

IN RE:

BEFORE THE BOARD OF SUPERVISORS

APPLICATION OF DELAWARE
VALLEY REALTY, LLC

OF KENNETT TOWNSHIP

CHESTER COUNTY, PENNSYLVANIA

DECISION

Delaware Valley Realty, LLC (hereinafter “Applicant”), having an address of 722 Yorklyn Road, Suite 350, Hockessin, Delaware, 19707, has filed an application for conditional use by which it seeks approval from the Board of Supervisors (hereinafter “Board”) of Kennett Township (hereinafter “Township”) to develop the approximately 38.4-acre parcel of land on the west side of McFarlan Road between Rosedale Avenue and East Hillendale Road (UPI # 62-4-218) in the R-4 Residential District of the Township (hereinafter “Property”) as an apartment development to be known as “Limestone Ridge” under the terms of §240-701.C(8), which permits apartments and other multi-family dwellings in accordance with §240-1928 of the Kennett Township Zoning Ordinance (hereinafter “Zoning Ordinance”).

The hearing on the conditional use application was opened on August 15, 2011 and continued to November 21, 2011 at the request of the Applicant. Michael E. Elling, Robert A. Hammaker and Allan A. Falcoff heard the application for the Board. Allan A. Falcoff is no longer a member of the Board of Supervisors, effective as of the beginning of 2012. He will, accordingly, not participate in this Decision, which shall be made by Mr. Elling and Mr. Hammaker alone. Robert F. Adams, Esquire served as the Board’s solicitor at the hearing. The applicant was represented by John A. Jaros, Esquire. Additional hearings on the application were heard on December 7, 2011 and December 19, 2011, at which time Patrick M. McKenna, Esquire served as the Board’s solicitor in place of Mr. Adams. Party status was sought by and

granted to various entities and property owners as follows: the Kennett Township Land Trust, d/b/a the Land Conservancy for Southern Chester County; the Kennett Township Planning Commission; Thomas and Ann Nale, 549 McFarlan Road; Ralph Schmidt, 600 McFarlan Road; Gordon Farquhar, Jr., 214 East Hillendale Road; John Boulet, 580 McFarlan Road; Joel and Ruth Hansen, 570 McFarlan Road; Amy Warren, 548 McFarlan Road; and Kathy Corcoran, 806 Nutes Farm Lane. None of the named parties were represented by counsel and no other citizens were accorded party status. Testimony was presented on behalf of the Applicant by Eden Ahrens, an employee of Delaware Valley Development Group, which is the owner of the Applicant, Andrew DeFonzo, P.E., employed by D.L. Howell & Associates, Inc. (hereinafter "D.L. Howell") and Glenn Worgan, also of Delaware Valley Development Company.

After receiving the evidence and exhibits presented by the Applicant in considering the Board and other exhibits made part of the record in this matter, and having reviewed the same, the Board makes the following:

Findings of Fact

1. Notice of the hearing was duly published in the Daily Local News and the proof of publication was presented as Exhibit B-2 at the hearing.
2. The record owner of the Property is Hornblende Enterprise Trust.
3. The Applicant is the equitable owner of the Property, having entered into an agreement of sale with the executors of the George Whiteside, III Estate (Exhibit A-1).
4. The Property consists of a single tax parcel designated UPI #62-4-218.
5. The following exhibits were presented to the Board at the hearing:

Applicant's Exhibits:

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| A-1 | First and last page of Agreement of Sale dated November 4, 2010 for the Property. |
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- A-2 Elevations and architectural floor plans prepared by Architectural Alliance dated October 11, 2011.
- A-3 Curriculum Vitae for Andrew M. DeFonzo, P.E.
- A-4 Aerial photograph of the Property on Existing Conditions Plan prepared by D.L. Howell.
- A-5 Pennsylvania Natural Diversity Inventory (PNDI) Review of the Property.
- A-6 Conditional use plan prepared by D.L. Howell dated December 23, 2010, last revised November 18, 2011.
- A-6(a) Conditional use plan prepared by D.L. Howell dated December 23, 2010, last revised December 6, 2011.
- A-7 Letter of serviceability from Chester Water Authority dated December 16, 2010.
- A-8 Letter from Kennett Township for sewer capacity availability dated December 13, 2010.
- A-9 Conditional use plan prepared by D.L. Howell with proposed improvements to McFarlan Road (site frontage) dated November 18, 2011, last revised December 6, 2011.
- A-10 Transportation Impact Study prepared by Traffic Planning & Design, Inc. dated March 31, 2011.
- A-11 Letter from Traffic Planning & Design, Inc. dated November 21, 2011 relating to Transportation Impact Study Addendum.
- A-12 Truck Turning Plan dated November 18, 2011 prepared by D.L. Howell.
- A-12(a) Amended Truck Turning Plan prepared by D.L. Howell dated December 23, 2010, amended December 6, 2011.
- A-13(a) Photograph of proposed signage for apartment units.
- A-13(b) Photograph of proposed signage for apartment units.
- A-14 Applicant's response to October 24, 2011 Gilmore & Associates, Inc. suggested conditions 1 through 17.
- A-15 Meeting summary prepared by Traffic Planning & Design, Inc. dated November 18, 2011 authored by Guy DiMartino.

Board Exhibits:

- B-1 Application for conditional use dated January 5, 2010.
- B-2 Proof of publication in Daily Local News of hearing scheduled for August 15, 2011.
- B-4 List of owners by parcel numbers who received notice of hearing.
- B-5 First review letter by Gilmore & Associates, Inc. dated March 30, 2011.
- B-6 Second review letter by Gilmore & Associates, Inc. dated June 2, 2011.
- B-7 Traffic Planning & Design, Inc. response to Gilmore & Associates, Inc. second review letter dated June 23, 2011.
- B-8 Message from Lisa Moore forwarding comments of Fire Marshal.
- B-9 Memo from Roger Lysle, Road Master, to Lisa Moore dated February 28, 2011.
- B-10 Memo from Police Chief Albert McCarthy to Planning Commission, Board of Supervisors and Lisa Moore dated March 10, 2011.

- B-11 Letter from Jeffrey T. Clark, Sr., Building Code Official, reporting Code compliance.
- B-12 Memo from Rick Farquhar, Safety Committee, to Planning Commission, Board of Supervisors and Lisa Moore dated March 10, 2011.
- B-13 Letter from Ray Ott & Associates re fiscal and market analysis review, dated June 2, 2011.
- B-14 Letter from Ann F. Walters Company, landscape architects, to Lisa Moore dated August 8, 2011.
- B-15 Fourth review letter from Gilmore & Associates, Inc. dated December 7, 2011.
- B-16 Memorandum from Environmental Management Center of the Brandywine Conservancy dated December 13, 2011.
- B-17 Report of Planning Commission recommendations from the Kennett Township Planning Commission dated December 13, 2011.
- B-18 Third review letter from Gilmore & Associates, Inc. dated July 29, 2011 (late exhibit).
- B-19 Revised third review letter from Gilmore & Associates, Inc. dated October 24, 2011 (late exhibit).

- C-1 Resolution of the Board of Trustees of the Land Conservancy for Southern Chester County dated December 12, 2011 authorizing the Executive Director to seek party status.
- C-2 Plan of proposed trail segment for Red Clay Greenway.

McCarthy-1 Hand drawn exhibit of roads surrounding property

6. The gross tract area of the Property is 38.4 acres, 19.8 acres of which is subject to a conservation easement.
7. The Applicant proposes to construct 112 apartment units configured in 14 buildings, each containing 8 apartments.
8. The Applicant also proposes a community center of approximately 2,191 square feet.
9. Minimum common open space of 35% is required by the Zoning Ordinance. The Applicant is proposing to have 35.7% common open space.
10. The total required parking is 283 spaces. The plan proposes 284 spaces.
11. The Property is currently unimproved.

12. The initial conditional use plan submitted with the application and at the first hearing was marked Exhibit A-6. A revised plan marked Exhibit A-6(a) was submitted at the hearing of December 7, 2011.

13. Exhibit A-9 is a conditional use plan demonstrating the improvements to McFarlan Road along the site frontage. The proposed improvements shown on Exhibit A-9 are shown in a gray shade. Those improvements resulted from a site meeting with the Township engineer and the Applicant's traffic engineer on November 18, 2011.

14. The McFarlan Road frontage improvements include, from the north, a 75-foot taper to a 12-foot widening width that is a 1-foot widening of the existing southbound travel lane, and an 11-foot shoulder. That 12-foot width will extend all the way to the southern access point of the Property. South of the southern access point there will be only a 2-foot widening of McFarlan Road due to the severe slopes. That 2-foot widening will be a 1-foot widening to the southbound travel lane and a 1-foot shoulder which will curtail with a 4-foot taper to the northern property line of Thomas and Ann Nale.

15. There will be no widening of the northbound lane of McFarlan Road, which will remain at 10 feet wide.

16. There are no sidewalks proposed along McFarlan Road and no trail to be provided at that location.

17. There are no walking paths proposed on the Property, except for a small loop in the southernmost portion of the Property which is approximately 300 feet in length.

18. There will be sidewalks on both sides of the interior roads of the proposed apartment project.

19. The central green area on the Property will have an underground pipe storage system beneath it, but the central green will be available for an active recreation area.
20. A tot lot is proposed on the southwestern portion of the central green.
21. The Applicant proposes to construct a 6-foot high vinyl material fence along the Property line contiguous with the industrial park abutting the Property to the north in order to eliminate the potential of pedestrian access to the adjacent McGrory property.
22. The Applicant has demonstrated satisfactorily through the submission of truck circulation turning plans that the interior roads of the project will handle fire truck circulation adequately (Exhibits A-12 and A-12(a)).
23. There will be no reserved parking places provided for at this project. As indicated in plan Exhibit A-6(a), there will be approximately 55 spaces ringing the central green area of the Property as it is proposed to be developed.
24. The approximately 19.7 acres to the south of the area to be developed is subject to a conservation easement with the Kennett Township Land Trust, d/b/a the Land Conservancy of Chester County.
25. Andrew DeFonzo offered the opinion that this application meets the conditional use standards required by §240-2509 of the Zoning Ordinance, as did Robert Johnston, Township engineer.
26. The Property will be served by public water provided by the Chester Water Authority and public sewer made available by Kennett Township.
28. The Property is intended to be developed in 2 phases, as indicated by a phasing line on Exhibit A-6(a). The line runs between buildings 1 and 14 on the east side of the plan and

moving in a westerly direction follows the loop road and crosses the cul-de-sac road in a northerly direction between buildings 7 and 8.

29. All of the internal roadway is intended to be constructed as part of phase 1, with the exception of the cul-de-sac in the southwesterly corner of the Property.

30. The Township traffic engineer, Eric Kauffman, and the Applicant's traffic engineer, Guy DiMartino, attended a site visit at the area of the proposed driveways serving the Property held on November 18, 2011. The sight distance analysis, based upon an assumed travel speed, was verified by the engineers and, based on the field measurements, considering appropriate re-grading of the embankment and removal of on-site vegetation to the south of the proposed southern driveway, it was agreed by both engineers that adequate sight distance is available for both of the proposed driveways from the Property to McFarlan Road. Those findings are set forth in Exhibit A-15.

31. Mr. Kauffman agreed with the location of the automatic traffic recorder tubes that were installed to determine the speed of the cars on McFarlan Road and verified that the speed used was the 85th percentile speed of the roadway, which was 45 miles per hour in one direction and 43 miles per hour in the other.

32. On behalf of the Kennett Township Land Trust, d/b/a the Land Conservancy for Southern Chester County, Gwen Lacy, Executive Director, presented a plan marked Exhibit C-2 demonstrating an extension of the proposed Red Clay Greenway Trail Segment that extended from the conserved portion of the Property across the McFarlan Road frontage of the Property. The request of the Kennett Township Land Trust, d/b/a the Land Conservancy was that public access be provided along McFarlan Road as an extension of the trail proposed on Hillendale Road pursuant to the conservation easement.

33. In its review letter dated July 29, 2011 (Gilmore third review letter, Exhibit B-18), 17 proposed conditions of approval of this application were set forth in that letter signed by Robert Johnston, Township engineer.

34. Exhibit A-14 sets forth the proposed Gilmore conditions (from its revised third review letter, Exhibit B-19) and the Applicant's response to each said condition.

35. By Exhibit B-17, the Planning Commission submitted a document restating those conditions and making additional comments in bold face type for each of the said 17 conditions.

36. By Exhibit B-16, John D. Snook of the Brandywine Conservancy, planning consultant to the Kennett Township Planning Commission, offered his comments concerning the conditional use plan in the form finally submitted (Exhibit A-6(a)). Mr. Snook's memorandum indicates some deviations from the alternative approaches to planning for the Property that he had submitted months before, including comments relating to the main roadway pattern, the size of the central green, the depth of the stormwater management basins, the perimeter trails and the concern by a neighboring owner about trespassing and overflow parking and the landscaping proposal for the ultimate preliminary final plan submissions. Mr. Snook did conclude that the conditional use plan conforms quite closely to his original alternative sketch.

37. Chief Albert McCarthy offered testimony concerning the flow pattern of stormwater and traffic safety issues on McFarlan Road, including his disagreement with the engineers concerning the sight distance at the Property driveways. Chief McCarthy expressed his opinion that, based on observations he has made, the sight distance is not adequate for the proposed development volume and he is concerned about additional accidents along the frontage of the Property.

DISCUSSION

The proposed apartment development for which approval is sought by Applicant is permitted by conditional use under the terms of §240-701.C(8) of the Zoning Ordinance. That authorization also includes compliance with the standards of §240-1928, which establishes standards for multiple-family dwellings, and requires also that the conditional use shall be subject to the criteria and procedures set forth in §240-2509 of the Zoning Ordinance. The term “conditional use” is defined in §240-201 of the Zoning Ordinance, as follows:

CONDITIONAL USE – A use which may not be appropriate to a particular zoning district as a whole, but which may be suitable in certain localities within the district only when specific conditions and criteria prescribed for such cases within this chapter are established by the applicant, who shall have the burden of proving the criteria and conditions can be satisfied. Conditional uses are reviewed and allowed or denied by the Board of Supervisors after recommendations by the Planning Commission.

A conditional use is essentially a use by right but is subject to compliance with specific conditions and criteria that are established in the Zoning Ordinance. Our task, as Supervisors, is to determine the extent to which the Applicant has met the burden of proving the criteria and conditions can be satisfied.

In addition to the specific conditions for approval contained in §240-2509.B(1), that section also defines the required application plan content in subsection E(2). The Applicant submitted Exhibit A-6 and, at a subsequent hearing, amended that with a plan identified as Exhibit A-6(a). This is the revision to the conditional use plan dated 12/6/11 that, among other things, eliminated the reserved parking places around a central green area and refined the intended use of the central green area which is intended to contain underground stormwater pipe storage and a proposed tot lot. These changes were made to the plan to meet the suggested alternative approaches recommended months before the hearing by John D. Snook of the

Brandywine Conservancy. Mr. Snook concludes, in Exhibit B-16, that the conditional use plan, as currently constituted, conforms quite closely to his original alternative sketch.

We find the plan content to be entirely compliant with the requirements of §240-2509.E(2) and we note that the Applicant has been responsive to comments of the Kennett Township Planning Commission and Township consultants through the review process that went on before the commencement of the hearings on the conditional use application. An example of this is the issue relating to site frontage improvements and traffic safety. The Applicant submitted a Transportation Impact Study marked Exhibit A-10 which was reviewed by Gilmore & Associates. One of the key issues examined by the Township traffic engineer was the location of access locations from the Property to McFarlan Road. In connection with this, the available sight distance from these proposed access locations was examined and the width of the road was likewise studied for adequacy to serve the intended apartment use. The sight distance was verified by Gilmore & Associates after a site visit held on November 18, 2011. A letter from Traffic Planning & Design, Inc. marked Exhibit A-11 concludes that the sight distances were verified by Gilmore & Associates in the field and that all parties agreed that adequate sight distance is available for both proposed access locations to McFarlan Road. In view of these findings and opinions, we are not able to reach a contrary conclusion as Chief McCarthy would have us do.

The Planning Commission recommends a full traffic signal at the McFarlan Road Rosedale Road intersection. The evidence establishes that there are insufficient warrants to allow us to impose that requirement. We will instead require a contribution from Applicant toward the expense of such a signal.

The Applicant refined its proposal concerning the road improvements to McFarlan Road after considering comments by the Township consultants. Exhibit A-9 is a plan dated 12/6/11 that shows in a gray-shaded color the proposed road improvements that were discussed at the aforesaid November 18, 2011 site meeting. This plan depicts the 75-foot taper with a 12-foot widening width that widens the southbound travel lane by 1 foot and adds an 11-foot shoulder. It shows that 12-foot width extending to the southern access point which then converts to only a 2-foot widening south of the southern entrance. It does not propose any widening of the northbound lanes of McFarlan Road. These proposed changes were found to be satisfactory by Gilmore & Associates.

The Applicant proposes no sidewalk or trail along the site frontage parallel to McFarlan Road. There was some discussion, but no conclusion, at the hearing about whether there would be any berming and landscaping along McFarlan Road. The Applicant indicated that it was open to having that berm if the Township desires it. We believe that the evaluation of that issue is more appropriately considered at the land development stage where there will be fully engineered plans presented. The Board will indicate in its Order that this decision will be reserved until that time and the Board shall have the right, in its discretion, to require the installation of a berm. At the land development stage, the Applicant will also evaluate and propose landscaping for properties on the east side of McFarlan Road, as we will set forth in a condition of our Order.

The plan complies with the recommendation of Ann F. Walters, who recommended in Exhibit B-14 that the proposed trail system on the interior of the site be removed because of the potential that it would encourage residents to “cut through” to the neighboring properties. The interior sidewalks along the interior roads of the proposed apartment project are adequate for

interior pedestrian circulation. With respect to the issue of trails, we note that on behalf of the Kennett Township Land Trust, d/b/a the Land Conservancy for Southern Chester County, Gwen Lacy, its Executive Director, submitted a proposed trail segment for the Red Clay Greenway marked Exhibit C-2 which shows a trail from the Conservation Easement Area in the southern part of the Property along the east side of the Property and parallel to McFarlan Road. The Applicant has not accepted that concept and it is not within the power of the Board to impose this requirement as part of an approval.

The Zoning Ordinance requires the Board to make a determination that the project will be developed using best stormwater management practices. The Applicant has been responsive to the comments of the Township engineer concerning the stormwater design, which appears to be feasible. Our principal concern is impacts of stormwater discharge on neighboring properties. Final stormwater design and calculations should indicate if any adverse off-site impacts will occur. We will require the Applicant to obtain stormwater easements from such owner(s), if necessary. In imposing this condition, the Board recognizes that current indications are that due to the design of the proposed stormwater management basins, no such easements will be necessary.

The Applicant presented sufficient evidence to demonstrate the availability of public water to the Property provided by Chester Water Authority. Kennett Township will have adequate sewer capacity for the project. The Applicant has demonstrated that the road network within the proposed project will accommodate the turning movements of a 48-foot aerial fire truck which will be able to navigate through the proposed internal drive and layout without issue. The testimony confirmed that the roads will accommodate such a vehicle even with the parking spaces fully loaded.

The Applicant has proposed to erect a 6-foot vinyl fence along the northerly title lines of the Property in response to the concerns expressed by the owner of the industrial facility to the west of the Property, as well as to comments of Township consultants. This improvement should substantially obviate the potential of residents of the apartment complex and others using the adjacent property for access to and from the Property.

The Township engineer, Gilmore & Associates, issued a series of review letters, 3 of which were marked Exhibits B-5, B-6 and B-15, being respectively the first review, second review and fourth review of the conditional use plan. Not entered as an exhibit were 2 other Gilmore review letters dated July 29, 2011 (third review) and October 24, 2011 (revised third review). The July 29, 2011 letter is relevant for purposes of this Decision simply to state that Robert Johnston, P.E., based upon his review of the documents submitted, offered a set of conditions of approval for the Township's consideration in that letter, which were numbered 1 through 17. The proposed conditions of approval were again set forth at length in the review letter of October 24, 2011. Both the Applicant, by means of Exhibit A-14, which referenced the 10/24/11 Gilmore review letter, and the Township Planning Commission, by means of Exhibit B-17, which referenced the July 29, 2011 Gilmore letter, commented on and supplemented the proposed Gilmore conditions. Since both the Applicant and the Planning Commission, in submitting Exhibits A-14 and B-17, made reference to proposed conditions of approval from Gilmore & Associates dated 10/24/11 and 7/29/11, the Board will make those 2 letters exhibits which shall be part of the record for the limited purpose of having those conditions as part of the record. The July 29, 2011 letter will be marked Exhibit B-18 and the October 24, 2011 letter will be marked Exhibit B-19. Both of these exhibits will be identified as having been submitted to the record late, after the close of the hearing.

The Zoning Ordinance permits the Supervisors, in the context of the consideration of a conditional use application, as set forth in §240-2509.B(2), to impose such conditions of approval, in addition to those required by the Zoning Ordinance, as may be necessary to ensure compliance with any and all of the conditional use standards of the Ordinance, as well as compliance with any other relevant ordinances, regulations and codes. The proposed conditions first established by Gilmore & Associates, with the assistance of the Planning Commission, have been very helpful to the Board in formulating the conditions which we will make part of the Order which follows.

Our primary task in evaluating this application is to determine whether the conditions identified in §240-2509.B(1)(a) through (p) have been satisfied by the Applicant. While this determination is ours to make, we do place reliance on the professionals who prepared and reviewed the plan. We note that both Andrew DeFonzo, Applicant's engineer, and Robert Johnston, Township engineer, concluded, in their opinions as civil engineers, that the Applicant has met or exceeded each of the conditional use standards. Those opinions are shown respectively in the notes of testimony at pages 114 and 152. We find that the record in this matter supports this conclusion. We place great reliance on our engineer and have concluded, therefore, that the application has satisfied those requirements.

Our inquiry, therefore, is now to determine in what way an approval of this application should be appropriately conditioned as we are authorized to do. In that regard, we turn to the recommendations by Gilmore and the comments thereon by the Applicant and by the Planning Commission which will be considered in the Order of the Board in the following approval. Based upon the testimony and exhibits presented, the Board is also satisfied that the Applicant

has demonstrated compliance with the multiple-family dwelling standards contained in §240-1928.

CONCLUSIONS OF LAW

1. The hearing was duly advertised, all required notices were given and the hearing was duly convened.

2. The Board has jurisdiction to decide this matter under §240-701.C(8) of the Zoning Ordinance.

3. Those persons and entities admitted as parties to this hearing are duly qualified to have that status.

4. The Applicant has satisfied the conditions of approval set forth in §240-2509.B(1) of the Zoning Ordinance.

5. The Applicant has met all standards relating to multiple-family dwellings as set forth in §240-1928 of the Zoning Ordinance.

6. The Board, therefore, enters the following:

ORDER

AND NOW, this 25th day of January, 2012, upon consideration of the application of Delaware Valley Realty, LLC for conditional use approval to develop the Property as an apartment complex under the terms of §240-701.C(8) of the Zoning Ordinance; AND having found that the Applicant has demonstrated compliance with the applicable standards of the Zoning Ordinance relating to the use as proposed; AND having found further that the Applicant has satisfied the requirements of §240-2509 of the Zoning Ordinance relating to conditional use applications generally and those of §240-1928 relating specifically to multiple-family dwellings,

IT IS HEREBY ORDERED that the conditional use application is granted to permit the development of the Property as proposed, subject to the following express conditions:

1. In lieu of the installation of a full service traffic signal at the intersection of McFarlan and Rosedale Roads, the Applicant shall make a contribution of \$50,000 to the Township upon execution and recordation of the final land development plan. This payment shall be applied to the cost of installing a traffic signal at this intersection when warranted.
2. The final land development plan shall incorporate the site frontage improvements to McFarlan Road, including the required grading, taper, widening and paving as indicated in the Conditional use plan marked Exhibit A-9 and entitled “Proposed Improvements to McFarlan Road (site frontage).”
3. The sidewalks shown on the plan marked Exhibit A-6(a) along the interior roads shall be the only sidewalks required and none shall be installed along the frontage of the Property along McFarlan Road. At the time of final land development approval, the placement of a landscaped berm along the site frontage parallel to McFarlan Road shall be considered and the Township hereby reserves the right to impose the requirement that a landscaped berm be shown on the land development plan and installed at the time of all other site improvements.
4. There shall be no internal walking paths installed within the Property other than the walking path identified as the loop in the open space area in the southwesterly corner of the plan, Exhibit A-6(a).
5. The Applicant shall install the 6-foot white vinyl fence, or an acceptable fence of alternative materials and color approved by the Board of Supervisors, along the northerly title lines of the Property as shown on Exhibit A-6(a). That fence shall be at all times maintained and repaired by the homeowners association for the apartment community.

6. The multiple-family apartment units shall be constructed substantially similar to the architectural rendering provided to the Township and marked Exhibit A-2 at the hearing.

This requirement shall be flexible only to the extent that the particular materials for the construction may vary depending upon their availability and cost.

7. During the preliminary plan review, the Applicant will submit a plan of exterior architectural building lighting for review and approval by the Township.

8. The Applicant shall install landscape screening on the residences on the opposite (east) side of the proposed development along McFarlan Road. The landscaping on those properties shall be in accordance with a design detail to be provided to the Township during the preliminary land development plan review and no such landscaping shall be installed unless and until it is approved by the affected McFarlan Road property owner. If those owners do not approve of the proposed landscaping, the Applicant will be relieved of any obligation for the installation of landscape material on such resident's lot. The landscaping shall be subject to the approval of the Board of Supervisors.

9. The Applicant shall perform site specific geotechnical evaluations relative to the internal driveways, stormwater management facilities and building foundations to be submitted with the preliminary land development application.

10. The Applicant shall submit a preliminary geologic assessment for carbonate geology to be performed by a licensed professional geologist and to be submitted with the preliminary land development application.

11. The Applicant acknowledges that, in the event the stormwater management design for this project substantially alters the concentration and/or volume of stormwater discharged from the Property after development, that it may be necessary to obtain stormwater

easements from abutting owners. In such circumstance, the Applicant will obtain such easements as may be legally required.

12. The Applicant shall provide up to 5 fire hydrants at locations which serve the project as agreed to by Applicant and the Township's fire and professional consultants. The Applicant shall specify the location of the 5 fire hydrants during the preliminary land development phase.

13. The Applicant shall not be required to provide any easement for the connection of a future trail system on the Property to adjacent parcels.

14. The Applicant has modified its conditional use plan and Exhibit A-6(a) to illustrate the central green area as recommended by the Brandywine Conservancy. This design may be revised by mutual agreement of the Applicant and the Township at the time of preliminary land development approval to enhance its use for active recreational use by residents of the apartment community.

15. Wooded areas shown on the plan shall be labeled consistent with the required definitions of the Zoning Ordinance.

16. This approval shall not be construed to be a waiver of any provision of the Township Zoning Ordinance, Subdivision and Land Development Ordinance or any other Township or other governmental regulation, law or requirement, including all requirements and impositions normally associated with the subdivision and land development review process in the Township, it being the intention of the Board that the proposed use and development of the Property shall comply with all applicable ordinances, laws and requirements, except to the extent that they may have been modified by the terms of this Order.

KENNETT TOWNSHIP
BOARD OF SUPERVISORS

Michael E. Elling

Robert A. Hammaker