, 47 P.S. § 1-101 et seq. (“Liquor Code”) authorizes the Pennsylvania Liquor Control Board to approve, in certain instances, the transfer of restaurant liquor licenses as provided for in Section 461 of the Liquor Code if, as in Upper Uwchlan Township, sales of liquor and malt or brewed beverages are legal in the municipality receiving the license; and

WHEREAS, subsection (b.3) of Section 461 of the Liquor Code requires the applicant to obtain from the receiving municipality a resolution approving the applicant’s request for an intermunicipal transfer of a liquor license prior to an applicant’s submission of an application to the Pennsylvania Liquor Control board; and

WHEREAS, that subsection also mandates that, prior to adoption of such resolution, at least one hearing be held for the purpose of receiving comments and recommendations from interested individuals residing within the receiving municipality concerning the intent to transfer the license into the municipality; and

WHEREAS, an application for transfer filed under the Liquor Code must contain a copy of the resolution adopted by the municipality approving the transfer of a restaurant liquor license into the municipality; and

WHEREAS, Garage Ventures, Inc. (“Applicant”) (t/a “Epicurean Garage”), on April 28, 2021, requested the approval of the Upper Uwchlan Township Board of Supervisors for the proposed transfer of Pennsylvania restaurant liquor license No. R-18869 (“License”) to restaurant facilities within the Township of Upper Uwchlan to be located at 570 Simpson Drive, Upper Uwchlan, Chester County Pennsylvania with the understanding that said transfer must be approved at a later date by the Pennsylvania Liquor Control Board; and

WHEREAS, on June 8, 2021, in accordance with Section 461(b.3) of the Liquor Code, the Board of Supervisors held a public hearing on the proposed transfer of the License; and

WHEREAS, the purpose of this Resolution is to comply with Section 461(b.3) of the Liquor Code.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of the Township of Upper Uwchlan APPROVES by adoption of this Resolution, the proposed transfer of the License into the Township of Upper Uwchlan by Applicant and

BE IT FURTHER RESOLVED, that transfer, designations and assignments of licenses hereunder are subject to approval by the Pennsylvania Liquor Control Board.

Duly adopted this 8th day of June, 2021, by the Board of Supervisors of the Upper Uwchlan Township, Chester County, Pennsylvania, in lawful session duly assembled.

UPPER UWCHLAN TOWNSHIP
BOARD OF SUPERVISORS

Sandra M. D'Amico, Chair

Attest:

Jamie W. Goncharoff, Vice-Chair

Gwen A. Jonik, Township Secretary

Jennifer F. Baxter, Member

UPPER UWCHLAN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWNSHIP OF UPPER UWCHLAN, CHESTER COUNTY, PENNSYLVANIA, AMENDING CHAPTER 200 OF THE UPPER UWCHLAN TOWNSHIP CODE, AS AMENDED, ENTITLED "ZONING", AMENDING SECTION 200-7 TO ADD A DEFINITION FOR "INERT"; SECTIONS 200-49.K AND 200-49.M(1) TITLED, "USE REGULATIONS FOR THE PI PLANNED INDUSTRIAL/OFFICE DISTRICT; SECTION 200-49.O TO ADD A NEW SUBSECTION 3 THERETO TO PERMIT ABOVEGROUND STORAGE TANKS AS AN ACCESSORY USE IN THE PI-PLANNED INDUSTRIAL/OFFICE DISTRICT; SECTION 200-80.C(2)(c) TO ADD REGULATIONS FOR THE STORAGE OF FUEL AND OTHER EXPLOSIVE MATERIAL; SECTION 200-80 TO ADD A NEW SUBSECTION E TO PROVIDE ADDITIONAL STANDARDS APPLICABLE TO ABOVEGROUND STORAGE TANKS IN THE PI-PLANNED INDUSTRIAL/OFFICE DISTRICT; AND SECTION 200-90.A(5) TO PERMIT ABOVEGROUND STORAGE TANKS AS AN ACCESSORY USE IN THE PI PLANNED INDUSTRIAL/OFFICE DISTRICT.

NOW THEREFORE BE IT ENACTED AND ORDAINED by the Board of Supervisors of Upper Uwchlan Township, Chester County, Pennsylvania, that Chapter 200 of the Upper Uwchlan Zoning Code, entitled, "Zoning", as amended, shall be amended as follows:

SECTION 1. Section 200-7 shall be amended to add the following definition:

INERT-a nonreactive, nonflammable, noncorrosive material (whether gas, liquid or solid) such as but not limited to argon, helium, krypton, neon, nitrogen and xenon.

SECTION 2. Section 200-49.K shall be amended as follows:

- "K. Wholesaling, warehousing and distributing provided there shall be no exterior evidence of such, and, further, no above ground storage tanks shall be allowed on the exterior of the building except as permitted by §200-49.O(3)."

SECTION 3. Section 200-49.M(1) shall be amended as follows:

- "(M)(1). Manufacturing and processing provided there shall be no raw materials or finished products permitted on the exterior of the building, and, further, no above ground storage tanks shall be allowed on the exterior of the building except as permitted by §200-49.O(3)."

SECTION 4. Section 200-49.0 shall be amended by adding a new subsection (3) which shall provide as follows:

"(3) Aboveground storage tanks for storage of inert gases, non-toxic liquids and non-toxic Of-solids, water and brine; provided, however, that the storage of any materials and/or substances that meet the definition of a Regulated Substance as that term is defined in 25 Pa. Code Chapter 245.1 shall be prohibited"

SECTION 5. Section 200-80.C(2)(c) shall be amended to state as follows:

"(c) For any new aboveground storage tanks that may be permitted under Subsection C(2)(b), the following shall apply:

- [1] In addition to any state and/or federal regulatory requirements, The tank installation shall be designed and its construction supervised by a registered professional engineer and the final installation approved by said engineer. The applicant shall file, with the Township and at the time of application for a building permit or zoning permit, as may be applicable, a site plan and details for the tank, including a narrative which describes why a particular site was chosen for the proposed aboveground storage tank, all prepared by a professional engineer. The applicant shall also file a written plan which establishes the safety measures that shall be followed as well as tank operation, inspection frequency and test procedure(s), appropriate coding or labeling of pipes and tanks. Any additional permits or permit applications ~~jeff~~ required by state or federal agencies for the construction of the tank shall also be submitted to the Township at the same time.
- [2] No commercial-3 aboveground storage tank shall be constructed closer than 50 feet to any property or right-of-way line, except when the lot with the storage tank abuts a lot zoned residential or with a residential use, in which case the setback shall be a minimum of 100 feet.
- [3] All commercial-3 above-ground storage tanks shall be either attached to or enclosed within an area that abuts a side or rear of the principal building located on the property.
- [4] All -aboveground storage tanks shall have a capacity not to exceed 10,000 gallons per tank, with an aggregate storage capacity of all aboveground storage tanks not to exceed 30,000 gallons.
- [5] the method of storage of fuel and other solids, liquids, and gases. If materials and/or substances shall conform to all applicable federal, state, and local regulations, including, but not limited to, the regulations of the Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, the Township fire Code and the Pennsylvania fire-Marshal Department of Labor and Industry, the

Commented [BTS1]: The definition of a Regulated Substance in 25 Pa. Code Chapter 245.1 is quite expansive, but does not include any substances which the PA Department of Environmental Protection deems to not be a threat to human health or the environment. Prohibiting the storage of these substances should ensure that any materials stored are harmless. The material proposed to be stored by the tenants do not fall under the definition of a Regulated Substance.

Commented [BTS2]: There is no regulatory basis for selecting these specific capacities, I'm just trying to avoid the situation wherein a tenant can install a large tank farm.

Pennsylvania Fire Marshal, and the Township, and including, without limitation, the Pennsylvania Uniform Construction Code, 34 Pa. Code § 401 et seq., the International Fire Code incorporated therein, and Chapter 71 of the Upper Uwchlan Township Code of Ordinances, Construction Codes, Uniform ..--

Commented [LA3]: Consider also reference to Sections VIII and X of the ASME Boiler and Pressure Vessel Code, which are incorporated by reference in Section 3a.71 of the L&I regs?

[§a] Copies of all current federal or state permits that are required for the aboveground storage tanks shall be on file with the Township Zoning Officer.

[Ze] ARy-Material Safety Data Sheet ~~that must be filed with federal or state agencies for the materials stored in the tanks~~ shall be on file with the Township Zoning Officer.

[8] ~~The facility owner and/or operator is~~ shall -responsible to- assure that a visual inspection of the tank(s) is performed at least once every 72 hours and shall document that these inspections occur.

[+] At least annually, the tanks shall be inspected by a registered professional engineer ~~J-the manufacturer of the tanks or the supplier of the material in the tank~~ and the inspector shall submit a written report to the Township which identifies the storage locations, waste locations and materials and items stored in the storage tanks. If necessary, the Township shall send this report to the Emergency Management Coordinator of the Township, the Zoning Officer and the Fire Chiefs of the first due emergency response organizations as identified by the Township. If requested by the Township or emergency response organizations, the owner shall provide initial and annual training to all first responders so identified and designated by the Township."

Commented [BTS4]: I suggest deleting this language to avoid the situation wherein the manufacturer or supplier sends someone that is not qualified to inspect the tanks. The manufacturer/supplier can still send a professional engineer if they have one on staff.

SECTION 6. Section 200-80 shall be amended by adding a new subsection E which shall provide as follows:

"E. Aboveground storage tanks in the PI District.

(1) Aboveground storage tanks for storage of inert gases, non-toxic liquids and non-toxic Of-solids, water and -brine, subject to the prohibition on storage of any materials and/or substances that meet the definition of a Regulated Substance in 25 Pa. Code Chapter 245.1 as discussed in Section 4. shall be enclosed with a fence or wall compatible with the architectural style employed on the lot in order to completely screen the aboveground storage tanks from view of any public right-of-way and any adjacent uses. The fence or wall shall not exceed the lesser of 20 feet in height or the height of the principal building on the lot. Fences and walls shall be erected in accordance with § 200-88 of this chapter, except that the requirements of this subsection shall apply to fences and walls installed to screen aboveground storage tanks in the PI District in lieu of Section 200-88.A.

(2) When the lot containing the aboveground storage tank abuts a lot zoned residential or a lot containing a residential use, the aboveground storage tank shall be set back a minimum of 200 feet from the lot line.

Q} When the lot containing the aboveground storage tank abuts a lot zoned residential or a lot containing a residential use, the aboveground storage tank shall not be located on any side of the building that faces the lot zoned residential or a lot containing a residential use.

(4) All aboveground storage tanks shall have a capacity not to exceed 10,000 gallons per tank, with an aggregate storage capacity of all aboveground storage tanks not to exceed 30,000 gallons.

f41(5) In addition to any state and/or federal requirements, the tank installation shall be designed and its construction supervised by a registered professional engineer and the final installation approved by said engineer. The applicant shall file, with the Township and at the time of application for a building permit or zoning permit, as may be applicable, a site plan and details for the tank, including a narrative which describes why a particular site was chosen for the proposed aboveground storage tank, all prepared by a professional engineer. The applicant shall also file a written plan which establishes the safety measures that shall be followed as well as tank operation, inspection frequency and test procedure(s), appropriate coding or labeling of pipes and tanks. Any additional permits or permit applications required by state or federal agencies for the construction of the tank shall also be submitted to the Township at the same time.

!§2__ The aboveground storage tank shall be either attached to or enclosed within an area that abuts a side or rear of the principal building located on the property.

filThe method of storage shall conform to all applicable federal, state, and local regulations, including, but not limited to, the regulations of the Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, ~~tAe Township Fire Code and the~~ Pennsylvania Department of Labor and Industry, the Pennsylvania Fire Marshal, and the Township, and including, without limitation, the Pennsylvania Uniform Construction Code, 34 P.s. § 401 et seq., the International Fire Code incorporated therein, and Chapter 71 of the Upper Uwchlan Township Code of Ordinances, Construction Codes-Uniform.
Fire-Marshall.

te)@L__Copies of all current federal or state permits that are required for the aboveground storage tanks shall be on file with the Township Zoning Officer.

{fil __Aay-Safety Data Sheet that ~~must be filed with federal or state agencies for~~ the materials stored in the tanks shall be on file with the Township Zoning Officer.

~~(7)~~(10) The facility owner and/or operator ~~is~~ shall ~~be responsible to assure that a visual inspection of the tank(s) is performed at least once every 72 hours and shall document that these inspections occur.~~

~~(8)~~(11) At least annually, the tanks shall be inspected by a registered professional engineer, ~~the manufacturer of the tanks or the supplier of the material in the tanks~~ and the inspector shall submit a written report to the Township which identifies the storage locations, waste locations and materials and items stored in the storage tanks. If necessary, the Township shall send this report to the Emergency Management Coordinator of the Township, the Zoning Officer and the Fire Chiefs of the first due emergency response organizations as identified by the Township. If requested by the Township or emergency response organizations, the owner shall provide initial and annual training to all first responders so identified and designated by the Township."

SECTION 7. Section 200-90.A(5) shall be amended as follows:

"(5) Aboveground storage tanks are allowed only in the C-3 Highway Commercial Zoning District, the LI Limited Industrial District or as an accessory use in the PI Planned Industrial/Office District as established by this chapter and in all cases, shall comply with all applicable provisions of § 200-80 of this chapter."

SECTION 8. Severability. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts hereof. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 9. Repealer. All ordinances or parts of ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 10. Effective Date. This Ordinance shall become effective in five days from the date of adoption.

ENACTED AND ORDAINED this ____ day of _____, 2021.

ATTEST:

UPPER UWCHLAN TOWNSHIP
BOARD OF SUPERVISORS

Gwen A. Jonik, Secretary

Sandy M. D'Amico, Chair

Jamie W. Goncharoff, Vice-Chair

Jenn F. Baxter, Member

**UPPER UWCHLAN TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWNSHIP OF UPPER UWCHLAN, CHESTER COUNTY, PENNSYLVANIA, AMENDING CHAPTER 200 OF THE UPPER UWCHLAN TOWNSHIP CODE, AS AMENDED, ENTITLED “ZONING”, AMENDING SECTION 200-7 TO ADD A DEFINITION FOR “INERT”; SECTIONS 200-49.K AND 200-49.M(1) TITLED, “USE REGULATIONS FOR THE PI PLANNED INDUSTRIAL/OFFICE DISTRICT; SECTION 200-49.O TO ADD A NEW SUBSECTION 3 THERETO TO PERMIT ABOVEGROUND STORAGE TANKS AS AN ACCESSORY USE IN THE PI-PLANNED INDUSTRIAL/OFFICE DISTRICT; SECTION 200-80.C(2)(c) TO ADD REGULATIONS FOR THE STORAGE OF FUEL AND OTHER EXPLOSIVE MATERIAL; SECTION 200-80 TO ADD A NEW SUBSECTION E TO PROVIDE ADDITIONAL STANDARDS APPLICABLE TO ABOVEGROUND STORAGE TANKS IN THE PI-PLANNED INDUSTRIAL/OFFICE DISTRICT; AND SECTION 200-90.A(5) TO PERMIT ABOVEGROUND STORAGE TANKS AS AN ACCESSORY USE IN THE PI PLANNED INDUSTRIAL/OFFICE DISTRICT.

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SECTION 2. Section 200-49.K shall be amended as follows:

“K. Wholesaling, warehousing and distributing provided there shall be no exterior evidence of such, and, further, no above ground storage tanks shall be allowed on the exterior of the building except as permitted by §200-49.O(3).”

SECTION 3. Section 200-49.M(1) shall be amended as follows:

“(M)(1). Manufacturing and processing provided there shall be no raw materials or finished products permitted on the exterior of the building, and, further, no above ground storage tanks shall be allowed on the exterior of the building except as permitted by §200-49.O(3).”

SECTION 4. Section 200-49.O shall be amended by adding a new subsection (3) which shall provide as follows:

“(3) Aboveground storage tanks for storage of inert gases, non-toxic liquids and non-toxic solids, water and brine, provided, however, that the storage of any materials and/or substances that meet the definition of a Regulated Substance as that term is defined in 25 Pa. Code Chapter 245.1 shall be prohibited”

SECTION 5. Section 200-80.C(2)(c) shall be amended to state as follows:

“(c) For any new aboveground storage tanks that may be permitted under Subsection C(2)(b), the following shall apply:

- [1] In addition to any state and/or federal regulatory requirements, the tank installation shall be designed and its construction supervised by a registered professional engineer and the final installation approved by said engineer. The applicant shall file with the Township and at the time of application for a building permit or zoning permit, as may be applicable, a site plan and details for the tank, including a narrative which describes why a particular site was chosen for the proposed aboveground storage tank, all prepared by a professional engineer. The applicant shall also file a written plan which establishes the safety measures that shall be followed as well as tank operation, inspection frequency and test procedure(s), appropriate coding or labeling of pipes and tanks. Any additional permits or permit applications required by state or federal agencies for the construction of the tank shall also be submitted to the Township at the same time.
- [2] No aboveground storage tanks shall be constructed closer than 50 feet to any property or right-of-way line, except when the lot with the storage tank abuts a lot zoned residential or with a residential use, in which case the setback shall be a minimum of 100 feet.
- [3] All aboveground storage tanks shall be either attached to or enclosed within an area that abuts a side or rear of the principal building located on the property.
- [4] The method of storage of any materials and/or substances shall conform to all applicable federal, state, and local regulations, including, but not limited to, the regulations of the U.S. Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, the Pennsylvania Department of Labor and Industry, the Pennsylvania Fire Marshal, and the Township, and including, without limitation, the Pennsylvania Uniform Construction Code, 34 Pa. Code § 401 *et seq.*, the International Fire Code incorporated therein, and Chapter 71 of the Upper Uwchlan Township Code of Ordinances.

- [5] Copies of all current federal or state permits that are required for the aboveground storage tanks shall be on file with the Township Zoning Officer.
- [6] Material Safety Data Sheets for the materials stored in the tanks shall be on file with the Township Zoning Officer.
- [7] The facility owner and/or operator shall assure that a visual inspection of the tank(s) is performed at least once every 72 hours and shall document that these inspections occur.
- [8] At least annually, the tanks shall be inspected by a registered professional engineer. The inspector shall submit a written report to the Township which identifies the storage locations, waste locations and materials and items stored in the storage tanks. If necessary, the Township shall send this report to the Emergency Management Coordinator of the Township, the Zoning Officer and the Fire Chiefs of the first due emergency response organizations as identified by the Township. If requested by the Township or emergency response organizations, the owner shall provide initial and annual training to all first responders so identified and designated by the Township."

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"E. Aboveground storage tanks in the PI District.

- (1) Aboveground storage tanks for storage of inert gases, non-toxic liquids and non-toxic solids, water and brine, subject to the prohibition on storage of any materials and/or substances that meet the definition of a Regulated Substance in 25 Pa. Code Chapter 245.1, shall be enclosed with a fence or wall compatible with the architectural style employed on the lot in order to completely screen the aboveground storage tanks from view of any public right-of-way and any adjacent uses. The fence or wall shall not exceed the lesser of 20 feet in height or the height of the principal building on the lot. Fences and walls shall be erected in accordance with § 200-88 of this chapter, except that the requirements of this subsection shall apply to fences and walls installed to screen aboveground storage tanks in the PI District in lieu of Section 200-88.A.
- (2) When the lot containing the aboveground storage tank abuts a lot zoned residential or a lot containing a residential use, the aboveground storage tank shall be set back a minimum of 200 feet from the lot line.
- (3) When the lot containing the aboveground storage tank abuts a lot zoned residential or a lot containing a residential use, the aboveground storage tank shall not be located on any side of the building that faces the lot zoned residential or a lot containing a residential use.

- (4) All aboveground storage tanks shall have a capacity not to exceed 5,000 gallons per tank, with no more than three aboveground storage tanks per property.
- (5) In addition to any state and/or federal requirements, the tank installation shall be designed and its construction supervised by a registered professional engineer and the final installation approved by said engineer. The applicant shall file, with the Township and at the time of application for a building permit or zoning permit, as may be applicable, a site plan and details for the tank, including a narrative which describes why a particular site was chosen for the proposed aboveground storage tank, all prepared by a professional engineer. The applicant shall also file a written plan which establishes the safety measures that shall be followed as well as tank operation, inspection frequency and test procedure(s), appropriate coding or labeling of pipes and tanks. Any additional permits or permit applications required by state or federal agencies for the construction of the tank shall also be submitted to the Township at the same time.
- (6) The aboveground storage tank shall be either attached to or enclosed within an area that abuts a side or rear of the principal building located on the property.
- (7) The method of storage shall conform to all applicable federal, state, and local regulations, including, but not limited to, the regulations of the Environmental Protection Agency, the Pennsylvania Department of Environmental Protection, the Pennsylvania Department of Labor and Industry, the Pennsylvania Fire Marshal, and the Township, and including, without limitation, the Pennsylvania Uniform Construction Code, 34 Pa. § 401 *et seq.*, the International Fire Code incorporated therein, and Chapter 71 of the Upper Uwchlan Township Code of Ordinances.
- (8) Copies of all current federal or state permits that are required for the aboveground storage tanks shall be on file with the Township Zoning Officer.
- (9) Safety Data Sheets for the materials stored in the tanks shall be on file with the Township Zoning Officer.
- (10) The facility owner and/or operator shall assure that a visual inspection of the tank(s) is performed at least once every 72 hours and shall document that these inspections occur.
- (11) At least annually, the tanks shall be inspected by a registered professional engineer and the inspector shall submit a written report to the Township which identifies the storage locations, waste locations and materials and items stored in the storage tanks. If necessary, the Township shall send this report to the Emergency Management Coordinator of the Township, the Zoning Officer and the Fire Chiefs of the first due emergency response organizations as identified by the Township. If requested by the

Township or emergency response organizations, the owner shall provide initial and annual training to all first responders so identified and designated by the Township.”

SECTION 7. Section 200-90.A(5) shall be amended as follows:

“(5) Aboveground storage tanks are allowed only in the C-3 Highway Commercial Zoning District, the LI Limited Industrial District or as an accessory use in the PI Planned Industrial/Office District as established by this chapter and in all cases, shall comply with all applicable provisions of § 200-80 of this chapter.”

SECTION 8. Severability. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts hereof. It is hereby declared as the intent of the Board of Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 9. Repealer. All ordinances or parts of ordinances conflicting with any provision of this Ordinance are hereby repealed insofar as the same affects this Ordinance.

SECTION 10. Effective Date. This Ordinance shall become effective in five days from the date of adoption.

ENACTED AND ORDAINED this ____ day of _____, 2021.

ATTEST:

**UPPER UWCHLAN TOWNSHIP
BOARD OF SUPERVISORS**

Gwen A. Jonik, Secretary

Sandy M. D’Amico, Chair

Jamie W. Goncharoff, Vice-Chair

Jenn F. Baxter, Member



UPPER UWCHLAN TOWNSHIP
140 Pottstown Pike
Chester Springs, PA 19425
610-458-9400 Fax 610-458-0307

RECEIVED

APR 12 2021

CONDITIONAL USE APPLICATION

UPPER UWCHLAN TWP
ADMINISTRATIVE OFFICES

Tax Parcel Number: 32-3 PARCEL 77.1 Date: 4/6/2021
Name of Applicant: BARN ON MOORE, LLC. / Brook J. Gulespe, President
Address: 261 MOORE ROAD, DOWNINGTOWN, PA 19335
Telephone: _____ Email: _____

Owner of Parcel: BARN ON MOORE, LLC.
Address / Location of Parcel: 260 MOORE ROAD, DOWNINGTOWN, PA 19335
Zoning District: R2 Existing Use: AG
Article / Section Authorizing Conditional Use: _____
Description of Proposed Conditional Use: _____

This Application shall be accompanied by:

1. A fee of \$500.00 for Non-Commercial or \$1,000.00 for Commercial/Industrial;
 2. Twenty (20) copies of:
 - parcel plot plans (half of which can be of reduced size, i.e. 11 x 17),
 - impact statements (if applicable pursuant to the Township's Zoning Ordinance §200-83),
 - and any other information pursuant to Zoning Ordinance §200-116, §200-117 (Conditional Uses, Conditional Use Standards).
- The Applicant will be responsible for reimbursing the Township for Consultants' Fees and Legal Fees, and if additional Hearings are necessary, a Fee will be charged for each Additional Hearing:
Non-Commercial \$250.00/Hearing; Commercial/Industrial \$500.00/Hearing

I hereby depose and say that all of the above statements, and the statements contained in any papers submitted herewith, are true to the best of my knowledge and belief.

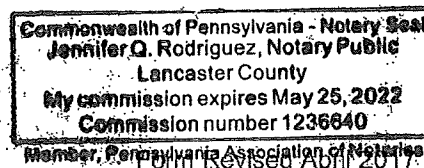
Brook J. Gulespe
Printed Name of Applicant

Brook J. Gulespe, President
Signature of Applicant
Brook J. Gulespe, President

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CHESTER

Sworn to and subscribed before me this
12 day of April, 2021.

Jennifer Rodriguez
Notary Public



Barn On Moore, LLC.
261 Moore Road
Dowington, PA 19335

Dear Board of Supervisors,

We are excited about the restoration of the historic barn located at 260 Moore Road, Downingtown, PA 19335 in Upper Uwchlan Township.

Barn On Moore, LLC ("BARN") is located in a R-2 Residential Zoning District.

Objectives:

1. Restoration
 - a. Restore the 225-year-old, historic structure and return the barn to its original beauty including a new roof and structural improvements.
 - b. Meet zoning rules associated with a commercial structure.
2. Usage:
 - a. Section 200.17.B: township zoning ordinance - adaptive re-use consideration given to a historical structure as a conditional use as outlined in Section 200-72.1- use not permitted by-right in the district.
 - b. Application enclosed
 - c. With granted variance
 - Lower level would house 3 small offices which would include a common reception area, a kitchenette and an ADA bathroom
 - Upper level would house coffee shop and space for private gatherings
3. Submission:
 - a. Rough site plan
 - b. Complete architectural drawings of the outside and the lower- and upper-levels layouts.
 - c. Structural drawings are available upon request
 - d. Pictures showing ongoing repointing work to stone walls
4. Permit:
 - a. Demolition of fore-bay
5. Improvements:
 - a. Necessary structural improvements are required for usage; 100 lb/sf required and 2-hour rated barrier will be added between upper and lower level
 - b. Meeting fire codes and zoning ordinance
 - c. Install all new electrical and plumbing
 - d. Geothermal HVAC
 - e. Drill new well
 - f. Septic
 - Easement provided adjacent to property
 - A new system is planned and we have an Act 537 planning approval for 500 gpd
 - Currently no septic exists

- g. Parking area includes handicap and ADA access to both levels per site drawing
- 6. Spaces:
 - a. Lower level estimated 2,500 SF (see attached drawings)
 - A unique Chester County opportunity
 - Office space ranging from 345 SF to 470 SF
 - 240 SF reception area
 - Kitchenette
 - ADA bathroom
 - Hallways
 - Additional 470 SF structure with lounge and full bathroom
 - b. Upper level estimated 3,200 SF (see attached drawings)
 - Coffee shop
 - Art studio
 - Private functions
 - Catered events
 - 2 ADA bathrooms
 - Kitchen area
 - Serving area
- 7. Impact
 - a. Roadway
 - Little, if any change, to current activity
- 8. Parking lot:
 - a. Use StandartPark EasyPave with grass except for the handicap parking spaces and driveway between the parking area and Moore Road.
 - b. Easy Pave supports up to 80,000 lbs., making it adequate for fire trucks and other large vehicles.
 - c. Significantly reducing the impervious coverage
 - d. Minimal change in historic value
- 9. Lighting:
 - a. Low level LED having minimal impact on neighbors
 - b. Township approved
- 10. Fire Coverage:
 - a. There are 3 local fire stations within 10 minutes of the barn
 - b. 2-hour rated barrier will be added between upper and lower level
 - c. No sprinkler system
- 11. Noise:
 - a. 24" stone walls
 - b. Roof will have 9" of insulation
 - c. All new windows

We look forward to working with the township to make the restoration of the Barn On Moore successful and a welcome addition to the township and our neighbors.

Sincerely,

Brook J. Gillespie

President

Barn On Moore, LLC.







LAW OFFICES
DAVID T. BOLGER

965 BURDETTE DRIVE
DOWNTOWN, PA 19335
(610) 304-7398
EMAIL: DBOLGER@COMCAST.NET

May 3, 2021

Via Email and First Class Mail

Gwen Jonik, Township Secretary
Upper Uwchlan Township
140 Pottstown Pike
Chester Springs, PA 19425

**Subject: Barn At Moore, LLC, Conditional Use Application
Request for Relief from Impact Statements**

Dear Ms. Jonik:

Please accept this letter submitted on behalf of my client, Barn at Moore, LLC, in connection with our request for relief from the requirement to submit various impact statements associated with the Conditional Use Application for the historical restoration and adaptive re-use of the property located at 260 Moore Road, Downingtown, PA ("Project").

Proposed Use of the Property

As reflected on the site plan prepared for the Project by E.B. Walsh & Associates, Inc. (attached as Exhibit "A"), the site is a 1.67 acre parcel, with a barn structure originally built in or about 1795. The proposed adaptive re-use of the barn includes three (3) separate single-person offices on the lower level, with a common restroom/bath area, vestibule, reception and lounge areas, and kitchenette. These spaces are intended to attract individual commercial tenants who are either small business owners or corporate employees working remotely who desire a local office that is outside their personal residence, and offers the amenities of commercial-grade telecommunication technology and reception areas for occasional business visitors. The anticipated hours of occupation and use are Monday-Friday during normal business hours (9:00 am – 5:00 pm), with limited weekend activity.

The upper level is planned to be a coffee bar with indoor seating for up to 20 guests that is open to the public, with operating hours from 7:00 a.m. to 1:00 p.m. This space is designed to attract and cultivate a local community clientele to congregate over morning refreshments and fresh baked goods, in a familial and relaxed atmosphere. There will be no drive-through, curbside or delivery services offered – those commuter-focused offerings are readily available in local establishments such as Wawa and Dunkin Donuts. As such, the incoming and outbound traffic will be much less frequent and lower in overall numbers than enterprises offering comparable food service activities.

The Barn at Moore is also open to considering having the coffee bar area available as a venue for local community-based organizations of ≤ 20 persons to host informal meetings in the evening hours, which would similarly generate minimal traffic counts and most often take place at non-peak traffic hours.

Zoning Requirements for Impact Statements

Under Article XIX, Chapter 200-117(I), applicants for conditional use approval are required to submit information that documents conformance to all requirements of Chapter 162-9(H), which includes a traffic impact study [§162-9(H)(2)], a recreational impact statement [§162-9(H)(3)] and a fiscal impact statement [§162-9(H)(4)]. The threshold criteria for when these impact studies/statements are required is "...when the land development is projected to generate 200 ADT (average daily trips), or 20 or more peak-hour trips..." See §162-9(H)(1)(a).

It is respectfully submitted that based upon the proposed adaptive re-use for conditional use approval, the Barn at Moore will not generate anywhere near the traffic counts listed in the ordinance to implicate the requirement for the traffic, recreational or fiscal impact statements/studies. The lower level office spaces are anticipated to generate roughly 3 trips each morning and evening for those tenants commuting to/from the offices. Similarly, the coffee bar patrons will generate infrequent and intermittent trips based on the character and nature of services offered to the guests, and the patronage for this business is projected to develop on a gradual and incremental basis, with expected occupancy to be between 10-15 persons at any given time over a 6 hour operational period. Moreover, even if the coffee bar area is used for local community groups in the evenings, the added trips will be at off-peak hours and add less than 20 trips. For all these reasons, the cumulative traffic generated by daily operations will not approach the average daily trips or peak-hour trips necessary to require the traffic, recreation or fiscal impact statements/studies, and therefore these studies/statements are not required.

Chapter 162-9(H)(5) also requires a historic resources impact statement, based on the adaptive re-use proposed in the application. See §162-9(H)(5)(a)[2]. However, the Board of Supervisors has the inherent authority to modify the specific requirements of this subsection to the extent they are determined to be not applicable in the context of the land development application. §162-9(H)(5)(a). In this regard, the Barn at Moore respectfully submits that the requirement for a historic resources impact statement to be prepared by a "qualified professional in historic preservation, historical architecture, planning or related disciplines" with the contents outlined in subsections §162-9(H)(5)(c-d) is not justified based upon the limited scope of the Project. Rather, the Barn at Moore proposes to submit its preliminary architectural and associated plans to demonstrate its commitment to preserve and maintain the historical character and features of the restoration and improvements to the barn and appurtenant structures, as well to seek guidance and approval related to plans for interior finishes, lighting, signage, etc., to the Upper Uwchlan Historical Commission at its monthly meetings, to ensure the planned construction is consonant with the criteria and objectives of the Historical Commission.

Finally, the provisions of Chapter 162-9(D) also require a site analysis and impact plan, and many of the requirements in this section are already reflected in the site plan prepared by E.B. Walsh & Associates, Inc. What the Barn at Moore would propose is to include a separate detailed note on its site plan that tracks the specific subsections in §162-9(D)(1-2), and identifies any subparagraphs which are not applicable to this development plan. Further, the concerns implicated in the provisions of §162-9(D)(3-4) that require an evaluation of the potential adverse impacts on sensitive receptors in proximity to the Project are not present with this Project, since the nature and character of the limited office space and casual coffee bar are tailored to integrate with and complement the surrounding pastoral properties along Moore Road. For that reason, we would request that the Barn at Moore be relieved from having to conduct and furnish this study, under the Board of Supervisors' authority to modify the requirements of this section of the ordinance.

To summarize, the Barn at Moore LLC is seeking a recommendation from the Upper Uwchlan Township Planning Commission, and the endorsement/approval of the Upper Uwchlan Township Board of Supervisors, for the following relief in connection with its Conditional Use application:

1. That the traffic, recreational and fiscal impact statements/studies outlined in Chapter 162-9(H)(2-4) are not required due to the low traffic impact on the proposed adaptive re-use, as the development will not approach the 200 average daily trips or the 20 daily peak-hour trips identified as the threshold criteria for these studies.
2. That the historic resources impact statement required under Chapter 162-9(H)(5) be modified by the Board of Supervisors to provide relief from: (a) the requirements in §162-9(H)(5)(c) to have an impact statement prepared by a qualified professional in historic preservation, historical architecture, planning or related disciplines; and (b) the information content outlined in §162-9(H)(5)(d). As part of the modified requirements, the applicant would be required to provide preliminary plans to, and meet with, the Upper Uwchlan Historical Commission to obtain guidance concerning, and approval for, the elements of the planned architectural and aesthetic improvements in the planned development.
3. That the requirements for a site analysis and impact plan required by Chapter 162-9(D) be modified by the Board of Supervisors to (a) have the information outlined in §162-9(D)(1-2) identified and reflected in the site plans submitted for preliminary and final land development approval; and (b) provide relief from the requirements of §162-9(D)(3-4) related to identifying and evaluating the potential adverse impacts on sensitive receptors in proximity to the Project, as these concerns are not implicated by the scope, nature and character of the proposed adaptive re-use.

We very much appreciate the Township's review and consideration of these requests, and look forward to discussing them with the Planning Commission at the upcoming meeting.

Sincerely yours,

/s/

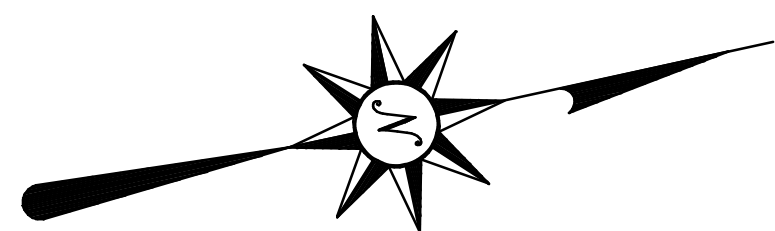
David T. Bolger

David T. Bolger

DTB/

Enclosures

cc: the Barn at Moore, LLC



REQUIRED SAFE SIGHT
DISTANCE = 440'
SAFE SIGHT DISTANCE
PROVIDED = 454'

REQUIRED SAFE SIGHT
DISTANCE = 350'
SAFE SIGHT DISTANCE
PROVIDED = SEE PROFILE

MOORE ROAD
N83°22'57"W
8.50'

SPEED LIMIT = 35 MPH

CARTWAY WIDTH
= 21 FT±

SOILS CLASSIFICATION

CpA COKEBURY SILT LOAM
0 TO 3 PERCENT SLOPES, HYDROLOGIC SOIL GROUP C

GdD GLADSTONE GRAVELLY LOAM
15 TO 25 PERCENT SLOPES, HYDROLOGIC SOIL GROUP A

PARKING REQUIREMENTS

OFFICE USE 2 SPACES/1,000 GFA
PROPOSED OFFICE = 2,992 SF = 6 REQUIRED SPACES
SPACES PROVIDED = 6

RESTAURANT USE REQUIRES 1 SP/50 SF PUBLIC USE AREA
OR 1 SP/2 SEATS + 1 SP/EMPLOYEE
PROPOSED COFFEE SHOP 24 SEATS+3 EMPLOYEES = 15 SPACES
SPACES PROVIDED = 15

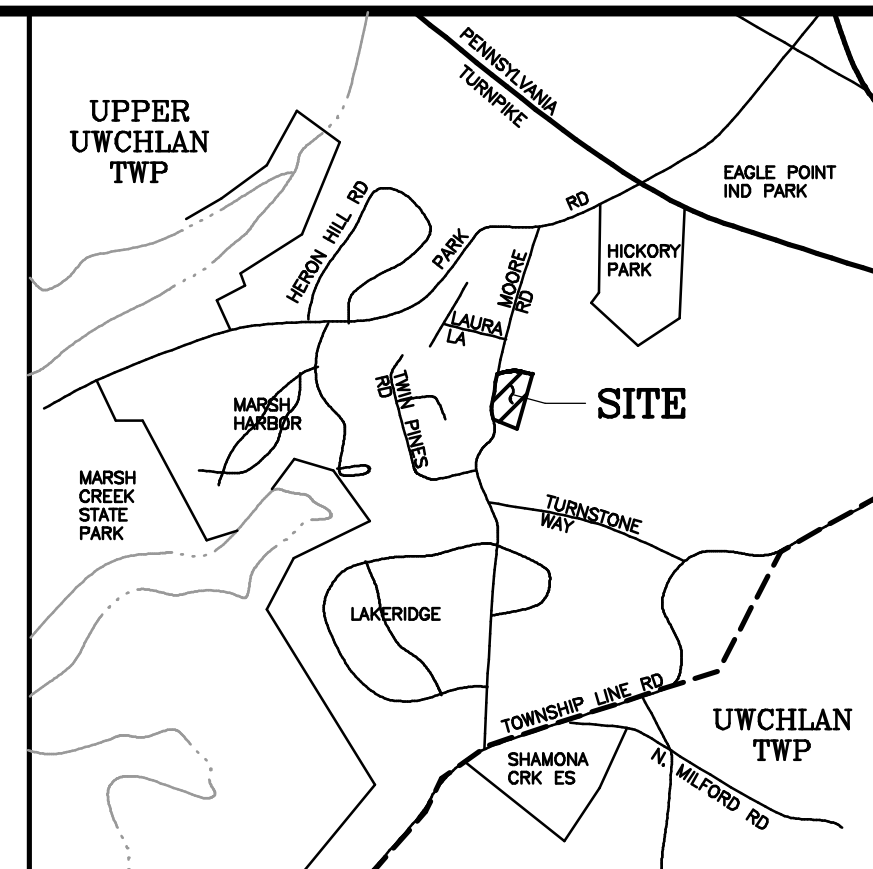
ZONING DATA

R-2 RESIDENTIAL ZONING DISTRICT

AREA AND BULK REQUIREMENTS		LOT 2
LOT AREA (MINIMUM)	1.0 ACRES	1.673 ACRES
LOT WIDTH (MINIMUM)	150 FEET	248 FEET
YARD REGULATIONS		
FRONT YARD	50 FEET	50 FEET
SIDE YARD	30 FEET	30 FEET
REAR YARD	40 FEET	40 FEET
BUILDING COVERAGE (MAXIMUM)	15%	5.12% 3,729 SF
IMPERVIOUS COVERAGE (MAXIMUM)	20%	20.60% 15,016 SF
BUILDING HEIGHT (MAXIMUM)	35 FEET	EXISTING

PROPOSED IMPERVIOUS COVER BREAKDOWN

PARKING LOT = 7,240 SF (OUTSIDE R-O-W)
BUILDING EXPANSION = 480 SF
SIDEWALK = 275 SF
TOTAL = 7,995 SF



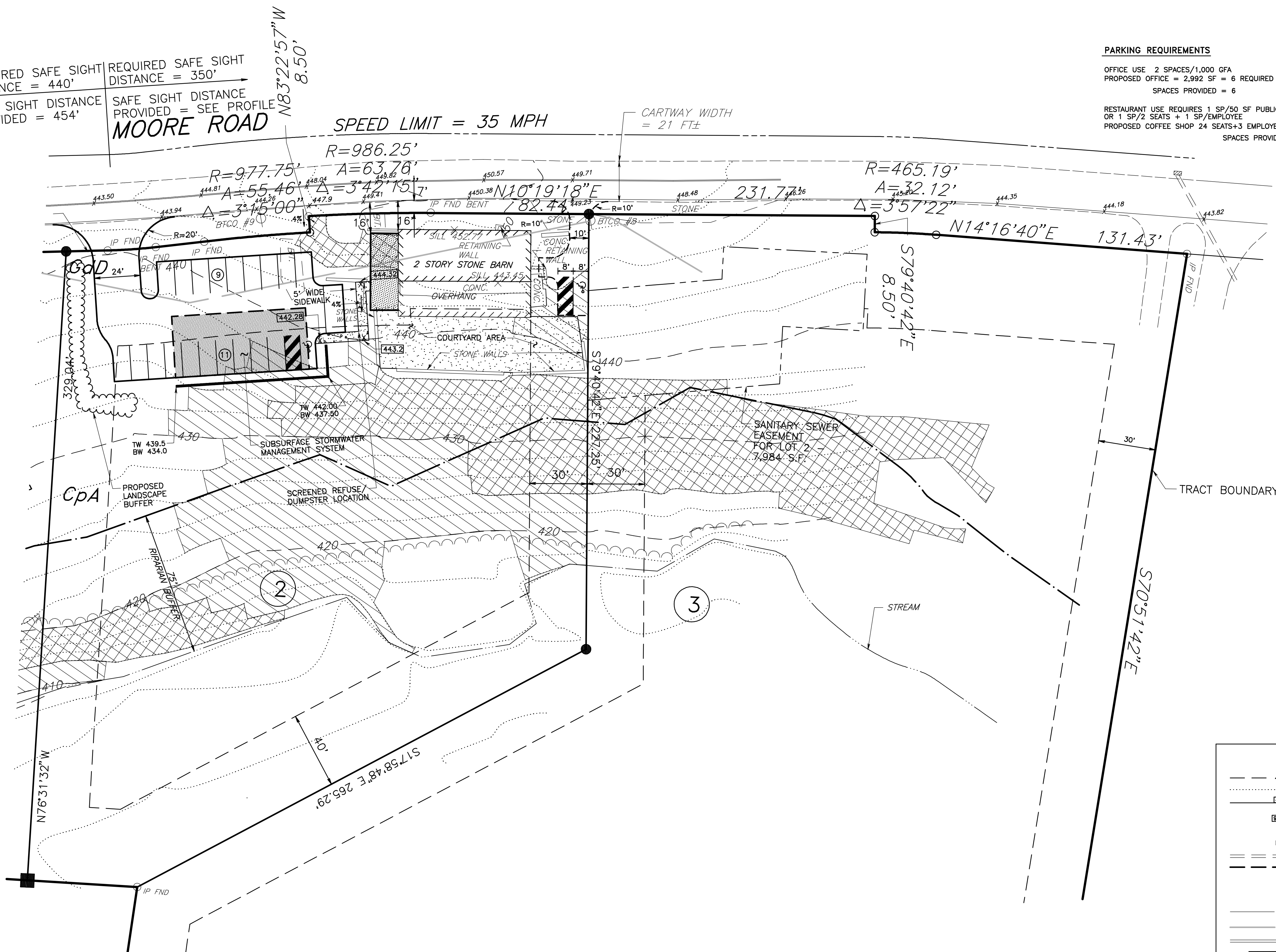
LOCATION MAP

SCALE: 1"=2000'

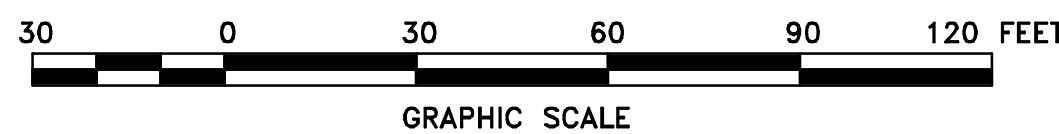
NOTE: THE PROPOSED BUILDING ADDITION THAT IS PROVIDED
IS CONTAINED IN THE FOOTPRINT OF A STRUCTURE
THAT WAS PREVIOUSLY IN THAT LOCATION.

GENERAL NOTES

- BOUNDARY, EXISTING FEATURES AND TOPOGRAPHIC INFORMATION IS FROM A FIELD SURVEY PERFORMED BY EDWARD B. WALSH & ASSOCIATES, INC. IN JULY 2016.
- BOUNDARY SURVEY WAS BASED UPON DEEDS OF RECORD. A TITLE REPORT WAS NOT PROVIDED. THEREFORE, THE SURVEY MAY NOT DEPICT ALL RIGHTS, EASEMENTS, ETC. ATTACHED TO THE PROPERTY THAT A CURRENT AND COMPLETE TITLE REPORT MAY DISCLOSE.
- SITE ADDRESS: 260 MOORE ROAD, DOWNINGTOWN, PA 19343.
- THE PROJECT INVOLVES THE RESTORATION OF THE EXISTING HISTORIC BARN AND ADAPTIVE REUSE AS AN OFFICE USE VIA A CONDITIONAL USE PROCESS PER ZONING CODE SECTION 200-17.B.3, AND SECTION 200-72.1.B. (1).(a)
- THE APPLICANT IS SEEKING A MODIFICATION OF THE OFFICE SPACE PARKING REQUIREMENT AS PERMITTED BY ZONING CODE SECTION 200-73.(k).(2) VIA THE CONDITIONAL USE PROCESS. GIVEN THE LIMITED OCCUPANCY OF 1 TO 2 PERSONS PER OFFICE A MODIFIED REQUIREMENT OF 2 SPACES PER 1,000 SF IS REQUESTED.
- A VERTICAL ADJUSTMENT TO MOORE ROAD WILL BE REQUIRED TO PROVIDE THE 275 FOOT SIGHT DISTANCE AS NOTED ON SHEET 2. THE DISTANCE IS BASED ON THE SIGHT DISTANCE FORMULA PROVIDED IN PENNDOT CHAPTER 67 BASED ON A ROAD WITH A SLOPE OF 6% DOWNHILL FOR A ROAD WITH A POSTED SPEED LIMIT OF 35 MPH. THE EXTENT OF CONSTRUCTION WOULD BE 60 FEET.



LEGEND	
---	EXISTING INDEX CONTOUR
---	EXISTING INTERIOR CONTOUR
---	PROPOSED CONTOUR
---	PROPOSED SPOT ELEVATION
---	EXISTING INLET
---	PROPOSED INLET
---	EXISTING STORM SEWER PIPE
---	PROPOSED STORM SEWER PIPE
---	WELL
---	EXISTING SANITARY MANHOLE
---	EXISTING ELECTRIC LINE
---	SOILS LINE
---	EXISTING CURB
---	STEEP SLOPES 15% - 25%
---	VERY STEEP SLOPES 25% >
---	EXISTING D-W ENDWALL
---	EXISTING BUILDING
---	PROPOSED BUILDING
---	PROPOSED PATIO AREA (GRASS OR SIMILAR)
---	STONE RECHARGE BED



CONDITIONAL USE PLAN

**SITE PLAN
FOR
260 MOORE ROAD**

UPPER UWCHLAN TOWNSHIP CHESTER COUNTY, PA.

Edward B. Walsh & Associates, Inc.
CIVIL ENGINEERS & SURVEYORS
Whiteland Business Park
855 Springdale Drive, Suite 202
Exton, Pennsylvania 19341
Phone: 610-903-0060
Fax: 610-903-0080



Project- 4711
Date- 1-20-21
Scale- 1"= 30'
Drawn-
Checked- AIB
Sheet- 1 OF 2

Plotted: 6/3/2021 File: F:\JB\4711\FPS\4711-B.pro

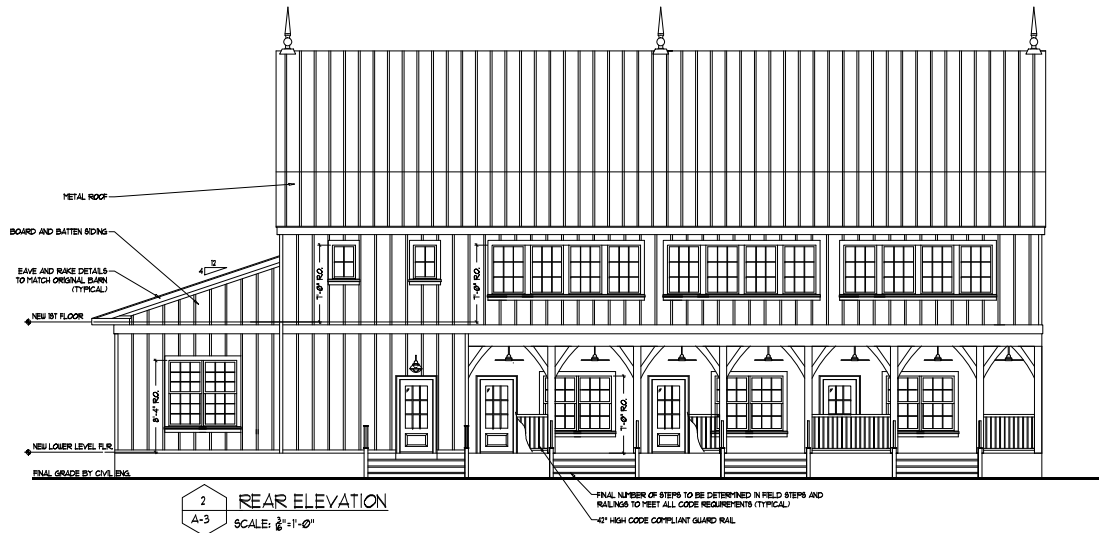
TAX MAP 32-3 PARCEL 77.1



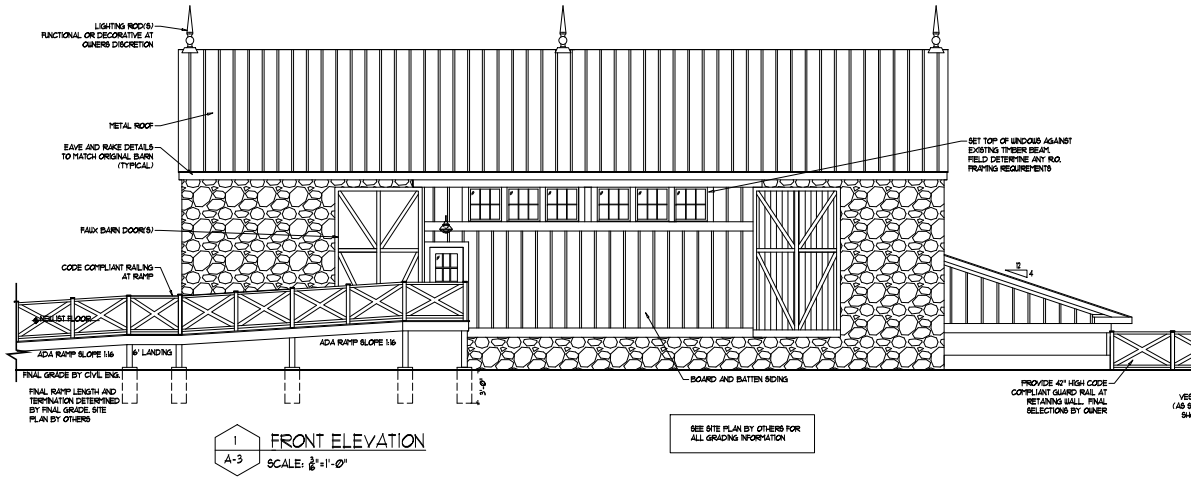
Project Title
BARN RENOVATION
260 MOORE ROAD
DOWNTOWN, PA 19335
UPPER MERCHLAN TOWNSHIP
CHESTER COUNTY

DRAIN BY: EEA

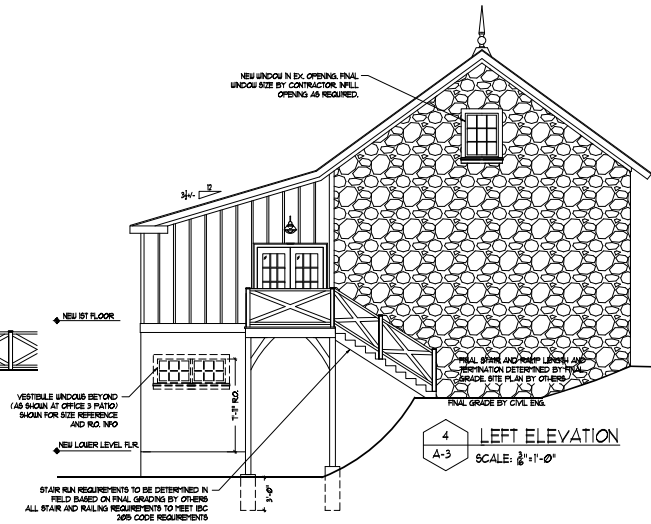
DRAWN BY: EEA



2 REAR ELEVATION
A-3 SCALE: $\frac{3}{8}" = 1' - 0"$



1 FRONT ELEVATION
A-3 SCALE: $\frac{3}{8}'' = 1'-0''$



4 LEFT ELEVATION
A-3 SCALE: $\frac{3}{8}" = 1'-0"$

TEST YOURSELF



GILMORE & ASSOCIATES, INC.
ENGINEERING & CONSULTING SERVICES

MEMORANDUM

Date: June 3, 2021
To: Upper Uwchlan Township Board of Supervisors
From: Dave Leh
cc: Tony Scheivert
Kristin Camp
Gwen Jonik
Reference: Townes at Chester Springs – Final Bond Release

Dear Board Members:

As you will recall, at your May 17th meeting, you elected to retain \$50,000 under the performance bond pending a site meeting between Township Staff, The Development's HOA, and Toll Brothers. This meeting was held on May 24th and it was agreed during that meeting Toll Brothers would replace the noted dead plantings as well as place some additional seeding and mulching around an inlet hood which had been replaced in the open space area. This work has now been satisfactorily completed. The only remaining item is some minor concrete work to be completed in the bottom of an inlet. This work is weather sensitive and has not been able to be completed due to the rain. However, it is anticipated to be completed by Monday. I will be in attendance at the Tuesday, June 8th Workshop to answer any questions as well as offer a recommendation.

Should you have any questions, please do not hesitate to contact me.

BUILDING ON A FOUNDATION OF EXCELLENCE

65 E. Butler Avenue | Suite 100 | New Britain, PA 18901 | **215-345-4330** | 215-345-8606
508 Corporate Drive West | Langhorne, PA 19047 | **215-369-3955** | 215-345-8606
184 W. Main Street | Suite 300 | Trappe, PA 19426 | **610-489-4949** | 610-489-8447
119 East Linden Street | Kennett Square, PA 19348 | **610-444-9006** | 610-444-7292
5100 Tilghman Street | Suite 150 | Allentown, PA 18104 | **610-366-8064** | 610-366-0433
One Penn Center at Suburban Station | 1617 JFK Blvd. | Suite 425 | Philadelphia, PA 19103 | **215-687-4246** | 215-564-1780
201 Market Street | Camden, NJ 08102 | **856-203-7447** | 856-379-3567
www.gilmore-assoc.com

LAND DEVELOPMENT AGREEMENT

Windsor Baptist Church

THIS LAND DEVELOPMENT AGREEMENT (together with all modifications and amendments, the “Agreement”) made this 26th day of May, 2021, by **UPPER UWCHLAN TOWNSHIP**, Chester County, Pennsylvania, a second class Township, with offices at 140 Pottstown Pike, Chester Springs, Pennsylvania 19425 (the “Township”) and **WINDSOR BAPTIST CHURCH**, a Pennsylvania 501(c)(3) organization with offices at 213 Little Conestoga Road, Downingtown, Pennsylvania, 19335 (the “Developer”).

BACKGROUND:

A. Developer proposes to develop a 9.4 acre piece of property, known as Chester County Tax Parcel No. 32-3-66 situate at 213 Little Conestoga Road, Chester County Parcel No. 32-3-65.31 situate at 250 Park Road, and Chester County Parcel No. 32-3-65.29 situate at 260 Park Road, Upper Uwchlan Township, Chester County, Pennsylvania, in accordance with a proposed subdivision and/or land development known as “Windsor Baptist Church Classroom Addition” (the “Subdivision/Development”).

B. The Upper Uwchlan Township Board of Supervisors (the “Board”) granted final land development approval of the Subdivision/Development on December 21, 2020 pursuant to a Motion of Approval. Developer received final approval of the land development plans for the Subdivision, subject to, among other things entering into a Financial Security Agreement and this Agreement, and posting the Financial Security, as hereinafter defined, to complete the Secured Improvements, as hereinafter defined.

C. The parties desire to set forth their agreement and understanding with respect to the foregoing and such other matters as hereinbelow set forth.

NOW, THEREFORE, the parties hereunto, in consideration of the premises and the mutual promises herein contained and intending to be legally bound hereby, agree as follows:

1. Definitions; Interpretation.

- A. For purposes of this Agreement, except where the context clearly indicates otherwise, the following words and phrases (including the singular and plural forms thereof) shall have the following meanings:
- (1) “Tract” shall mean all that certain 6.2 acre tract located at 213 Little Conestoga Road, Upper Uwchlan Township, Chester County, Pennsylvania, and which is more fully and further shown and described on the Plans.

- (2) "Plans" shall mean the land development plan entitled "Final Land Development Plan of *Windsor Baptist Church*" prepared by Ludgate Engineering Corporation, dated January 22, 2019, last revised April 21, 2021, consisting of Twenty (20) sheets that are specifically numbered, entitled, dated, and last revised as set forth on Exhibit "A" attached hereto and made fully part hereof, including, without limitation, all notes, statements and other information appearing on the plans, and all reports, narratives, studies, profiles, delineations and other materials of whatever nature or kind accompanying or related to the plans.
- (3) "Subject Land Development" or "Project" shall mean the proposed land development of the Tract as a classroom addition, together with new streets and roads to serve the same and such other Improvements, as hereinafter defined, proposed or required in, on and/or related to the Subject Land Development, as the same are more fully depicted on the Plans.
- (4) "Improvements" shall mean all those streets, roads, walkways, curbs, gutters, street lights, fire hydrants, shade trees, water mains, sanitary sewers, site grading, storm drains and sewers, storm water detention and/or retention basins and other related drainage facilities, recreational facilities, open space improvements, buffer or screen plantings, and/or other improvements or common amenities, as the same are more fully shown, identified or otherwise described on and by the Plans.
- (5) "Secured Improvements" shall mean all those Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates.
- (6) "Completion Date" shall mean the date specified in Section 2.D of this Agreement on or before which the Improvements shall be completed.
- (7) "Financial Security" shall mean the financial security provided under and in accordance with the provisions of Section 3 of this Agreement and the provisions of the Financial Security Agreement (including any additional financial security made part thereof, any increases and other adjustments thereto, and any financial security substituted therefor) and the funds representative thereof and therein.

- (8) "Financial Institution" shall mean the bonding company or lending institution chosen by Developer with which the Financial Security has been posted or established and/or which issues the Financial Security to the Township. The Financial Institution must be a bonding company or Federal or Commonwealth chartered lending institution which is authorized to conduct business in the Commonwealth of Pennsylvania.
 - (9) "Financial Security Agreement" shall mean that certain Financial Security Agreement, of even date herewith, by and between the Township and Developer, which agreement is fully incorporated into and made part of this Agreement.
 - (10) "Subdivision and Land Development Ordinance" shall mean the Upper Uwchlan Township Subdivision and Land Development Ordinance, as such Ordinance has been amended and now exists and as hereafter may be amended, provided that the application of subsequent amendments to the Subject Land Development shall be subject to the provisions of Section 508(4) of the MPC.
 - (11) "MPC" shall mean the Pennsylvania Municipalities Planning Code, Act No. 247 of 1968, *as reenacted and amended*, 53 P.S. § 10101 *et seq.*, as the same now exists and hereafter may be further amended.
 - (12) "Township Engineer" shall mean the professional engineer, licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for the Township or engaged by the Township as a consultant thereto.
- B. Except as may be otherwise provided herein and/or if the context clearly indicates otherwise, all words and phrases appearing in this Agreement, which also appear in the Subdivision and Land Development Ordinance or the MPC, shall have the meanings and shall be interpreted herein as under the Subdivision and Land Development Ordinance or the MPC.

2. **Construction and Completion of Improvements.**

- A. Developer, at its sole expense, shall layout, construct, install, and/or otherwise complete the Improvements in a good and workmanlike manner, in full and strict accordance with and pursuant to the following: (i) the Subdivision and Land Development Ordinance; (ii) the Plans; (iii) the provisions of this Agreement; (iv) all applicable requirements of electric, telephone, and other utility companies having jurisdiction; and (v) all other applicable laws, statutes, ordinances, resolutions, rules, and regulations of the Township and of other applicable or appropriate

governmental authorities and/or agencies having jurisdiction. In the event of any inconsistency or conflict between or among the provisions of any of the foregoing, those provisions contained in the Plans shall prevail and control.

- B. No Improvements referred to herein, in connection with this Project shall be commenced until:
 - (1) The Plans are recorded according to law;
 - (2) This Agreement is duly signed and delivered;
 - (3) Financial security as defined in Section 509 of the MPC and in this Agreement is delivered to the Township and Developer and the Financial Institution have executed the Financial Security Agreement; and
 - (4) All fees (i) required by any Ordinance, Resolution or regulation of the Township and (ii) legal and engineering expenses, incurred by the Township for the completion of its approval of the Plans, preparation of the Agreements, Resolutions and other papers relating to the acceptance of this Agreement by the Township are paid.
- C. Upon compliance with the requirements of subsection B, above, Developer may obtain permits for the buildings which together constitute the Project.
- D. The Improvements shall be completed on or before the date occurring one (1) year from the date of this Agreement. Upon written request of Developer and approval of the Township, the Completion Date may be extended from time to time, provided that (i) Developer's written request is received by the Board of Supervisors not less than twenty (20) days prior to the then-current completion date, and (ii) the Financial Security is also extended so that it continues valid and effective for all purposes thereof to a date occurring at least sixty (60) days after the extended completion date. Such times shall be of the essence.
- E. Developer shall be solely responsible, at its sole cost and expense, for the repair and maintenance of all Improvements during and after construction thereof, provided however, that in the case of Improvements which are completed and dedication (or other transfer or assignment) of which is offered to and accepted by the Township, Developer shall have such repair and maintenance responsibility until such time as the acceptance of dedication (or other transfer or assignment) is final and effective, and the maintenance bond or other financial security is deposited with respect to such dedicated (or otherwise transferred or assigned) Improvements as provided under Section 5 below. For purposes of this subsection, "repair

and maintenance of all Improvements” shall mean, without limitation, keeping the Improvements at all times in such condition that the structural integrity and functioning of the same shall be maintained in accordance with the design and specifications thereof as shown on the Plans, and with respect to Improvements consisting of streets or roads, shall further mean, without limitation, keeping the same at all times free of mud, snow, ice and other impediments or other obstructions to motor vehicular traffic thereon and thereover, and otherwise in a permanently passable condition by and for motor vehicles.

- F. In the event that Developer is in default of any of its repair and maintenance obligations under Subsection E, the Township, shall have the right, but not the obligation, (which right shall be in addition to such other or further rights and remedies as may be available to the Township under this Agreement, the Financial Security Agreement, the Subdivision and Land Development Ordinance, and/or the MPC, and/or otherwise at law or in equity) to:
- (1) Enter upon the Tract and satisfy any of such defaulted repair and maintenance obligation of Developer (provided that any such entry and/or satisfaction shall not be deemed, in any manner or to any extent whatsoever, as an acceptance by the Township of the dedication, transfer or other assignment of the Improvements subject of the default, and/or as imposing any responsibility upon the Township for the completion, further repair and maintenance, or otherwise, with respect to the Improvements subject of the default); and
 - (2) In order to pay for the costs, expenses and/or fees incurred by the Township related to the satisfaction of such defaulted obligations, (i) obtain payment to the Township, or its order, of all or any part of the Financial Security for such costs, expenses and fees (notwithstanding that the amount of the Financial Security, but for this Paragraph, is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees); and/or (ii) institute and prosecute appropriate legal and/or equitable actions or proceedings against Developer to recover such costs, expenses and/or fees, together with attorney fees and costs incurred by the Township for and otherwise related to any such legal and/or equitable action or proceeding.
- G. It shall be the obligation of Developer to arrange in advance with the Township for inspection of the work as the work progresses and the cost of such inspection shall be paid by Developer.

- H. Developer agrees that it will obtain use and occupancy permits as required under the Township's Zoning Ordinance prior to permitting occupancy of any dwelling or any building within the Project.
- I. Developer agrees to maintain such barricades, warning lights or fences as are necessary during the course of construction to give reasonable protection to the public.

3. **Guaranty of Completion of Secured Improvements.**

- A. Developer shall deposit with the Township or otherwise establish the Financial Security all in accordance with and pursuant to the terms and conditions of this Section 3 and the Financial Security Agreement. Unless and until the Financial Security is so deposited or otherwise established by Developer, no building or occupancy permit, relating to the erection, placement or occupancy of any of any buildings or other structures in, on and/or related to the Subject Land Development, shall be issued by the Township.
- B. The Financial Security shall provide for and secure to the public, as represented by the Township, the completion, on or before the Completion Date, of the Secured Improvements in accordance with and pursuant to the Financial Security Agreement. The Financial Security shall be of such type as more fully and further provided in and by the Financial Security Agreement.
- C. The initial amount of the Financial Security shall be **\$253,321.20**, which is 110% of the total cost estimate as set forth in Exhibit "B" attached hereto and made fully part hereof. The amount of the Financial Security shall be subject to such increase, adjustment and reduction as provided in and by the Financial Security Agreement.

4. **Dedication.**

- A. Developer, at its expense, hereby offers to dedicate the following to the Township (or the Township Municipal Authority for the sewer lines and sewer easements) and with respect to the same, hereby agrees to tender to the Township and/or the Municipal Authority, as applicable, deeds of dedication containing such provisions and in such form as shall be approved by the Township or Municipal Authority Solicitor:

- (1) All that certain new street/road, designated on the Plans as n/a to the full ultimate rights-of-way widths and lengths thereof, together with all road and other Improvements (including, without limitation, stormwater management facilities) as shall be constructed, installed, or otherwise completed in, under, or upon said streets or roads in accordance with and pursuant to the Plans and this Agreement;
 - (2) All portions of the Tract, to the extent not heretofore dedicated to the Township, which portions are within the ultimate right-of-way lines of n/a, together with all road and other Improvements (including, without limitation, stormwater management facilities) as shall be constructed, installed, or otherwise completed in, under, or upon said portions in accordance with and pursuant to the Plans and this Agreement;
 - (3) All sanitary sewer easement areas, and the sanitary sewer facilities constructed within such easement areas, as are shown on the Plans;
 - (4) All portions of the Tract designated on the Plans as open space areas to be dedicated to the Township for public use; and
 - (5) Any or all other facilities specified to be dedicated to the Township as part of the approval of the Plans.
- B. The Township shall accept dedication of the items described in Subsection A above, by deed of dedication (or other instrument) or otherwise, when all of the following have been satisfied, at the sole expense of Developer:
- (1) Certification by the Township Engineer that all Improvements which are to be dedicated have been satisfactorily completed fully in accordance with the terms of Section 2 above;
 - (2) Deposit of a maintenance bond or other security, as provided under Section 5 below, with respect to each of the Improvements to be accepted for dedication; and
 - (3) Advancement and/or reimbursement to the Township of and for all costs, expenses and fees as provided under and in accordance with Section 7 below;

5. **Maintenance Bond or Other Financial Security.**

The maintenance bond or other financial security, to be deposited by Developer under Section 4.B(2) above as a condition to the Township's acceptance of dedication of any of the Improvements offered for dedication under Section 4.A shall be in accordance with the following:

- (1) The form and provisions of the bond or other financial security shall reasonably be approved by the Township Solicitor;
- (2) The type of the bond or other financial security shall be a type permitted by Section 509 of the MPC;
- (3) The bond or other financial security shall be posted with (1) a bonding company; or (2) lending institution chartered by the Federal Government or the Commonwealth of Pennsylvania, provided said bonding company or lending institution is authorized to conduct such business within the Commonwealth of Pennsylvania;
- (4) The bond or other financial security shall provide for and secure to the public, as represented by the Township with respect to each of the dedicated Improvements, the structural integrity and proper functioning of each such Improvement, in accordance with the design and specifications thereof as shown on the Plans, for a term of eighteen (18) months from the date when the Township accepts dedication of each such Improvement;
- (5) The amount of the bond or other financial security shall be equal to Fifteen Percent (15%) of the actual costs of installing, constructing or otherwise completing the dedicated Improvements covered by the bond or other financial security;
- (6) The bond or other financial security shall provide that in the event the structural integrity or proper functioning of any of the dedicated Improvements, covered by the bond or other financial security, is not in accordance with the design and specifications of the Plans for the aforesaid 18-month term, the bonding company or lending institution, which issues or holds the bond or other financial security, shall pay to the Township, or its order, from time to time, as the Township shall determine and demand, all or part of the amount of the bond or other financial security; and that such payment shall be made by the bonding company or lending institution to the Township, or its order, at and upon receipt from the Township of a written demand for such payment (in, to or of which demand the consent, joinder, agreement and/or approval of Developer shall not be required). The bond or the financial

security shall further provide that the aforesaid right of the Township to payment under the bond or other financial security shall not constitute the exclusive right and/or remedy of the Township, but shall be in addition to such other or further rights and/or remedies as may be available to the Township under this Agreement, at law, in equity, or otherwise, in the event that the structural integrity or proper functioning of any of the dedicated Improvements is not in accordance with the design and specifications as aforesaid; and that the aggregate payments made to the Township, or its order, by the bonding company or lending institution shall not exceed the amount of the bond or other financial security (plus any interest which may be earned on the principal thereof); and

- (7) Final release of Developer under and from the bond or other financial security shall be subject to the advancement and/or reimbursement to the Township of and for all costs, expenses and fees under and in accordance with Section 7 below.

6. **Failure to Complete; Other Default.**

- A. In the event that any of the Improvements are not completed in accordance with the terms, conditions and requirements of Section 2 above, the Township shall have the right, but not the obligation, (which right shall be in addition to such other or further rights and remedies, as may be available to the Township under this Agreement, the Financial Security Agreement, and/or the MPC, and/or otherwise at law or in equity) to: (i) enter upon the Tract and complete all or part of the Improvements in accordance with the terms, conditions and requirements of Section 2; and (ii) with respect to incomplete Secured Improvements, obtain payment to it, or its order, of all or any part of the Financial Security and/or to otherwise enforce the Financial Security in order to pay for the costs of such completion and related costs, expenses and fees. If the proceeds of the Financial Security paid to the Township, or its order, are not sufficient or unavailable to pay the costs of fully completing all the incomplete Improvements, together with related costs, expenses and fees, the Township, at its option, shall have the right to complete part of the Improvements and to institute appropriate legal and/or equitable actions against Developer to recover monies necessary to complete the remainder of the incomplete Improvements and pay related costs, expenses and fees.
- B. In the event that the Township exercises its right, but not obligation, to complete all or part of the incomplete Improvements upon the aforesaid default of Developer, there shall be no requirement for the advertisement of public works or for competitive bidding. Any monies paid to the Township of, from or under the Financial Security and any proceeds resulting from the aforesaid legal and/or equitable actions against

Developer shall be not deemed to be public funds for the purpose of any laws relating to public advertising or solicitation of bids. The Township may use any commercially reasonable means to select contractors and/or negotiate prices or costs of material and labor, and Developer hereby ratifies all actions taken by the Township in that regard. The Township shall have the right, but not the obligation, to use its own employees to complete all or part of the Improvements.

7. **Advancement and/or Reimbursement of Expenses.**

A. Developer shall advance and/or reimburse the Township the following:

- (1) All costs, expenses and fees incurred by the Township in and for the preparation, review, and enforcement of this Agreement and the Financial Security Agreement. Such costs, expenses and fees shall include, without limitation: reasonable legal expenses and fees of the Township Solicitor; and reasonable expenses and fees of the Township Engineer, in visiting the site for the purposes of inspection and for the performance of official duties necessarily connected with said inspection purposes.
- (2) All costs, expenses and fees incurred by the Township of and for necessary legal proceedings in connection with the dedication (or other transfer or assignment) under Section 5 hereof, including, without limitation, reasonable fees of the Township Solicitor and the Township Engineer.

B. Developer shall, in accordance with the Subdivision and Land Development Ordinance (and/or any schedules which have been or may be adopted thereunder from time to time or at any time), (i) deposit monies with the Township, to be held in escrow by the Township, to cover the costs, expenses and fees, described in Subsection A above, and (ii) thereafter replenish such escrow deposits.

C. Subject to the dispute provisions of Section 510(g) of the MPC to the extent applicable, the costs, expenses and fees, described in Subsection A above, shall be billed by the Township to Developer, and the amounts of the same shall be due and payable within fifteen (15) days of the billing date to the extent that such amounts are not earlier paid to or otherwise recovered by the Township from monies deposited by Developer with and held in escrow by the Township for any such costs, expenses or fees.

- D. The Township, under and in accordance with the Financial Security Agreement, shall have the right to recover, from and under the Financial Security, the costs, expenses and fees, described in Subsection A above, notwithstanding that the amount of the Financial Security Agreement, but for this Subsection D, is not now or hereafter specifically established to guarantee or otherwise cover the payment of such costs, expenses and/or fees. Such right shall be in addition to such other or further rights or remedies as may be now or hereafter available to the Township under this Agreement, the Financial Security Agreement, the Subdivision and Land Development Ordinance, and/or the MPC, and/or otherwise at law or in equity.
- E. It is expressly acknowledged and agreed that the Township shall not be obligated hereunder or otherwise to finally release Developer from and under the Financial Security, the Financial Security Agreement, or any other financial security provided pursuant hereto, and/or to accept dedication (or other transfer or assignment) of any of the items under Section 5 hereof, unless and until all the aforesaid costs, expenses and fees are paid in full.

8. **Indemnification.**

- A. It is understood and agreed that the Township has reviewed the Plans and specifications for the purpose solely of protecting the interests of the public and have not thereby expressly or impliedly warranted the technical suitability of Developer's Plans. Developer warrants that all Plans, designs, installations and specifications have been designed by registered engineers licensed in the Commonwealth of Pennsylvania and will be installed in a good and workmanlike manner and in accordance with the plans and specifications and sound construction practices. Developer does further warrant that the Improvements installed and each and every part thereof are fit for all purposes for which they are intended. The Township disclaims all liability for design, construction, installation or operational defects.
- B. Developer hereby agrees to indemnify, save harmless and defend the Township, its officials, officers, employees and agents, of, from, and against any liability, claim, suit or demand, of whatever nature or kind, whether founded or unfounded, arising from, out of, or related to the design, laying out, permitting, installation, construction, completion, inspection, testing, functioning, repair and/or maintenance of (or the failure to repair and/or maintain) the Improvements, together with all cost, fees and expenses (including, but not limited to, attorney's fees and costs, and expert witness fees and costs) as may be incurred by the Township in connection with any such liability, claim, suit or demand.

9. **Notices.**

- A. Any notice, demand or other communication required, authorized or permitted to be given under this Agreement shall be sufficient if given in writing and delivered to the party to whom or which the notice or demand is directed at the respective address of the party first above indicated, or to such other address as the party may give by notice complying with the terms of this section.
- B. Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized express delivery service, postage or delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, three (3) business days after the date of deposit in the United States mails.

10. **Miscellaneous.**

- A. **Waiver.** Neither the failure nor any delay on the part of the Township to exercise any right, remedy, power, or privilege granted under this Agreement or otherwise provided at law or in equity, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power, or privilege preclude further exercise of the same or of any other such right, remedy, power or privilege; nor shall any waiver of any such right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective against the Township unless it is in writing signed by a duly authorized representative of the Township.
- B. **Assignment; Delegation.** Developer shall not assign or delegate any of its rights, powers, privileges, duties, obligations, or liabilities hereunder without the express written consent of the Township, except in conjunction with Developer's transfer of ownership of the Tract as a whole, in which event, the successor in interest shall execute a new Development Agreement and a new Financial Security Agreement or an assignment of this Agreement. Any such assignment or delegation, without such consent, shall be void.
- C. **Cumulative Rights and Remedies.** Any and all rights, powers, privileges and/or remedies granted or accruing to the Township under or pursuant to this Agreement and/or the Financial Security Agreement shall not be exclusive, but shall be cumulative and in addition to such other rights, powers, privileges, and/or remedies as may be now or hereafter available to the Township under the MPC, and/or otherwise at law or in equity.

- D. **Headings.** The captions or headings preceding the text of the several sections and subsections of this Agreement are inserted solely for convenience of reference; they shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.
- E. **Severability.** If any provision on this Agreement is held to be invalid or unenforceable: (i) the remaining provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect; (ii) this Agreement be and is hereby amended, to the minimum necessary, to remedy such invalidity or unenforceability, and the parties hereto shall adjust their respective rights and obligations hereunder accordingly; and (iii) to the extent that such invalid or unenforceable provisions cannot be rendered valid or enforceable by amendment as aforesaid, the same shall be severed herefrom as though never set forth herein.
- F. **Binding Effect.** Subject to Subsection B above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- G. **Entire Agreement; Amendment.** This Agreement, together with the exhibits attached hereto and made part hereof and the Financial Security Agreement, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and, except as may be otherwise specifically set forth herein, supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written. Except as may be otherwise specifically provided herein, this Agreement may not be amended, revoked, changed, altered, or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.
- H. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.
- I. **Third Party Beneficiary.** The rights and benefits of this Agreement shall not inure to the benefit of any third party. This Agreement shall not be construed as creating any rights, claims or causes of action against the Township or Developer in favor of any other persons furnishing services or materials to or for the construction of the Development.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the day and year first above written.

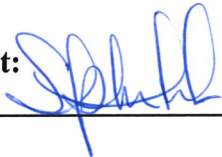
UPPER UWCHLAN TOWNSHIP

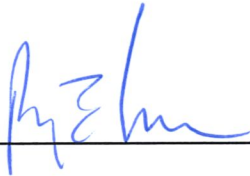
Attest:

By: _____
Sandy M. D'Amico, Chairperson

DEVELOPER

Attest:

_____ 

By: _____ 

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF CHESTER :

On this _____ day of _____, 20__, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Sandy M. D'Amico, who acknowledged herself to be the Chairperson of the Board of Supervisors of Upper Uwchlan Township, and that she, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Notary Public

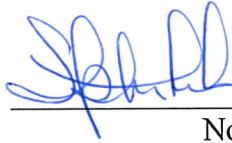
My Commission Expires:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF Chester :

On this 26th day of May, 2021, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Philip E. Marks, who acknowledged himself/herself to be an Elder of Windsor Baptist Church, a Pennsylvania 501 (c)(3) organization, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.



Notary Public

My Commission Expires: 12/23/2023

Commonwealth of Pennsylvania - Notary Seal Stephanie Nicole Hoke, Notary Public Chester County My commission expires December 23, 2023 Commission number 1263777
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EXHIBIT "A"

PLAN SHEETS

**Sheet
No.**

**Drawing
No.**

Title

Date

**Last Revised
Date**

EXHIBIT "B"

FINANCIAL SECURITY

FINANCIAL SECURITY AGREEMENT

Windsor Baptist Church

THIS FINANCIAL SECURITY AGREEMENT (together with all modifications and amendments, the "Agreement") made this 26th day of May, 2021 by **UPPER UWCHLAN TOWNSHIP**, Chester County, Pennsylvania, a second class Township, with offices at 140 Pottstown Pike, Chester Springs, Pennsylvania 19425 (the "Township") (the "Township") and **WINDSOR BAPTIST CHURCH**, a Pennsylvania 501(c)(3) organization with offices at 213 Little Conestoga Road, Downingtown, Pennsylvania, 19335 (the "Developer"), and **S&T BANK**, with offices at 4 Brandywine Avenue, Downingtown, Pennsylvania 19335 (the "Financial Institution").

BACKGROUND:

A. Developer proposes to develop a 9.4 acre piece of property, known as Chester County Tax Parcel No. 32-3-66 situate at 213 Little Conestoga Road, Chester County Parcel No. 32-3-65.31 situate at 250 Park Road, and Chester County Parcel No. 32-3-65.29 situate at 260 Park Road, Upper Uwchlan Township, Chester County, Pennsylvania, in accordance with a proposed subdivision and/or land development known as "Windsor Baptist Church Classroom Addition" ("Subdivision/Development").

B. The Upper Uwchlan Township Board of Supervisors (the "Board") granted final land development approval of the Subdivision/Development on December 21, 2020 pursuant to a Motion of Approval. Developer received final approval of the land development plans for the Subdivision/Development, subject to, among other things entering into this Agreement and the Development Agreement, as hereinafter defined, and posting the Financial Security, as hereinafter defined, to complete the Secured Improvements, as hereinafter defined.

C. In the Development Agreement, as hereinafter defined, Developer agreed to construct or install the Secured Improvements, as hereinafter defined, and to post Financial Security to guarantee to the Township that the Secured Improvements will be constructed or installed by the date provided for in this Agreement.

D. The parties desire to set forth their agreement and understanding with respect to the said Financial Security and such other matters as hereinbelow set forth.

NOW, THEREFORE, the parties hereunto, in consideration of the premises and the mutual promises herein contained and intending to be legally bound hereby, agree as follows:

1. Definitions; Interpretation.

A. For purposes of this Agreement, except where the context clearly indicates otherwise, the following words and phrases (including the singular and plural forms thereof) shall have the following meanings:

(1) "Township Engineer" shall mean the professional engineer, licensed as such in the Commonwealth of Pennsylvania, duly appointed and employed as the engineer for the Township or engaged by the Township as a consultant thereto.

(2) "Tract" shall mean all that certain 6.2 acre tract of property which is situate at 213 Little Conestoga Road in the Township, Chester County, Pennsylvania, and which is more fully and further shown and described on the Plans.

(3) "Plans" shall mean that certain final subdivision and/or land development plan set entitled "Final Land Development Plan for Windsor Baptist Church prepared by Ludgate Engineering Corporation, dated January 22, 2019, last revised April 21, 2021, consisting of Twenty (20) sheets, as more particularly described in the Development Agreement.

(4) "Subject Land Development" shall mean the proposed land development of the Tract as a Classroom Addition together with new streets and roads to serve the same and such other improvements proposed or required in, on and/or related to the proposed land development, as the same are more fully and further shown and depicted on and by the Plans.

(5) "Improvements" shall mean the Improvements that are to be located on the Tract as depicted on the Plans.

(6) "Secured Improvements" shall mean all those certain Improvements for which the Financial Security is provided or to which the Financial Security otherwise relates. A list of the Secured Improvements is attached here to as Exhibit "A".

(7) "Completion Date" shall mean the date specified in Section 2.D of the Development Agreement on or before which the Improvements shall be completed.

(8) "Financial Security" shall mean the Financial Security provided under and in accordance with the provisions of Section 2 and other provisions of this Agreement.

(9) "Financial Institution" shall mean the lending institution chosen by Developer with which the Financial Security has been posted or established and/or which issues the Financial Security to the Township. The Financial Institution must be a bonding company or Federal or Commonwealth chartered lending institution which is authorized to conduct business in the Commonwealth.

(10) "MPC" shall mean the Pennsylvania Municipalities Planning Code, Act No. 247 of 1968, *as reenacted and amended*, 53 P.S. § 10101 *et seq.*, as the same now exists and hereafter may be further amended.

(11) "Development Agreement" shall mean the Land Development Agreement entered into by Developer and the Township with respect to the development of the Subject Land Development which is dated on or about the date hereof.

B. Except as may be otherwise provided herein and/or if the context clearly indicates otherwise, all words and phrases appearing in this Agreement which also appear in the MPC shall have the meanings and shall be interpreted herein as under the MPC.

2. **Financial Security.**

A. Developer, in accordance with and pursuant to the terms of this Agreement and at its sole cost and expense, shall establish and maintain Financial Security in accordance with the one of the following which is checked:

☐ A restrictive loan account or cash escrow account (either such account being hereinafter described as an "Escrow Account") with Financial Institution as escrow holder under and in accordance with the terms and conditions of this Agreement;

☒ An irrevocable, Standby Commercial Letter of Credit, issued by Financial Institution in favor of the Township as beneficiary, in form and content satisfactory to the Township Solicitor and appended hereto as Exhibit "B" (the "Letter of Credit");

☐ An unconditional surety bond, issued by Financial Institution as surety to Developer, in form and content satisfactory to the Township Solicitor.

B. The Financial Security shall be established by Developer upon Developer's execution of this Agreement. The Financial Security shall provide for and secure to the public, as represented by the Township, the completion, on or before the Completion Date, of the Secured Improvements.

C. The initial amount of the Financial Security shall be \$253,321.20 which amount is 110% of the total of (i) the estimated costs of completing the Secured Improvements and (ii) the estimated amounts of other costs, expenses and fees needed to reimburse the Township for the Township Engineer's inspection or and report on the Improvements and any reasonable and necessary legal fees and expenses incurred by the Township for the Township Solicitor's fees in enforcing this Agreement.

D. In addition to the Financial Security being posted to guarantee completion of the Phase I Secured Improvements, before construction of the Phase I Improvements may begin, Developer shall deposit with the Township a sum of money equal to \$5000 (already established with the Township) which sum represents 2% of the estimated cost of construction of the Phase I Secured Improvements (the "Inspection Escrow"). The Inspection Escrow shall be held in a non-interest bearing escrow account and shall be used by the Township to pay the costs of its professional consultants and engineer's inspection of the Phase I Secured Improvements (the "Inspection Fees"). The Township shall pay the Inspection Fees from the Inspection Escrow. Developer shall be required to replenish the Inspection Escrow such that there is a minimum of 1% of the estimated cost of construction of the Phase I Secured Improvements on deposit. The Inspection Escrow shall be used by the Township solely to pay invoices for Inspection Fees. The Township shall provide a copy of all invoices for the Inspection Fees to the Developer."

E. If a letter of credit is posted as the Financial Security, the letter of credit shall be automatically renewed, without amendment, for additional one-year periods from the present or each future expiration date unless the Financial Institution notifies the Township in writing, not less than sixty (60) days before such expiration date of the letter of credit, that the Financial Institution has elected not to renew the letter of credit. The Financial Institution's notice of such election not to renew the letter of credit shall be sent to the Township in accordance with the terms of this Agreement.

F. A notation shall appear on the records of the Financial Institution providing that, except as provided in and by this Agreement or as may be otherwise consented to and approved and directed in and by a writing signed by the Township, (i) no withdrawals shall be made from the Financial Security, (ii) the Financial Security shall not be terminated or closed or expire, and (iii) any balance of funds in the Financial Security shall be fully available to the Township for use under and for purposes of this Agreement.

G. Developer agrees to remit to the Township all of the costs incurred by the Township for its professional consultants and Township Engineer to inspect the Improvements and to enforce this Agreement ("Professional Fees"). If Developer fails to pay the Township for such Professional Fees, the Township shall be entitled to withdraw from the Financial Security the amount necessary to pay for such costs. The Township shall provide a copy of all invoices for Professional Fees to the Developer.

1. Adjustments to Financial Security.

A. Developer agrees that the total amount of the Financial Security and the amount of each of the specific items thereof shall be subject to increase or other adjustment as permitted by and in accordance with the provisions of Section 509 of the MPC. Without limiting the generality of the foregoing:

Developer agrees that, if the Secured Improvements, or any part thereof, are not completed within one (1) year after the date of this Agreement and the Township has agreed to extend the time for completion beyond the Completion Date as may be necessary for the completion, Developer shall post additional Financial Security in accordance with the provisions of the MPC; and Developer shall continue to provide such additional Financial Security on each one (1)-year anniversary date of this Agreement thereafter if the Secured Improvements, or any part thereof, are not completed and Township has agreed to further extend the time for completion beyond the Completion Date, as the same may have been previously extended.

B. Notice of any such additional Financial Security or of any such increase or other adjustment in the amount of the Financial Security, or any part thereof, shall be given in writing by the Township to Developer, and Developer shall post the amount of the additional Financial Security, increase or other adjustment within thirty (30) days of the date of such notice.

C. Any funds posted or provided under this Section 3 as additional Financial Security or as increases or other adjustments to the Financial Security shall become part of the Financial Security and fully subject to the terms and conditions of this Agreement.

2. Interim Releases of Funds.

A. As the work of the construction of the Secured Improvements satisfactorily proceeds, the Township, from time to time upon written request of Developer prior to final release under Section 7 below, shall authorize the release of funds from the Financial Security in accordance with the provisions of the MPC, in such amounts as directed by the Township in writing, but only by and upon the issuance to and receipt by the Financial Institution of a duly executed Certificate of Completion signed by the Township Engineer, the Chairman of the Board of Supervisors or the Township Manager. The Certificate of Completion shall be in the form substantially as set forth in Exhibit "C" attached to and made fully part of this Financial Security Agreement.

B. Unless the Township expressly and affirmatively directs otherwise in and by the said duly executed Certificate of Completion, the following shall apply to every release of funds from the Financial Security requested under this Section 4: (i) Ten Percent (10%) of the amount of the funds requested for release shall be retained and not released; and (ii) in no event shall the balance of the Financial Security be reduced below One Hundred Ten percent (110%) of the estimated costs of completing the remaining uncompleted Secured Improvements, as such estimated costs of completion shall be determined or approved by the Township Engineer.

3. Default.

A. If any of the Secured Improvements have not been completed as depicted on the Plans, the Township shall have the right to demand and collect payment from the Financial Institution of the full undrawn amount, after reductions and interim releases, if any, pursuant to this Agreement, of the Financial Security, or any part or lesser amount thereof which the Township in its sole discretion deems necessary to cure any such default as well as to pay for any professional services related to such cure. The following shall apply to such demand and payment:

(1) Developer hereby authorizes the Financial Institution upon such default, without further inquiry being made, to make said payment directly and immediately to the Township or its order, and no further authorization, consent and/or approval of or by Developer to or of said payment shall be required.

(2) The Township may draw amounts from and under the Financial Security prior to the performance of any work by or for the Township in order to complete the Secured Improvements or otherwise cure the default, and/or to pay professional services related thereto, based upon (i) estimates received by the Township for the completion, and/or (ii) bills received by the Township for the professional services.

(3) Developer agrees that it shall have no right or standing to prevent or delay any such payment to and/or collection by the Township.

(4) Developer hereby remises, releases and forever discharges Financial Institution from any and all liability with respect to honoring any such draws by the Township.

(5) In the event of a dispute between Developer and the Township, Developer nevertheless agrees that the provisions of Subsection (1) above shall continue to apply, and that the provisions of Subsection (1) shall not be satisfied by the Financial Institution's payment into court of the amount demanded by the Township but shall be satisfied only by the Financial Institution's payment of the demanded amount directly and immediately to the Township.

(6) The right of the Township to demand payment and collect less than the full undrawn amount of the Financial Security shall not be exhausted by a single exercise thereof, but may be exercised by the Township from time to time and at any time without limitation on the number of exercises thereof until the amount of the Financial Security has been fully drawn.

(7) If the costs, expenses and fees, incurred by the Township on account of (i) the foregoing completion of Secured Improvements or otherwise curing the default of Developer and (ii) the professional services related thereto, exceed the amount, if any, received by the Township from and under the Financial Security, Developer, in addition to such other and further obligations and liabilities imposed upon it under this Agreement and otherwise by law, shall be liable to the Township for such excess of such costs, expenses and fees. Developer hereby agrees to pay the full amount of such excess to the Township immediately upon demand.

(8) Except in the event of an emergency or other threat to public health and safety, prior to exercising the remedies available to the Township in the event of default, the Township shall give thirty (30) days advance notice of default to Developer and Financial Institution and Developer and Financial Institution shall have the right to cure such default within the said thirty (30) day period, provided, however, it is acknowledged by the Township and Developer that the Financial Institution has no obligation to cure any event of default under this Agreement.

4. Costs, Expenses and Fees.

A. If Developer fails to advance or reimburse the Township any costs, expenses or fees in accordance with and pursuant to Section 7 of the Development Agreement, whether or not such failure is the result of Developer's not establishing and/or not replenishing an escrow deposit with the Township for payment of such costs, expenses or fees, Developer shall be in default of this Agreement, and the Township shall be authorized to collect the amount thereof from and under the Financial Security (notwithstanding that the amount of the Financial Security, but for this Subsection A, is not now or hereafter specifically established to guarantee, secure or otherwise cover the payment of such costs, expenses or fees) in same manner and to the same extent as a default made and provided for under Section 5 of this Agreement.

B. Developer shall provide additional Financial Security, in a form acceptable to the Township and in the amount by which the Financial Security was reduced by any payment made to the Township from the Financial Security under provisions of Subsection A above, within fifteen (15) days after written notice of such reduction in the amount of the Financial Security is sent by the Township to Developer. Developer shall also provide the Township, within such fifteen (15)-day period, written proof of such additional Financial

Security. The failure of Developer to provide the Township such additional Financial Security and written proof thereof within such time shall constitute a default or breach under this Agreement, and Developer shall be subject to the provisions governing its default or breach, as set forth in both this Agreement and the Development Agreement and/or as otherwise provided by law, until the default or breach is properly and fully cured. The additional Financial Security shall be and constitute Financial Security fully subject to the terms and conditions of this Agreement.

5. Final Release of Financial Security; Termination of Agreement.

A. After all of the Secured Improvements have been completed in accordance with the Development Agreement, and after all of the provisions of the Development Agreement and this Agreement have been satisfied by Developer (including the payment of all costs, expenses and fees for which Developer is responsible under both said agreements) and Developer has tendered to the Township all improvements which are proposed to be dedicated to the Township and posted the necessary maintenance security as provided under Section 509(k) of the MPC, the Township shall authorize the Financial Institution in writing to release the balance of the Financial Security and the Township shall release the remainder of the Inspection Escrow to Developer. Such release authorized by the Township shall be the final release of funds from the Financial Security, and shall further release Developer and the Financial Institution from and under the Financial Security and this Agreement.

B. At and upon the aforesaid Township-authorized release of the balance of the Financial Security, this Agreement shall terminate without further action of the parties being required and neither Developer nor the Financial Institution shall have any further liability under this Agreement.

6. Validity and Enforceability of Financial Security.

A. The Financial Security shall be valid, and shall be maintained by Developer valid and in full force and effect at all times following the establishment thereof in accordance with and during continuance of this Agreement.

B. During the continuance of this Agreement, Developer shall, as may be requested by written notice from the Township from time to time or at any time, provide verification and proof to the Township concerning the existence, validity and enforceability of the Financial Security. The verification and proof shall be satisfactory to the Township.

C. Developer agrees and hereby authorizes the Financial Institution, during the continuance of this Agreement, to release to the Township any information as may be requested from time to time or at any time by the Township concerning the financial affairs of Developer relative to this Agreement and the Financial Security.

D. If the Township determines that, upon the information provided or not provided pursuant to Subsections B and/or C above, the Financial Security requirements of this Agreement are not satisfied, or, if Developer otherwise fails to provide and maintain the Financial Security under and in accordance with this Agreement, the Township shall give

Developer written notice to provide the required Financial Security within thirty (30) days of the date of the notice.

E. Developer agrees that any and all notices from the Township to the Financial Institution demanding payment of, from and under the Financial Security shall be valid and enforceable, and shall be honored by the Financial Institution if given to the Financial Institution during the continuance of this Agreement.

7. Financial Institution Non-Responsibility.

A. Developer agrees that Financial Institution shall have no duty to inquire as to the truthfulness, acceptability, due execution, due authorization or validity of any document, certificate, statement or notice which purports to have been executed by an official or other representative of the Township.

B. Developer and the Township further agree that Financial Institution shall not have any duty or responsibility with respect to the Financial Security other than to comply with the terms of this Agreement that apply to the actions which the Financial Institution is to take or not take with respect to the Financial Security.

C. Developer and Financial Institution further agree that the obligations of the Financial Institution under this Agreement, and under and with respect the Financial Security, are for the sole benefit of the Township, and shall not be affected, in any way, by any default, action or omission of Developer.

D. The Township and Developer further agree and acknowledge that the Financial Institution assumes no liability for the design, layout, construction, installation, maintenance and/or upkeep of the Improvements or the obligations of the Developer under this Agreement or the Development Agreement.

8. Charges of Financial Institution.

Any and all charges made by the Financial Institution for the establishment, creation, administration or termination of the Financial Security and/or for all other actions of the Financial Institution under, pursuant and/or related to this Agreement are the sole responsibility of Developer and shall be billed to and paid directly by Developer, and no amount of, from or under the Financial Security may be used by or paid to the Financial Institution for such charges. Developer agrees that the Township shall not be liable or otherwise obligated for any of such charges, and Developer hereby agrees to indemnify, protect and defend the Township from and against any such charges.

9. Interest.

If any interest accrues on account of the Financial Security, such interest shall merge with and become part of the funds represented by the Financial Security and shall be treated as an integral part thereof and applied in accordance with the terms of this Agreement. All such interest shall be reported under and to the taxpayer identification number of Developer, and Developer shall be liable for the payment of any income taxes as may be imposed and due on such interest.

10. Insolvency of Developer.

Developer acknowledges, covenants and agrees that, in case of any bankruptcy, receivership, or voluntary or involuntary assignment for the benefit of creditors by or of Developer, the Financial Security and all interest of Developer in, to or under this Agreement are not and shall not be considered part of the estate of Developer.

11. Payments, Reductions or Releases of Financial Security.

It is expressly and specifically understood, covenanted and agreed by Developer and Financial Institution that no payment, reduction and/or release whatsoever shall be made at any time of, from or under the Financial Security without the express written consent and instructions of the Township in accordance with the terms of this Agreement, and that Developer shall maintain the Financial Security at all times during the continuance of this Agreement in the amounts required herein, less all sums drawn or released therefrom by the Township in accordance with the terms hereof. Any violation of Developer's obligations under this Section shall render Developer liable for all damages to the Township, including, without limitation, all costs, fees and expenses (including, but not limited to, attorney's fees and costs), which the Township is required to pay in order to cure any default or breach by Developer under this Agreement because the Financial Security is not maintained and/or funds thereunder are not available or paid upon demand to the Township in order to cure such default or breach. Any violation of the Financial Institution's obligations under this Section shall render the Financial Institution liable for all damages to the Township, including, without limitation, all costs, fees and expenses (including, but not limited to, attorney's fees and costs), which the Township is required to pay in order to cure any default or breach by the Financial Institution for releasing or reducing the Financial Security except in accordance with the terms of this Agreement.

12. Notices.

Except as may be otherwise specifically provided in this Financial Security Agreement:

(1) Any notice, demand or other communication required, authorized or permitted to be given under this Agreement shall be sufficient if given in writing and delivered to the party to whom or which the notice or demand is directed at the respective address of the party first above indicated, or to such other address as the party may give by notice complying with the terms of this section.

(2) Such notice, demand or other communication shall be delivered to the addressee by one of the following means: (i) personal delivery against receipt; (ii) certified United States mail, postage prepaid, return receipt requested; or (iii) nationally recognized express delivery service, delivery charges prepaid. The notice, demand or other communication shall be deemed given and effective as follows: (i) if by personal delivery or by express delivery service, at the time of delivery; or (ii) if by mail, 3 business days after the date of deposit in the United States mails.

13. **Miscellaneous.**

A. **Waiver.** Neither the failure nor any delay on the part of the Township to exercise any right, remedy, power, or privilege granted under this Agreement or otherwise provided at law or in equity, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power, or privilege preclude further exercise of the same or of any other such right, remedy, power or privilege; nor shall any waiver of any such right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective against the Township unless it is in writing signed by a duly authorized representative of the Township.

B. **Assignment; Delegation.** Developer shall not assign or delegate any of its rights, powers, privileges, duties, obligations, or liabilities hereunder without the express written consent of the Township. Any such assignment or delegation, without such consent, shall be void.

C. **Cumulative Rights and Remedies.** Any and all rights, powers, privileges and/or remedies granted or accruing to the Township under or pursuant to this Agreement shall not be exclusive, but shall be cumulative and in addition to such other rights, powers, privileges, and/or remedies as may be now or hereafter available to the Township at law or in equity.

D. **Headings.** The captions or headings preceding the text of the several sections, subsections, paragraphs and other parts of this Agreement are inserted solely for convenience of reference; they shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

E. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable: (i) the remaining provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect; (ii) this Agreement be and is hereby amended, to the minimum necessary, to remedy such invalidity or unenforceability, and the parties hereto shall adjust their respective rights and obligations hereunder accordingly; and (iii) to the extent that such invalid or unenforceable provisions cannot be rendered valid or enforceable by amendment as aforesaid, the same shall be severed herefrom as though never set forth herein.

F. **Binding Effect.** Subject to Subsection B above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

G. **Entire Agreement; Amendment.** This Agreement, together with the exhibits attached hereto and made part hereof and the Development Agreement, constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof, and, except as may be otherwise specifically set forth herein, supersedes all prior and contemporaneous agreements and understandings, express or implied, oral or written. Except as may be otherwise specifically provided herein, this Agreement may not be amended, revoked,

changed, altered, or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.

H. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

I. **Third Party Beneficiary.** The rights and benefits of this Agreement shall not inure to the benefit of any third party. This Agreement shall not be construed as creating any rights, claims or causes of action against the Township, Developer or Financial Institution in favor of any other persons furnishing services or materials to or for the construction of the Development.

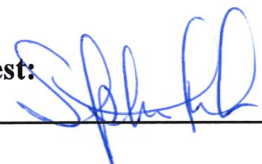
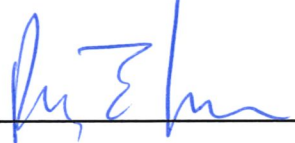
IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the day and year first above written.

UPPER UWCHLAN TOWNSHIP

Attest:

_____ By: _____
Sandy D'Amico, Chairperson

DEVELOPER

Attest:  _____ By:  _____

(NAME OF FINANCIAL INSTITUTION)

By: _____

changed, altered, or modified in any manner whatsoever, other than by written unanimous agreement of and signed by all parties hereto.

H. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

I. **Third Party Beneficiary.** The rights and benefits of this Agreement shall not inure to the benefit of any third party. This Agreement shall not be construed as creating any rights, claims or causes of action against the Township, Developer or Financial Institution in favor of any other persons furnishing services or materials to or for the construction of the Development.

IN WITNESS WHEREOF, the parties hereunto have executed this Agreement as of the day and year first above written.

UPPER UWCHLAN TOWNSHIP

Attest:

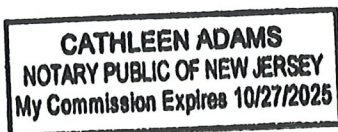
By: _____
Sandy D'Amico, Chairperson

DEVELOPER

Attest:

By: _____

SET Bank
(NAME OF FINANCIAL INSTITUTION)



By: _____

Cathleen Adams

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF CHESTER :

On this _____ day of _____, 20____, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Sandy D'Amico, who acknowledged herself to be the Chairperson of the Board of Supervisors of Upper Uwchlan Township, and that she, as such official, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Notary Public

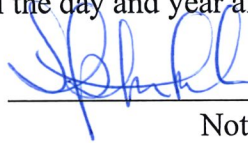
My Commission Expires:

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF CHESTER :

On this 26th day of May, 2021, before me, a notary public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared Philip E. Marks, who acknowledged himself/herself to be an Elder of Windsor Baptist Church, a Pennsylvania 501 (c)(3) organization and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.



Notary Public

My Commission Expires: 12/23/2023

Commonwealth of Pennsylvania - Notary Seal Stephanie Nicole Hoke, Notary Public Chester County My commission expires December 23, 2023 Commission number 1263777
--

ACKNOWLEDGMENT

New Jersey
COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF CHESTER *Atlanta* : ss
:

On this 28 day of MAY, 20 , before me, a notary public in and for the Commonwealth of ~~Pennsylvania~~ *Georgia*, the undersigned officer, personally appeared Tasell Grier who acknowledged himself/herself to be a Officer of FT Bank (name of Financial Institution), and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and official seal the day and year aforesaid.

Cathleen R
Notary Public

My Commission Expires:

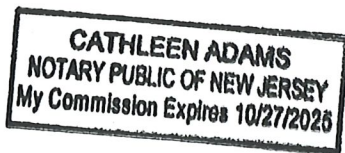


EXHIBIT "A"

List of Secured Improvements

ESCROW STATUS REPORT

GILMORE & ASSOCIATES, INC.
184 WEST MAIN STREET
SUITE 300
TRAPPE, PA 19426

PROJECT NAME: Windsor Baptist Church
PROJECT NUMBER: 18-11016T
PROJECT SPONSOR: Windsor Baptist Church
MUNICIPALITY: Upper Uwchlan Township

SUMMARY OF ESCROW ACCOUNT

TOTAL CONSTRUCTION (100%) = \$ 230,292.00
TOWNSHIP SECURITY = \$ 23,029.20
CONSTRUCTION INSPECTION \$ -
GRAND TOTAL ESCROWED = \$ 253,321.20

RELEASE NO.: 0
REQUEST DATE:

TOTAL ESCROW REMAINING: \$ -
CONSTRUCTION COMPLETION:

ESCROW TABULATION					CURRENT ESCROW RELEASE		ESCROW RELEASED TO DATE (INCLUDES CURRENT REQUEST)		ESCROW REMAINING (AFTER CURRENT REQUEST)		PERCENT COMPLETE
CONSTRUCTION ITEMS	UNITS	QUANTITY	UNIT PRICE	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	PERCENT
A. EROSION & SEDIMENTATION CONTROLS											
TEMPORARY STABILIZATION	LS	1	\$2500.00	\$ 2,500.00		\$ -		\$ -	1	\$ 2,500.00	
2' DIVERSION BERM	LS	1	\$2500.00	\$ 2,500.00		\$ -		\$ -	1	\$ 2,500.00	
CONCRETE WASH OUT	LS	1	\$1,500.00	\$ 1,500.00		\$ -		\$ -	1	\$ 1,500.00	
Basin Fencing	LF	340	\$2.00	\$ 680.00		\$ -		\$ -	340	\$ 680.00	
CONSTRUCTION ENTRANCE	EA	1	\$1500.00	\$ 1,500.00		\$ -		\$ -	1	\$ 1,500.00	
INLET PROTECTION	EA	9	\$250.00	\$ 2,250.00		\$ -		\$ -	9	\$ 2,250.00	
12" SILT SOX	LF	130	\$15.00	\$ 1,950.00		\$ -		\$ -	130	\$ 1,950.00	
SUBTOTAL ITEM A				\$ 12,880.00		\$ -		\$ -		\$ 12,880.00	
B. STORM SEWER											
6" SDR 35 R.W.C.	LF	227	\$45.00	\$ 10,215.00		\$ -		\$ -	227	\$ 10,215.00	
15" HDPE (6" SEL. BED & 12" COVER)	LF	113	\$55.00	\$ 6,215.00		\$ -		\$ -	113	\$ 6,215.00	
18" HDPE (6" SEL. BED & 12" COVER)	LF	498	\$75.00	\$ 37,350.00		\$ -		\$ -	498	\$ 37,350.00	
PRECAST STRUCTURES	EA	12	\$3700.00	\$ 44,400.00		\$ -		\$ -	12	\$ 44,400.00	
OUTLET AND RIPRAP	EA	1	\$2,500.00	\$ 2,500.00		\$ -		\$ -	1	\$ 2,500.00	
STORM RECHARGE BASIN	CY	480	\$12.00	\$ 5,760.00		\$ -		\$ -	480	\$ 5,760.00	
AMENDED SOIL	SF	3680	\$6.00	\$ 22,080.00		\$ -		\$ -	3,680	\$ 22,080.00	
SUBTOTAL ITEM B				\$ 128,520.00		\$ -		\$ -		\$ 128,520.00	
C. PAVING											
STONE BASE	SY	456	\$9.00	\$ 4,104.00		\$ -		\$ -	456	\$ 4,104.00	
PAVING	SY	456	\$15.00	\$ 6,840.00		\$ -		\$ -	456	\$ 6,840.00	
CEMETERY LANE RELOCATION (6" 2AMD, 2.0" TOPSOIL CHOKE)	SY	431	\$18.00	\$ 7,758.00		\$ -		\$ -	431	\$ 7,758.00	
STRIPING & SIGNAGE	LS	1	\$5000.00	\$ 5,000.00		\$ -		\$ -	1	\$ 5,000.00	
SUBTOTAL ITEM C				\$ 23,702.00		\$ -		\$ -		\$ 23,702.00	
D. LANDSCAPING											
SHADE / CANOPY TREES	EA	22	\$450.00	\$ 9,900.00		\$ -		\$ -	22	\$ 9,900.00	
EVERGREENS	EA	12	\$400.00	\$ 4,800.00		\$ -		\$ -	12	\$ 4,800.00	
SHRUBS	EA	19	\$50.00	\$ 950.00		\$ -		\$ -	19	\$ 950.00	
SUBTOTAL ITEM D				\$ 15,650.00		\$ -		\$ -		\$ 15,650.00	
E. MISCELLANEOUS											
SITE LAYOUT		1	\$7,500.00	\$ 7,500.00		\$ -		\$ -	1	\$ 7,500.00	
BOLLARDS		2	\$1,700.00	\$ 3,400.00		\$ -		\$ -	2	\$ 3,400.00	
HOP PLAN PREPARATION AND APPROVAL (LCR TRAIL)		1	\$10,000.00	\$ 10,000.00		\$ -		\$ -	1	\$ 10,000.00	
DEMOLITION OF EXISTING RETAINING WALL AT PARK AND LCR (LCR TRAIL)		1	\$2,200.00	\$ 2,200.00		\$ -		\$ -	1	\$ 2,200.00	
EXCAVATION / GRADING (LCR TRAIL)		1	\$7,500.00	\$ 7,500.00		\$ -		\$ -	1	\$ 7,500.00	
6' PAVED TRAIL (LCR TRAIL)		270	\$22.00	\$ 5,940.00		\$ -		\$ -	270	\$ 5,940.00	
ADA RAMPS (LCR TRAIL)		3	\$1,000.00	\$ 3,000.00		\$ -		\$ -	3	\$ 3,000.00	
SCHOOL FLASHER RELOCATION (LCR TRAIL)		1	\$5,000.00	\$ 5,000.00		\$ -		\$ -	1	\$ 5,000.00	
PERMANENT RESTORATION		1	\$5,000.00	\$ 5,000.00		\$ -		\$ -	1	\$ 5,000.00	
SUBTOTAL ITEM E				\$49,540.00		\$ -		\$ -		\$ 49,540.00	
TOTAL IMPROVEMENTS - ITEMS A-E				\$ 230,292.00		\$ -		\$ -		\$ 230,292.00	
F. RETAINAGE (10%)											

ESCROW STATUS REPORT

GILMORE & ASSOCIATES, INC.
184 WEST MAIN STREET
SUITE 300
TRAPPE, PA 19426

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CONSTRUCTION INSPECTION \$ -
GRAND TOTAL ESCROWED = \$ 253,321.20

RELEASE NO.: 0
REQUEST DATE:

TOTAL ESCROW REMAINING: \$ -
CONSTRUCTION COMPLETION:

ESCROW TABULATION					CURRENT ESCROW RELEASE		ESCROW RELEASED TO DATE (INCLUDES CURRENT REQUEST)		ESCROW REMAINING (AFTER CURRENT REQUEST)		PERCENT COMPLETE
CONSTRUCTION ITEMS	UNITS	QUANTITY	UNIT PRICE	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	QUANTITY	TOTAL AMOUNT	PERCENT
G. CONTINGENCY (TOWNSHIP SECURITY) (10%)				\$ 23,029.20		\$ -		\$ -		\$ 23,029.20	
						\$ -		\$ -		\$ 253,321.20	
NET CONSTRUCTION RELEASE						\$ -		\$ -			
SURETY AMOUNT				\$ 253,321.20		\$ -		\$ -			

EXHIBIT "B"

LETTER OF CREDIT

EXHIBIT "C"

**CERTIFICATE OF COMPLETION AND
AUTHORIZATION OF REDUCTION AND RELEASE
NO. _____**

WE, THE UNDERSIGNED, HEREBY:

A. CERTIFY that the work and Improvements, described hereinbelow, completion of which is provided under and by that certain Financial Security Agreement between Upper Uwchlan Township (the "Township") and _____, ("Developer"), dated _____, 20__ , concerning the construction, installation and completion of Improvements in the [Insert Name of Development] Land Development have been completed to the extent of the amount indicated in item I below; and

B. AUTHORIZE [Insert Name of Financial Institution], pursuant to the Financial Security Agreement, **TO REDUCE** the Financial Security, in the nature of a letter of credit by the Bank to guaranty, among other things, the completion of said work and Improvements, to the extent of the amount indicated in item III below, and to release said amount of reduction from and under the terms and conditions of the escrow account.

The reduction and release of the amount of the Financial Security hereby authorized shall not be construed, in any manner or extent, as an acceptance by the Township of the work and Improvements described hereinbelow (or of any other work performed or any Improvements installed or constructed), nor shall this Certificate and Authorization constitute any waiver by the Township of its rights to inspect and approve the work and Improvements described hereinbelow (or any other work performed and Improvements installed and constructed). Township hereby reserves the right to re-inspect the work and Improvements (as well as any other work and Improvements) and to require Developer to correct, repair or demolish and to properly reconstruct any and all defective and deficient work and Improvements not accepted and approved by Township.

THE FOLLOWING WORK AND Improvements are the subject of this Certificate and Authorization: *(See attached letter and invoice.)*

THE REDUCTION AND RELEASE of the Financial Security authorized by this Certificate and Authorization have been determined as follows:

I. COST OF COMPLETED WORK AND Improvements	\$ _____
II. <i>less</i> AMOUNT OF RETAINAGE (10%)	\$ _____
III. AMOUNT OF REDUCTION AND RELEASE	\$ _____

Date

Township Engineer

Date

Chairman, Board of Supervisors

Date

Township Manager



UPPER UWCHLAN TOWNSHIP

MEMORANDUM

ADMINISTRATION

TO: BOARD OF SUPERVISORS

FROM: Gwen Jonik, Township Secretary

RE: Disposition of Township Property – Public Works vehicles and equipment

DATE: June 3, 2021

The Board is **requested to authorize advertising for sale** the Public Works items listed below. The items below will be posted on Municibid, an online auction, with bidding open until June 18, for approvals of sale to the high bidders at your June 21 meeting. Public notice of the auction will be published in the Daily Local News, as required.

These items have met the replacement schedule and have been replaced.

1980's Leroi air compressor

2008 Haulmark 16' enclosed trailer

2008 Ford F-350 crew cab 4x4 5.4L

2008 Ford F-550 reg cab 4x4 6.4L diesel