

**EAST BRANDYWINE TOWNSHIP BOARD OF SUPERVISORS**  
**AM SESSION**  
**March 3, 2022**

**Those in Attendance:**

Kyle P. Scribner, Chairman  
Carl K. Croft, Vice-Chairman  
Jason R. Winters, Member  
Luke D. Reven, Township Manager  
Mark Kocsi, Chief of Police  
Matthew VanLew, Roadmaster  
Tom Oeste, Township Solicitor  
Lisa Taraschi, Township Secretary

The East Brandywine Township Board of Supervisors meeting of Thursday, March 3, 2022 was called to order at 8:00 AM at the East Brandywine Township Municipal Complex.

**Opening of Meeting**

Chairman Scribner opened the meeting by announcing that this meeting is being recorded.

Chief Kocsi stated he was proud to announce that Juan Lemus was being promoted to the rank of Corporal. He added that Officer Lemus has been employed by East Brandywine Township Police Department since 2015 and is involved in the department's fire arms program, on the County's Drug Task Force and a team operator on the Regional SWAT team. Chief Kocsi congratulated Corporal Lemus. Chairman Scribner administered the oath to Corporal Lemus and congratulated him on his achievement.

Chief Kocsi awarded Juan Lemus, Danny Miller, Ken Ader and Minquas Ambulance Service with Merit Accommodations earned while on Greg Kohlmaier's ambulance call. He advised that this accommodation is earned while taking action in the line of duty resulting in saving a life.

**Public Comment on Agenda Items**

There was no public comment.

**Approval of Minutes**

There were no minutes to be approved.

**Old Business**

**Permission to appoint Roadcrew Forman**

Roadmaster VanLew respectfully asked the Board for permission to promote Derrick Claas to Roadcrew Forman. He added Derrick has been with the Department for seven years, and has demonstrated his ability to lead a crew.

Vice-Chairman Croft made a motion to appoint Derrick Claas to Roadcrew Forman. Supervisor Winters seconded the motion, with all members voting Aye. Motion passed 3-0.

**Conditional Use Decision: ELU-Planebrook Guthriesville, LLC**

Mr. Tom Oeste provided a brief summary of the Conditional Use hearing. Mr. Oeste added that he feels it is appropriate to approve this decision in order. The Conditional Use order has been included in these minutes.

KRISTIN S. CAMP, ESQUIRE  
THOMAS OESTE, ESQUIRE  
BUCKLEY, BRION, McGUIRE,  
& MORRIS LLP  
118 West Market Street, Suite 300  
West Chester, Pennsylvania 19382  
(610) 436-4400

SOLICITOR FOR EAST BRANDYWINE  
TOWNSHIP

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IN RE: CONDITIONAL USE : BEFORE THE BOARD OF SUPERVISORS  
APPLICATION OF  
ELU-PLANEBROOK GUTHRIESVILLE, LLC : EAST BRANDYWINE TOWNSHIP

**DECISION AND ORDER**

ELU-Planebrook Guthriesville, LLC (“Applicant”) is the equitable owner of two parcels of property located at 1130 Horseshoe Pike, Chester County Tax Parcel No. 30-5-144.5 and 1136 Horseshoe Pike, Chester County Tax Parcel No. 30-5-144.8 (collectively the “Property”). Applicant filed a conditional use application (the “Application”) on August 2, 2021 with the Board of Supervisors of East Brandywine Township (the “Board”) seeking approval to subdivide and develop the Property with 89 townhouses and associated improvements in accordance with Section 399-27.C(2) of the East Brandywine Township Zoning Ordinance of 1989, as amended (the “Ordinance”). Section 399-27.C(2) permits a traditional neighborhood development in the TND-2 Traditional Neighborhood Development Overlay District by conditional use of the Board pursuant to the standards in Section 399-30.B of the Ordinance. Applicant also seeks the Board’s conditional use approval to develop multifamily dwellings, specifically 89 townhouses, in the traditional neighborhood development which is a use permitted by conditional use pursuant to Section 399-30.B(3)(e). Applicant also seeks the Board’s approval of the following:

- 1) A modification pursuant to Section 399-13.1.I of Section 399-13.1.B which establishes the minimum width of the Riparian Corridor Conservation District;
- 2) A modification pursuant to Section 399-13.1.I of Section 399-13.1.C(1) which requires existing natural vegetative conditions to be maintained within the first 50 feet of any designated Riparian Corridor Conservation

District unless determined by the Township to be undesirable and/or contrary to the objectives of Section 399-13.1;

- 3) Approval pursuant to Section 399-79.B(2) to permit a reduction of the minimum planting guidelines required in Section 399-79.B(2);
- 4) A modification of Section 399-58.C(5)(f)[3][c] to locate a portion of the stormwater management facilities within a primary conservation area within the common open space and within an area of woodlands; and
- 5) A modification of Section 399-30.B(4)(c)[5] pursuant to the authority in Section 399-137.C(7)(a) to allow the dwelling units to be setback a minimum of 20 feet from the cartway, or in instances where a lot abuts a sidewalk, a minimum of 20 feet from the sidewalk, all ample room for parking in front of the garages in the townhouses.

The Board conducted a public hearing on October 7, 2021 to consider the Application. Public notice of the hearing was advertised in the *Daily Local News* on September 22, 2021 and September 29, 2021. See Exhibit B-19. The Property was posted pursuant to the requirements in the Pennsylvania Municipalities Planning Code ("MPC"). See Exhibits B-20 and B-21. The Board was represented by its Solicitor, Marc Jonas, Esquire. Applicant was represented by John Jaros, Esquire.

Beth Watts, owner of property at 404 Norland Drive, Downingtown, Pennsylvania, and John Winters, owner of property at 2069 Bondsville Road, Downingtown, Pennsylvania, were granted party status at the hearing without any objection from Applicant.

From the testimony and exhibits presented at the hearing, the Board makes the following:

#### **FINDINGS OF FACT**

1. Applicant is the equitable owner of the Property pursuant to the following: (i) an Agreement of Sale dated October 10, 2018 with DNB First, NA, Trustee under the Will of Alan H. McCausland, as amended in two amendments; and (ii) an Agreement of Sale dated June 13, 2019 with Sharon H. Fisherowski. See Exhibit A-1.
2. The Property is located between Bondsville Road and Horseshoe Pike in the R-2 Residential Zoning District and TND-2 Traditional Neighborhood Development Overlay District.
3. No portion of the Property is located in the Flood Hazard District pursuant to Section 399-13 or the Water Hazards Soils Overlay District pursuant to Section 399-15.
4. There is a perennial stream which is an unnamed tributary to Beaver Creek that traverses generally east to west on the southern portion of the Property and thus portions of the Property are located in the Riparian Corridor Conservation District pursuant to Section 399-13.1.

5. The Property is located in the Steep Slope Conservation District pursuant to Section 399-14.

6. The Property contains a total of 21.775 gross acres which is comprised of two different tax parcels: (i) 19.307 gross acres identified as Parcel 30-5-144.5; and (ii) 2.468 acres identified as Parcel 30-5-144.8.

7. Applicant proposes to consolidate the two tax parcels and develop a maximum of 89 townhouses with streets, sidewalks, open space, stormwater facilities and utilities.

8. The Property is currently undeveloped farmland and woodland. See aerial photograph admitted as Exhibit A-2.

9. The Property is located to the southeast of an existing townhouse development known as Applecross Village Towns which is located on the east side of Bondsville Road ("Applecross").

10. In a Decision and Order dated October 5, 2021, the East Brandywine Township Zoning Hearing Board granted Applicant a special exception pursuant to Sections 399-14.D(3)(b), (c) and (d) of the Ordinance to build the proposed access road, (identified on the Plan as Road A) up to 24 feet in width through the Steep Slope Conservation District in a location substantially similar to the location depicted on the plan presented at the zoning hearing and to permit construction and use of public utilities within proposed Road A within the Steep Slope Conservation District. See Exhibit B-23.

11. With the Application, Applicant submitted a conditional use plan prepared by Commonwealth Engineers, Inc., dated July 28, 2021 (the "Plan"). The Plan was admitted as Exhibits B-12 and A-3(a)-(p).

12. Applicant presented the expert testimony of Victor Kelly, P.E., a professional civil engineer from Commonwealth Engineers, Inc., who prepared the Plan and the Stormwater Management Plan Narrative that was admitted as Exhibit A-8.

13. The applicable area and bulk requirements for the proposed development are found in Section 399-30.B(4)(c).

14. Section 399-30.B(4)(c)[1] allows a maximum gross density of 7 dwelling units per acre while the Plan proposes 4.1 dwelling units per acre.

15. The approximate floor area of each unit in the development will range between 1,100 to 1,300 square feet which meets the requirement in Section 399-30.B(4)(c)[3][a].

16. The proposed lots will have a minimum lot width of 24 feet which complies with the minimum lot width requirement in Section 399-30.B(4)(c)[4].

17. The Plan does not comply with the minimum front yard/build to line in Section 399-30.B(4)(c)[5]. Applicant seeks the Board's approval pursuant to the authority in Section 399-137.C(7)(a) to modify this specific area and bulk requirement to allow the dwelling units to be setback a minimum of 20 feet from the cartway, or in instances where a lot abuts a sidewalk, a minimum of 20 feet from the sidewalk, to make sure there is ample room for parking in front of the garages.

18. The Planning Commission was concerned that the dwellings be set back far enough from the cartway or sidewalk to allow room for off street parking in the driveway.

19. The dwellings will have a minimum side yard setback of 10 feet and minimum rear yard setback of 35 feet as required by Sections 399-30.B(4)(c)[6] and [7] respectively.

20. According to Mr. Kelly, the Plan complies with all area and bulk requirements for lots in a traditional neighborhood development set forth in Section 399-30.B(4)(c) of the Ordinance, except for the minimum front yard/build to line in Section 399-30.B(4)(c)[5].

21. The proposed townhouse development will be accessed through a single access road labeled "Road A" on the Plan which intersects with Horseshoe Pike approximately 2,000 feet east of the intersection of Horseshoe Pike and Bondsville Road/Hopewell Road.

22. The Plan proposes two emergency access driveways that are proposed to connect to two different streets in Applecross. One emergency access is proposed to connect proposed Road B to the right of way of Par Lane in Applecross and the other emergency access connection is proposed to connect proposed Road D to Mulligan Road.

23. The final subdivision and land development plan for Applecross titled, "Final Land Development Plan for Applecross Country Club, Phase IV, South Tract", prepared by Wilkinson & Associates, Inc. dated January 15, 2016, last revised October 7, 2016 which was recorded in the Office of the Chester County Recorder of Deeds in Plan Book No. 20046 ("Applecross Plans") depicted an easement in favor of the Township for a 37 foot wide road right of way over an area identified as "Road C" on sheet 22 of the Applecross Plans. The easement depicted on the Applecross Plans was offered for dedication to the Township.

24. Consistent with the Applecross Plans, the developer of Applecross, Pulte Homes of PA, Limited Partnership, executed a Declaration of Perpetual Offer of Dedication of Road C Right of Way dated June 5, 2018 which was recorded in Book 9775, page 575 whereby Pulte irrevocably and in perpetuity offered to the Township dedication of the right of way of Road C for public purposes. Road C is now identified as Par Lane.

25. There is no recorded easement in favor of the Township or Applicant to allow the emergency access to Mulligan Road as shown on the Plan.

26. Because the roads in Applecross are private, Applicant will need to obtain the Applecross homeowners association's approval for an easement to allow the emergency accesses proposed on the Plan.

27. Applicant proposes to install chains or bollards at the entrances to the emergency accesses to demarcate that the connections may only be used in the event of emergencies.

28. Over the course of Applicant meeting with the Planning Commission to review the Plan, the Planning Commission requested Applicant to revise the Plan to relocate the access driveway identified as Road A to allow the future construction of the eastern leg of the Reeceville Road Extension (the "Road Extension").

29. The Road Extension is a road planned by the Township in the Guthriesville Master Plan and Official Map which on the eastern leg proposes a road connecting Bondsville Road across various properties, including the Property, to Horseshoe Pike in order to bypass the Village of Guthriesville and the intersection of Horseshoe Pike/Bondsville Road/Hopewell Road.

30. Mr. Kelly testified that Applicant is willing to amend the Plan and implement what is depicted on the concept plan that was admitted at the hearing as Exhibit A-13 titled "Road & Right of Way Configuration Plan" prepared by Commonwealth Engineers, Inc. dated October 7, 2021 (the "Right of Way Configuration Plan").

31. The Right of Way Configuration Plan depicts Road A being designed and built in three different segments. The first segment which intersects with Horseshoe Pike is proposed to be a 50 foot wide right of way and 28 foot cartway with concrete vertical curb for approximately 452 feet from Horseshoe Pike into the Property where it ends in a stub. This portion is depicted in green crosshatch on Exhibit A-13. The second portion is proposed to be a 37 foot wide right of way and 24 foot cartway with Belgian block curb. This portion is depicted in blue crosshatch on Exhibit A-13. The third segment is proposed to be a 37 foot wide right of way and 20 foot wide cartway with Belgian block curb. This portion is depicted in red crosshatch on Exhibit A-13.

32. Applicant is only willing to construct the first leg of the Road Extension which is the portion of Road A depicted on Exhibit A-13 in green crosshatch.

33. Applicant is willing to grant the Township a perpetual easement across a portion of the Property which is designated on the Plan as sanitary sewer drip fields to allow the Township to finish the construction of the Road Extension through the Property.

34. If Applicant is required to construct the portion of the Road Extension as depicted on Exhibit A-13, that will reduce the land area that Applicant may provide for disposal of treated sewer effluent to approximately 135% and would require the Board to grant a waiver from the requirement in Section 350-47.B(3) of the Subdivision and Land Development Ordinance ("SALDO") which requires a developer to provide an area of 1 ½ times the land area necessary to dispose of the total effluent generated by the development on or off the subdivision or land development.

35. Applicant proposes to dedicate to the Township the green crosshatched portion of Road A as depicted on Exhibit A-13, but the remaining portion of Road A and all other roads within the development would be privately owned by the homeowners association that will be created for the development.

36. The roads in Applecross are also privately owned and have a 37 foot wide right of way and a 20 foot wide cartway.

37. The proposed townhouse development is proposed to be serviced by public water with a main extension leading to Horseshoe Pike.

38. The entirety of the Property drains to unnamed tributaries to Beaver Creek which traverse the site along the southeast Property boundary.

39. The Plans propose the installation of two stormwater basins labeled "Wetland Treatment Basin No. 1" and "Wetland Treatment Basin No. 2" on the plan located along the southern edge of the Property.

40. Applicant proposes to install additional stormwater BMP's such as rain gardens, infiltration trenches, amended soils within sumped inlet areas and extensive landscape plantings throughout the development.

41. The details of the stormwater management facilities that Applicant will be required to install shall be determined and approved by the Board as part of the land development process.

42. The Plan proposes that approximately seven acres of woodland will be retained on the north end of the Property where Applicant proposes to install a drip irrigation system for disposal of the treated sewage effluent from the development. This area is depicted on sheet 1 of the Plan marked as Exhibit A-3(a) and labeled, "Woodland Preservation and Drip Field Area".

43. Applicant presented a letter dated July 22, 2021 from Ebert Engineering, Inc. to the East Brandywine Township Municipal Authority (the "Authority").

44. Mr. Ebert proposed to connect various dwellings via a low pressure sewer system with the homeowners association owning and maintaining the system.

45. Joseph Boldaz, P.E., the civil engineer who represents the Authority, reviewed the Application and proposed connection to public sewer and issued a review letter dated September 1, 2021 which was admitted as Exhibit B-12.

46. Mr. Boldaz commented that the Authority does not permit low pressure sewer systems serving multiple connections and that Applicant will have to revise the design to meet the Authority's requirements.

47. Applicant proposes to connect the townhouses to public sewer for treatment at the Applecross Sewage Treatment Plant (the "Plant"). The townhouses will be connected to either a gravity collection system or single unit low pressure grinder pumps which will transport the sewage effluent to an existing collection system in Applecross where it is then conveyed by a pump station on Bondsville Road through a force main leading to the Plant.

48. Mr. Kelly testified that the Plant has sufficient capacity to serve the proposed development which is expected to generate approximately 15,575 gallons per day of effluent for 89 townhouses.

49. Applicant has not received any approvals or permits from the Authority for the proposed development and proposed connection to public sewer and will have to obtain the Authority's approvals to connect to public sewer as part of the land development process.

50. The Plan proposes a 20-foot wide protected buffer area on the northwest boundary between the proposed development and Applecross to the north. Applicant indicated that it had early discussions with the Applecross homeowners association who expressed its desire that Applicant preserve the existing tree line along Applecross' southern property boundary.

51. Applicant proposes to enhance the existing tree buffer with additional landscaping.

52. As a result of maintaining the 20 foot wide buffer between the northern Property boundary and Applecross, Applicant shifted the proposed development further to the southeast which led to disturbance of the 100 foot riparian buffer.

53. Applicant explained that in order to preserve the 20 foot wide buffer between the northern Property boundary and Applecross, Applicant seeks the Board's approval to modify the 100 foot wide riparian buffer required by Section 399-13.1.B(2)(b)[1].

54. Applicant requests the Board's approval for the following modifications pursuant to Section 399-13.1.I of the Ordinance: (i) to reduce the 100 foot wide buffer required in Section 399-13.1.B(2)(b)[1] to 50 feet; (ii) to allow the disturbance of existing natural vegetative conditions within the first 50 feet of any designated Riparian Corridor Conservation



District; and (iii) to allow stormwater management facilities and driveways within the proposed 50 foot riparian buffer which would otherwise be prohibited by 399-13.1.C.

55. Applicant seeks the Board’s approval of the modifications outlined in Finding of Fact No. 54 above pursuant to the authority in Section 399-137.C(7)(a) and (d).

56. There are no historic resources located on the Property. There are two Class II Historic Resources (No. 146 and No. 150) located on adjacent properties.

57. Applicant has not prepared a Historic Resource Impact Study and will be required to do so pursuant to Section 399-66.A(2) of the Ordinance if any portion of the exterior wall, surface, or boundary of the structures designated as Historic Resource Nos. 146 or 150 are located within 300 feet of the proposed location of any exterior wall or surface of a new building, structure, road, driveway, or parking area in the proposed development.

58. Applicant presented the testimony of Rachel Sclan Vahey, ASLA, the owner of InFocus Planning. Ms. Sclan Vahey is a registered landscape architect in the Commonwealth of Pennsylvania who was offered as a professional landscape architect based on the credentials in her curriculum vitae which was admitted as Exhibit A-5.

59. Ms. Sclan Vahey prepared the landscaping plans which were marked Exhibit A-3(h) and (i) and included as sheets 8 and 9 of the Plan.

60. Ms. Sclan Vahey testified that one of the main goals in designing the landscaping for the development was to preserve the existing woodlands in the northwest portion of the Property and to preserve the existing buffer where the Property abuts Applecross.

61. The landscaping plan proposes the installation of street trees lining Road A as it enters off of Horseshoe Pike.

62. The landscaping plan does not comply with the requirements in Section 399-79.B(2) for buffer and screening plantings required based on the proposed gross building area. Ms. Sclan Vahey was asked to quantify the deficiencies in the landscape plan which are as follows:

<b>DEFICIENCIES IN LANDSCAPE PLAN</b>	
<b><u>REQUIRED</u></b>	<b><u>PROVIDED</u></b>
470 deciduous trees	119 shade trees and 101 ornamental trees
940 deciduous shrubs	141

470 evergreen trees	93
940 evergreen shrubs	177

63. Section 399-79.B(2) also requires Applicant to plant a certain number of deciduous trees, evergreen trees, deciduous shrubs and evergreen shrubs based on the square footage of proposed paved areas. The landscaping plan does not propose any additional plantings to comply with that Ordinance requirement.

64. Applicant seeks the Board's approval to reduce the required buffer and screening plantings based on Section 399-79.D(2).

65. Section 350-53 of the SALDO permits an applicant to remove 25% of existing woodlands without requiring any tree replacement. The Plan proposes the removal of 30.89% of the woodlands and thus would require Applicant to plant an additional 192 trees and 319 shrubs.

66. Section 350-54 of the SALDO would require Applicant to plant 178 street trees along the roads while the landscape plan proposes the installation of only 109 street trees.

67. The Board will consider Applicant's request for a modification of the landscaping that would be required by Section 399-79.B(2) and the applicable sections in the SALDO as part of the land development process.

68. Section 399-30.B(2) requires that all new infill development and redevelopment within the TND-2 Overlay District shall be consistent with the Amended Manual of Written and Graphic Design Guidelines which is codified in Appendix B of the Ordinance.

69. Applicant submitted a Design Manual as Exhibits B-10 and A-7 prepared by InFocus Planning dated July 27, 2021 (the "Design Manual").

70. The Design Manual proposes the following amenities: small pocket parking areas limited to less than seven parking spaces; no on street parking; parking stalls shielded with low evergreen hedges; buildings placed close to the cartway to establish a village feel; garages at grade level; varied front elevations to promote architectural interest; grouped mailbox locations which will tie into architectural elements throughout the development; central plaza areas with gazebos, benches and trash receptacles; fitness areas with equipment provided along a pedestrian trail; street trees and other vegetation lining the main entrance road; naturalized storm water detention basins and LED streetlights.

71. Applicant retained Matthew Hammond, the Executive Vice President of Traffic Planning and Design, Inc., to prepare a Transportation Impact Assessment dated July 23, 2021 which was introduced as Exhibits B-9 and A-11 (the "TIA").

72. The purpose of the TIA was to examine the potential traffic impact associated with the proposed residential development.

73. Mr. Hammond analyzed the potential traffic impact from the proposed development using the following different scenarios: (i) without construction of the Road Extension and without the proposed improvements at Horseshoe Pike and Bondsville Road/Hopewell Road which are designated to be completed by Pulte as a condition of the Highway Occupancy Permit Pulte obtained from the Pennsylvania Department of Transportation ("PennDOT") for Applecross; (ii) without construction of the Road Extension and with the proposed improvements at Horseshoe Pike and Bondsville Road/Hopewell Road; (iii) with construction of the Road Extension and without the proposed improvements at Horseshoe Pike and Bondsville Road/Hopewell Road; and (iv) with construction of the Road Extension and with the proposed improvements at Horseshoe Pike and Bondsville Road/Hopewell Road.

74. If the Township opts to NOT construct the Road Extension, the development will be accessed through one full access unsignalized driveway to Horseshoe Pike via Road A as depicted on the Plan. If the Township opts to construct the eastern leg of the Road Extension through the Property, the development will be accessed from one full access unsignalized driveway to Horseshoe Pike via Road A as depicted on the Right of Way Configuration Plan admitted as Exhibit A-13.

75. According to Mr. Hammond, both proposed access driveway locations at the intersection with Horseshoe Pike will exceed PennDOT acceptable sight distance criteria under all projected build conditions.

76. Mr. Hammond concluded that all intersections that he studied as part of the TIA will satisfy the level of service standards based on PennDOT guidelines. The proposed driveway intersection will operate at a level of service "A" under both access options outlined in Finding of Fact No. 74 above.

77. Mr. Hammond conducted a trip generation study based on trip generation data from the Institute of Transportation Engineers ("ITE") and estimated that the proposed development will generate 43 new trips during the weekday A.M. peak hour and 54 new trips during the weekday P.M. peak hour.

78. Based on the Township's Traffic Impact Fee Ordinance, Applicant will be required to pay a traffic impact fee of \$3,507.54 per P.M. peak hour trip.

79. When completing the TIA, Mr. Hammond assumed that the intersection of Horseshoe Pike and Hopewell Road/Bondsville Road would be improved by Pulte as required by the HOP for Applecross.

80. Mr. Hammond recommended that Applicant make the following roadway improvements:

Intersection	Recommendations	
	Without <del>Reeceville</del> Road Extension	With <del>Reeceville</del> Road Extension
Horseshoe Pike (S.R. 0332) & Site Driveway (Road A)	Construct a 125' Eastbound Right Turn Lane	--
	Construct a 125' Westbound Left Turn Lane	--
	Maximize the ingress/egress radii in order to facilitate enter/exit movements	--
	Provide a 'STOP' sign on the NB egress approach of the roadway	--
	Provide proper pavement markings and signage at the site driveway to facilitate safe and efficient ingress and egress movements to/from the proposed site	--
<del>Reeceville</del> Road Extension & Site Driveway (Road A)	--	Maximize the ingress/egress radii in order to facilitate enter/exit movements
	--	Provide a "STOP" sign on the NB egress approach of the roadway
	--	Provide proper pavement markings and signage at the site driveway to facilitate safe and efficient ingress and egress movements to/from the proposed site

81. Andreas Heinrich, P.E., from Heinrich & Klein Associates, Inc., reviewed the TIA and the Application and issued a review letter dated August 26, 2021 which was admitted as Exhibit B-13.

82. Mr. Hammond testified that Applicant is willing to comply with the comments in Mr. Heinrich's letter as part of the land development review, except for comment 5 which suggested that Applicant widen the approach of the access driveway (first portion of Road Extension) at its intersection with Horseshoe Pike to provide two lanes. Mr. Hammond does not believe that it is necessary to provide these lanes because of the low volume of traffic proposed to be generated by the development.

83. The Township engineer, Nathan M. Cline, P.E. from Pennoni reviewed the Application and Plans and issued a review letter dated August 26, 2021 which was admitted as Exhibit B-14.

84. Many of the comments in the Township engineer review letter indicate that further analysis and review will be required of the Plan in order to obtain final subdivision and land development approval.

85. The East Brandywine Township Planning Commission reviewed the Application and Plan at several of its public meetings. On October 6, 2021, the Planning Commission voted to recommend that the Board approve the Application subject to various conditions set forth on Exhibit B-22.

86. The Board introduced the following exhibits at the hearing:

B-1 Conditional Use Application

**B-2 Deed, dated December 16, 2013, between The Estate of Albert E. Holbrook, by and through Sharon H. Fisherowski, Executrix (grantor) and Sharon H. Fisherowski (grantee), recorded in deed book 8860, page 1909.**

B-3 Fiduciary Deed, dated January 18, 2008, between Downingtown National Bank, as Executor of the Estate of Alan H. McCausland, deceased (grantor) and DNB First, NA, as Trustee under Will of Alan H. McCausland, deceased, dated September 1, 1999 (grantee), recorded in deed book 7354, page 229.

B-4 Agreement of Sale, dated October 10, 2018, between ONB First, NA, Trustee under the Will of Alan H. McCausland, deceased (seller) and ELU-Planebrook Guthriesville, LLC, a Pennsylvania Limited Liability Company (buyer):

a) amendment to agreement dated February 6, 2019;

b) second amendment to agreement dated May 16, 2019

B-5 Agreement of Sale, dated June 13, 2019, between Sharon H. Fisherowski (seller) and ELU-Planebrook Guthriesville, LLC, a Pennsylvania Limited Liability Company (buyer)

B-6 Drip disposal field layout, prepared by Ebert Engineering, Inc., dated March 15, 2019, last revised July 7, 2021

B-7 "McCausland/Plank Drip Disposal Field Report," prepared by CPSS VW Consultants, dated July 15, 2021

B-8 "Pre/Post-Development Drainage Area Plan," prepared by Commonwealth Engineers, Inc., dated July 19, 2021

B-9 "Plank Farm Residential Development Transportation Impact Assessment," prepared by Traffic Planning & Design, Inc., dated July 23, 2021

B-10 "McCausland/Plank Property Design Manual," prepared by InFocus Planning, dated July 27, 2021

B-11 "Conditional Use Stormwater Management Plan Narrative," prepared by Commonwealth Engineers, Inc., dated July 27, 2021

B-12 "Conditional Use Plan for McCausland/Plank," consisting of 16-sheets, prepared by Commonwealth Engineers, Inc., dated July 28, 2021

B-13 Review letter, prepared by Heinrich & Klein Associates, Inc., dated August 26, 2021

B-14 Review letter, prepared by Pennoni, dated August 26, 2021

B-15 Review letter, prepared by Hydraterra Professionals, dated September 1, 2021

B-16 CHESCO Views aerial photograph of property

B-17 Adjoining Property List

B-18 Legal Notice

- B-19 Proof of Publication
- B-20 Affidavit of Posting
- B-21 Photograph of Posting
- B-22 EBT Planning Commission meeting conditions dated October 6, 2021
- B-23 Notice of decision letter regarding the application for special exception of ELU-Planebrook Guthriesville, LLC, dated October 6, 2021, enclosures:
  - a) Order and Decision, entered on October 5, 2021, granting a special exception in accordance with Ordinance § 399-14.D(3)(b), (c), and (d);
  - b) List of intervening parties.

87. Applicant introduced the following exhibits at the hearing:

- A-1 First and Last Pages of the Agreements of Sale dated October 10, 2018 and June 13, 2019 [redacted]
- A-2 Chesco View aerial photo of site
- A-3
  - (a) Construction Overview Plan prepared by Commonwealth Engineers dated July 19, 2021 [Sheet 1]
  - (b) Existing Conditions Plan prepared by Commonwealth Engineers dated July 19, 2021 [Sheet 2]
  - (c) Site Grading Plan prepared by Commonwealth Engineers dated July 19, 2021 [Sheet 3]
  - (d) Intersection Improvements Plan prepared by Commonwealth Engineers dated July 19, 2021 [Sheet 4]
  - (e) Common Open Space Plan prepared by Commonwealth Engineers dated July 19, 2021 [Sheet 5]
  - (f) Natural Features Impact Plan prepared by Commonwealth Engineers dated July 19, 2021 [Sheet 6]
  - (g) Overall Public Realm Plan prepared by Infocus Planning dated 7/27/21 [Sheet 7]
  - (h) Landscape Plan prepared by Infocus Planning dated 7/xx/21 [Sheet 8]
  - (i) Landscape Plan prepared by Infocus Planning dated 7/xx/21 [Sheet 9]
  - (j) Amenity Areas prepared by Infocus Planning dated 7/xx/21 [Sheet 10]
  - (k) Potential Erosion Control Plan prepared by Commonwealth Engineers dated July 18, 2021 [Sheet 11]
  - (l) Drip Disposal Field Layout Plan prepared by Commonwealth Engineers dated July 19, 2021 [Sheet 12]
  - (m) Proposed Roadway Centerline Profiles prepared by Commonwealth Engineers dated July 19, 2021 [Sheet 13]
  - (n) Potential Reeceville Road Extension Plan prepared by Commonwealth Engineers dated July 19, 2021 [Sheet 14]
  - (o) Potential Reeceville Road Centerline Profile prepared by Commonwealth Engineers dated July 19, 2021 [Sheet 15]

- (p) Revised Road 'A' Centerline Profile prepared by Commonwealth Engineers dated July 19, 2021 [Sheet 16]
- A-4 CV of Vic Kelley
- A-5 CV of Rachel Sclan Vahey
- A-6 CV of Matt Hammond
- A-7 Design Manual prepared by InFocus Planning dated July 27, 2021
- A-8 Stormwater Management Plan Narrative prepared by Commonwealth Engineers dated July 19, 2021
- A-9 Water and Wastewater Engineering Report prepared by Ebert Engineering, Inc. dated July 22, 2021
- A-10 McCausland/Plank Drip Disposal Field Narrative prepared by Matthew Hostrander, CPSS VW Consultants dated July 15, 2021
- A-11 Transportation Impact Assessment prepared by Traffic Planning and Design, Inc. dated July 23, 2021
- A-12 Review Letter from Hydroterra Professionals dated September 1, 2021
- A-13 Road & Right of Way Configuration Plan prepared by Commonwealth Engineers, Inc. dated October 7, 2021

88. Neither of the neighbors who were admitted as parties offered any witnesses or expert testimony to the Board at the hearing; however, Ms. Watts had questions of Mr. Hammond concerning the conclusions he reached in the TIA.

### **CONCLUSIONS OF LAW**

1. Applicant, as equitable owner of the Property, has standing to file the Application.
2. The conditional use hearing was duly advertised in accordance with the provisions of the MPC and the Ordinance.
3. Section 399-27.C(2) permits a traditional neighborhood development in the TND-2 District by conditional use of the Board and subject to the standards in Section 399-30.B.
4. Section 399-30.B(3)(e) allows multifamily dwellings in a traditional neighborhood development in the TND-2 District by conditional use of the Board.
5. The Amended Plan complies with the area and bulk requirements in Section 399-30.B(4) except for the minimum front yard/build to line requirement in Section 399-30.B(4)(c)[5].
6. Section 399-137.C(7)(a) allows the Board of Supervisors to approve modifications to area and bulk requirements when approving a conditional use application.

7. Section 399-13.1.B(2)(b)[1] establishes that the width of the Riparian Corridor Conservation District in instances where there is a naturally occurring watercourse that normally contains flowing water during all times of the year is 100 feet.

8. Section 399-13.1.C(1) requires that within the first 50 feet of any designated Riparian Corridor Conservation District existing natural vegetative conditions shall be maintained unless determined by the Township to be undesirable and or contrary to the objectives of Section 399-13.1.

9. Section 399-13.1.C does not permit structures or portions of stormwater basins within the Riparian Corridor Conservation District.

10. Section 399-137.C(7)(d) authorizes the Board to approve modifications to applicable design standards as part of a conditional use application.

11. Section 399-79.B(2) of the Ordinance requires Applicant to follow minimum planting guidelines and landscape design guidelines set forth in that section. Where the proposed landscape improvements do not conform to the Ordinance guidelines, Applicant shall undertake other design measures (e.g., site planning, architectural, landscape architectural) which, in the judgment of the Board of Supervisors, achieve comparable results or which render the guidelines unnecessary or inappropriate.

12. The landscaping plans admitted as Exhibit A-3(h) and (i) do not meet the minimum planting guidelines in Section 399-79.B.

13. Applicant has sought the Board's approval pursuant to Section 399-79.B(2) to approve a reduced number of landscape plantings.

14. The open space standards in Section 399-58.C(5)(f)[3][c] apply, unless otherwise modified by the Board, given the language in Section 399-30.B(5)[h] which provides that the use, design, maintenance and ownership of any common open space areas shall be in accordance with the applicable standards contained in Section 399-58.C(5)(c) through (j).

15. Applicant provided evidence to prove the general criteria and standards for conditional use approval in Section 399-137.D of the Ordinance.

16. There was no evidence offered to demonstrate that the proposed traditional neighborhood development with 89 townhouses would result in substantial injury to the public interest.



**DISCUSSION**

A conditional use is a permitted use, subject to an applicant's proof of compliance with all applicable conditions and criteria imposed by the Ordinance and reasonable conditions of approval imposed by the Board. A conditional use is not a use which the Board has the unfettered discretion to approve or deny. Rather, the Board is governed by the objective criteria and standards enunciated in the Ordinance when determining whether to grant an application. If the applicant can prove that it complies with the terms of the Ordinance authorizing a conditional use, the Board must grant the conditional use unless substantial evidence indicates that the use will result in substantial injury to the public interest. Susquehanna Twp. Board of Commissioners v. Hardee's Food Systems, Inc., 59 Pa. Cmwlth. Ct. 479, 430 A.2d. 367 (1981; Appeal of Estate of Achey, 86 Pa. Cmwlth. Ct. 385, 484 A.2d. 874 (1984), aff'd 501 A.2d. 249 (Pa. 1985).

Applicant seeks the Board's conditional use approval for a townhouse development with a maximum of 89 townhouses in accordance with the standards for a traditional neighborhood development allowed in the R-2 district and the TND-2 Development Overlay District. In order to configure the townhouses consistent with the Plan, Applicant seeks other relief from the Board which is outlined in the introductory paragraphs of this Decision and Order. The Board understands that in order to provide additional buffering between the proposed development and the townhouses in the Applecross development, the development had to be shifted further to the southeast closer to the stream and the riparian buffer. As a result, Applicant has requested the Board's approval to modify certain provisions of Section 399-13.1 to allow encroachment within 50 feet of the Riparian Corridor Conservation District. The Board is comfortable with these modifications given that there will still be a 50 foot buffer between any development and the stream.

Applicant also has requested modifications of the landscaping standards in Section 399-79.B. While the Board does support modification of the landscaping requirements, the exact amount of relief that will be granted from the minimum planting guidelines will be determined as part of the approval of the final land development plans with input from the Planning Commission.

Although the traditional neighborhood development was not required to provide a minimum amount of open space, because open space is proposed, it must comply with the requirements in Section 399-58.C(5). Because the Plan proposes to locate a portion of the stormwater management facilities within an area of woodlands in the common open space, Applicant seeks relief from Section 399-58.C(5)(f)[3][c].

One of the important features of the Plan which the Planning Commission advocated for Applicant to provide was the design of the access road (Road A) in a manner that allowed the Township to build the eastern leg of the Road Extension in the future. Applicant is willing to design Road A consistent with the configuration depicted on Exhibit A-13 which proposes the installation of the first 452 feet of the Road Extension and grants to the Township an easement across areas designated as drip fields to allow future extension by the Township of the Road Extension. If the Township opts to build the Road Extension in the future to connect Horseshoe Pike to Bondsville Road, it will require the disturbance of areas designated for sanitary sewage drip fields and will necessitate a waiver of Section 350-47.B(3) of the SALDO. Given the goals of providing the Road Extension in master plans of the Township, the Board believes this waiver is warranted and will approve the same as part of land development.

WHEREFORE, the Board votes as follows:

### **ORDER**

AND NOW this 3<sup>rd</sup> day of March, 2022, the Board votes to approve a conditional use pursuant to Section 399-27.C(2) to allow a traditional neighborhood development in accordance with the standards in Section 399-30.B of the Ordinance. The Board also votes to approve a conditional use pursuant to Section 399-30.B(3)(e) to allow a maximum of 89 multifamily dwellings in the proposed traditional neighborhood development. The Board also approves the following modifications pursuant to the authority in Section 399-137.C(7)(a) and (d):

- (i) a modification of the provisions of Section 399-13.1.B which establishes the minimum width of the Riparian Corridor Conservation District to allow a minimum width of 50 feet as shown on the Plan;
- (ii) a modification of the provisions of Section 399-13.1.C(1) which requires existing natural vegetative conditions to be maintained within the first 50 feet of any designated Riparian Corridor Conservation District;

- (iii) a modification of Section 399-58.C(5)(f)[3][c] to locate a portion of the stormwater management facilities within a primary conservation area within the common open space and within an area of woodlands.
- (iv) A modification of the minimum planting guidelines required by Section 399-79-B(2) to allow a landscape plan that does not provide all of the required plantings.
- (v) A modification of the minimum front yard/build to line in Section 399-30.B(4)(c)[5] to allow the dwelling units to be setback a minimum of 20 feet from the cartway, or in instances where a lot abuts a sidewalk, a minimum of 20 feet from the sidewalk, to make sure there is ample room for parking in front of the garages.

The conditional use approvals and modifications listed above are granted subject to Applicant's compliance with the following conditions:

1. The maximum number of townhouses that shall be permitted in the traditional neighborhood development shall be 89 townhouses. Applicant understands that it is not guaranteed that it will be permitted to develop 89 townhouses as the Plan is revised to comply with the SALDO and to obtain the Board's approval of the final subdivision and land development plans.
2. Applicant shall comply with the Zoning Hearing Board Decision and Order dated October 5, 2021.
3. The Plan shall be revised to comply with or otherwise satisfy all comments of the following review letters to the satisfaction of the Township, unless modified in the SALDO process:
  - a. Pennoni, dated August 26, 2021;
  - b. Hydraterra Professionals, dated September 1, 2021; and
  - c. Heinrich & Klein Associates, Inc., dated August 26, 2021.
4. Applicant shall pay a Traffic Impact Fee equal to the number of P.M. peak hour trips (as determined by the Township Engineer) multiplied by \$3,507.54 in accordance with the requirements in Chapter 370 of the East Brandywine Code.

5. Applicant shall comply with the recreation lands and facilities requirements of Section 350-50 of the SALDO as part of land development.

6. Applicant shall obtain all necessary permits and approvals from the Municipal Authority in order to provide public sewer to the proposed development. All details and specifications of the sewage facilities proposed to service the development shall be designed, constructed and installed in compliance with the standards and specifications as adopted by the Municipal Authority from time to time and subject to the review and approval of the Municipal Authority.

7. Applicant shall obtain all necessary permits and approvals for sewage disposal from the Pennsylvania Department of Environmental Protection prior to release of the final subdivision and land development plan for recording.

8. Applicant shall obtain an easement from the homeowners association for Applecross to allow the emergency connection from proposed Road B to Par Lane and to also allow the use of the private streets in Applecross to access Bondsville Road in the event of an emergency. Applicant shall construct this emergency access connection to Par Lane with the specifications and details for such connection to be determined by the Board during land development. The construction of the emergency access shall occur prior to the occupancy of any townhouses.

9. Applicant shall negotiate with the homeowners association for Applecross to allow an emergency connection from proposed Road D to Mulligan Road as shown on the Plan. If the appropriate easement is granted by the Applecross homeowners association, Applicant shall construct this emergency access connection.

10. The details for the use of the emergency accesses shall be determined as part of land development but the access driveways shall be limited to use by emergency vehicles. The homeowners association created for the development shall be responsible for maintaining the emergency access driveways located on the Property.

11. Applicant shall implement the Right of Way Configuration Plan which was admitted as Exhibit A-13 and design the access road into the proposed development in accordance with such plan as such plan is revised to obtain final land development approval.

12. Applicant shall grant to the Township a perpetual easement over portions of the proposed drip fields to allow the Township to construct the Road Extension through the Property. The exact location of the easement shall be determined during land development and shall be demarcated on the Plan with language making it clear that it is offered for perpetual dedication to the Township.

13. Applicant shall demonstrate that it can provide sufficient land area for sewage disposal equal to 150%; provided however that if the Township opts to accept dedication of the easement over the proposed drip fields to construct

the Road Extension, the Plan can be revised to reduce the area available for disposal areas to 100% of the land area needed to dispose of the effluent generated at the development. The 150% only has to be achieved based on the initial layout of the Plan which was admitted as Exhibit A-3(a).

14. Applicant shall include in its design of the stormwater management facilities for the development areas necessary for future stormwater management for the portions of the Road Extension on the Property provided that any area provided for stormwater management will result in a reduction of provided sewage disposal area, not to be reduced below 100% of the land area needed to dispose of the effluent generated at the development.

15. Applicant shall form a homeowners association ("HOA") under the Uniform Planned Community Act, 68 Pa. C.S. §5101, et seq., to manage all community improvements, including, but not limited to all private roads, stormwater management, trail and all site amenities. The HOA shall be responsible for the portion of the Road Extension located on the Property, until such time as the road is accepted for dedication by the Township. The HOA documents shall be subject to the review and approval of the Township.

16. The green crosshatch portion of Road A as depicted on Exhibit A-13 shall be perpetually offered for dedication to the Township. This portion of Road A shall be owned and maintained by the HOA until such time as the Township opts to accept dedication which shall be in the Township's sole discretion. The remaining portions of Road A as depicted on Exhibit A-13 and all other roads within the development shall be privately owned and conveyed to the homeowners association created for the development.

17. Applicant shall revise the Plan to include a note that parking shall be prohibited on all roads and shall include this prohibition in the HOA documents.

18. Applicant shall construct all of the community amenities shown on the Plan, including the three common amenity areas, the nature trail, fitness areas, landscaping, and sidewalks. The specific trail location is subject to modification and approval by the Board during the land development process.

19. The development shall be serviced by public water.

20. Applicant shall preserve a 20-foot wide buffer area on the northwest boundary between the proposed development and the southern boundary of Applecross. Applicant shall supplement the buffer with additional plantings with the exact species and number of plantings to be approved by the Board as part of the land development approval process.

21. Applicant's Design Manual shall be reviewed and approved by the Board as part of land development. At a minimum Applicant shall install the amenities detailed in the Design Manual and outlined in Finding of Fact No. 70 above.

22. Applicant shall install the roadway improvements recommended in Table 16 of the TIA and outlined in Finding of Fact No. 80 above.

23. Applicant shall obtain a PennDOT Highway Occupancy Permit (“HOP”) for the proposed access to Horseshoe Pike and make the roadway improvements required by condition 22 above.

24. All driveways shall be a minimum of twenty (20) feet in length, exclusive of sidewalks.

25. Applicant shall consider and implement if feasible and to the satisfaction of the Board during land development additional off-street parking areas, pull-off areas, and/or gathering areas for school bus pick up/drop off and community mailbox(es).

26. As part of the land development review process, Applicant shall submit vehicle turning plans that demonstrate to the satisfaction of the Fire Marshall that the emergency vehicles that will service the development can safely access the dwellings and maneuver throughout the site.

27. Applicant shall reimburse the Township for all outstanding fees and charges incurred by the Township in processing and considering the subdivision and land development application, including but not limited to legal, engineering, and other consulting reviews. Applicant shall stay current with all required Township escrows.

**ATTEST**

**BOARD OF SUPERVISORS  
EAST BRANDYWINE TOWNSHIP**

\_\_\_\_\_  
Lisa Taraschi, Secretary

\_\_\_\_\_  
Kyle Scribner, Chairman

\_\_\_\_\_  
Carl K. Croft, Vice Chairman

\_\_\_\_\_  
Jason Winters, Member

Supervisor Winters made a motion to approve the Conditional Use Application for ELU Planebrook LLC as presented by the Township solicitor with the twenty-seven conditions. Vice-Chairman Croft seconded the decision, with all members voting Aye. Motion passed 3-0.

Mr. John Jaros thanked the Board and Consultants and Mr. Croft for taking the time to bring himself up to speed on this project in order to participate in the vote. He added they are looking forward to working with the Board during land development.

## **New Business**

### **Award Contract of Purchase of Plants for Bondsville Mill**

Mr. Jim Buczala presented the bid received for the purchase of plants for phase 3 of the Bondsville Mill Park Garden project. Stating this project is supported by a grant awarded in 2020. He added there was only one bidder, All Seasons Landscaping Co. in the amount of \$61,840.00. He stated this amount is in line with the plant budget of \$58,850.00 which is being covered by the grant previously mentioned. Mr. Buczala requested the Board accept this contractor. Mr. Oeste advised that this should be subject to the low bidder executing contract and the required bonds and insurance.

Vice-Chairman Croft made a motion to accept the bid with stipulations outlined by the Township Solicitor Tom Oeste. Chairman Scribner seconded the motion. With all members voting Aye, motion passed 3-0.

### **Contract Amendment #1 to Chester County Grant Program Contract 18829: Bondsville Mill Park Improvements Phases 1 and Phases 2**

Township Manager Reven stated this grant amendment pertains to the Bondsville Mill Park. This extension will extend the grant deadline to October 20, 2022. Mr. Buczala added that this is a three-year grant which expires in April of 2022. Mr. Reven added that this extension will give the Township more time to complete the items discussed.

Vice-Chairman Croft made a motion to accept the contract of amendment number one of the Chester County Grant Program for the Bondsville Mill Park Improvements phase 1 and phase 2. Supervisor Winters seconded the motion. With all members voting Aye, motion passed 3-0.

### **Contract with Chester County Beekeepers Association: Apiary at Bondsville Mill Park**

Mr. Buczala informed the Board that on January 25, 2022 representative from the Bondsville Mill Park met with representatives of Chester County Bee Keepers Association (CCBKA) to discuss the possibility of establishing an apiary at the park. CCBKA would install bee hives along with a fence for the protection of the hives and the public as well as signages for safety and education around the hives. Mr. Buczala added they would also like to provide monthly education on hives. He also added they would continue to support the parks additional education plans. Mr. Buczala stated CCBKA has provided a contract that has been passed on to the Township Solicitor, Mr. Tom Oeste, for his review. He added insurance is missing from the contract. However, CCBKA has insurance and will be adding the Township as an additional insured as part of that policy. Mr. Buczala asked the Board to consider approving the contract.

Vice-Chairman Croft asked who will be constructing the fence. Mr. Buczala stated that the CCBKA would construct a post and rail fence with turkey wire and post the fence with signage. He added CCBKA will also be contributing to the security system. Mr. Croft mentioned that there is a clause in the contract that states they can not spray in the area. Mr. Buczala agreed and stated coordination is very important. Mr. Oeste added that

CCBKA has indicated that they will add the Township to the insurance. However, that should be added to the contract. He also added there is a provision in the contract to not hold the Township responsible for accidents. Mr. Oeste stated the contract should be slightly amended to show they are indemnifying the Township and hold us harmless from claims that are brought from an accident. Mr. Oeste stated that he would send Mr. Buczala the language to be added to the contract.

Vice-Chairman Croft made a motion to approve the contract with the Chester County Bee Keepers Association with Bondsville Mill, with provisions recommended by the Township Solicitor Tom Oeste. Supervisor Winters seconded the motion. With all members voting Aye, motion passed 3-0.

### **Subdivision & Zoning Applications**

There were no applications to discuss.

### **Ordinances & Resolutions for Consideration**

There were none.

### **Public Comment on Non-Agenda Items**

There was no public comment.

### **Notices**

An Executive session was held on February 25, 2022 to discuss legal and personnel matters.

### **Adjournment**

Chairman Scribner made a motion to adjourn the public meeting at 8:25 AM. Vice-Chairman Croft seconded the motion, with all members voting Aye. Motion passed 3-0.

Respectfully submitted,

Lisa Taraschi,  
Township Secretary