

**BEFORE THE BOARD OF SUPERVISORS OF SCHUYLKILL TOWNSHIP
CHESTER COUNTY, PENNSYLVANIA**

IN RE:

**CONDITIONAL USE APPLICATIONS OF
WHITEHORSE ROAD-PHOENIXVILLE,
LLC (“APPLICANT”)**

NOS. 2017-01 and 2017-02

**FINDINGS OF FACT, LEGAL ANALYSIS, CONCLUSIONS
OF LAW, DECISIONS AND ORDERS**

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Historic Resource Demolition Conditional Use Application No.
2017-0164

Convenience Store Conditional Use Application No. 2017-0265

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FINDINGS OF FACT

I. INTRODUCTION AND PROCEDURAL MATTERS.

1. Applicant, Whitehorse Road-Phoenixville, LLC, has submitted two Conditional Use Applications to Schuylkill Township, dated March 21, 2017, each of which is addressed in the instant Findings of Fact, Legal Analysis, Conclusions of Law, Decisions and Orders below:

(a) Historic Resource Demolition Conditional Use: conditional use relief pursuant to Zoning Ordinance Section 370-55 to demolish a certain Class II historic structure on the identified Property; and

(b) Convenience Store Conditional Use: conditional use relief pursuant to Zoning Ordinance Sections 370-86.H.(1) and 370-169 to develop a Convenience Store on the identified Property.

2. Applicant was represented by Julie L. Von Spreckelsen, Esquire and John A. VanLuvanee, Esquire of Eastburn and Gray, PC, 470 Norristown Road, Suite 302, Blue Bell, PA 19422 and 60 East Court Street, P.O. Box 1389, Doylestown, PA 18901-0137.

3. The interests of Schuylkill Township were represented by Michael G. Crotty, Esquire of Siana Bellwoar, 941 Pottstown Pike, Suite 200, Chester Springs, PA 19425.

4. The Board of Supervisors of Schuylkill Township (the “Board”) was represented by William J. Brennan, Esquire of Butera, Beausang, Cohen & Brennan, 630 Freedom Business Center, Suite 108, King of Prussia, PA 19406, Solicitor to the Board.

5. Kristopher A. Kachline, Esquire appeared on his own behalf and on the behalf of certain residents in the Moorhall Development, however he withdrew as both a party and counsel in an email dated October 19, 2017. His identified clients have remained as parties.

6. John C. Gregory, Jr., Esquire, appeared on his own behalf.

7. A number of Township residents also obtained party status including, William Byron Battle, Joe Thompson, Diana Gamble, Joseph Tosco, Sarah Sterling, Kevin Brooker, Thomas Cehula, Joseph and Stacie Benyish, and Francis Coughlin. Additionally, Susan Harmon, Virginia Williams, Eva Masterson, George Sillup, Sue Arenschiold, and Vera Falasco were admitted as parties. The non-represented parties shall hereinafter be referred to as “Objectors” or “Neighboring Parties.”

8. The two separate Conditional Use Applications involve the same property and accordingly there is some overlap in the evidence presented. Public hearings were duly advertised initially by posting and public advertisement, and thereafter by appropriate public notice in accordance with the Pennsylvania Municipalities Planning Code, 53 P.S. 10101, *et. seq.* (“MPC”). The dates on which meetings were held are as set forth below:

(a) Historic Resource Demolition Conditional Use Application

- June 12, 2017;
- July 11, 2017;
- August 23, 2017;¹
- August 29, 2017;¹
- September 19, 2017;¹ and
- October 26, 2017.¹

(b) Convenience Store Conditional Use Application

- July 11, 2017;
- August 23, 2017;

¹ The Record of the Historic Resource Demolition Conditional Use Application was left open in order for additional information to be supplemented regarding the scope of the archeological testing recommended by the Township’s Historical Consultant (Robert Wise). This testimony and evidence was addressed on the record in the Convenience Store Conditional Use Application, as reflected in the above-referenced transcripts.

- August 29, 2017;
- September 19, 2017;
- October 26, 2017;
- November 9, 2017;
- December 4, 2017;
- December 19, 2017;
- January 30, 2018; and
- February 8, 2018.

9. Applicant’s counsel agreed on the record to waive the timing requirements of the MPC associated with the two Applications. See, e.g., N.T. 7/11/2017 at p. 190. The final hearing date, February 8, 2018, was reserved for public comment and oral argument by the parties. It was stipulated by all parties that briefs would be submitted within 30 days of February 8, 2018 and a Decision would be rendered within 45 days thereafter. Because the 30th day from February 8 fell on a Saturday, briefs were accepted through Monday, March 12, 2018. The agreed and accepted due date for the Opinion and Decision of the Board is accordingly April 24, 2018.

10. The Exhibits submitted by the parties and admitted into the Record for each of the Applications are set forth below:

(a) Historic Resource Demolition Conditional Use Application

Board of Supervisors Exhibits

- | | |
|-------|---|
| BOS-1 | Notice of Hearing |
| BOS-2 | Certificate of Posting and Mailing |
| BOS-3 | Affidavit of Publication |
| BOS-4 | Letter of Applicant Granting Extension of 60-day Deadline |

- BOS-5 Historic Resources Demolition Conditional Use Application
- BOS-6 Convenience Store Conditional Use Application
- BOS-7 7/11/2017 Hearing Notice-Mailing to 500 Foot Residents
- BOS-8 7/11/2017 Hearing Letter to Counsel Parties/Parties
- BOS-9 Certificate of Posting 6/16/2017
- BOS-10 Affidavit of Publication of Hearing Notice 7/5/2017
- BOS-11 Certification of Right to Vote in Matter dated 1/30/2018 of Supervisor Mark Donovan

Applicant Exhibits

- A-1 Deeds
- A-2 Redacted Agreement of Sale
- A-3 Applicant Letter Dated 5/9/2017 to Ms. Bird Amending Conditional Use Application
- A-4 C.V. of Adam Benosky, RLA
- A-5 Aerial Photograph-Intersection White Horse/Valley Forge Rd.
- A-6 Land Title Survey Prepared by Blue Marsh Associates
- A-7 Alternate Conditional Use Plan dated 3/8/2017
- A-8 C.V. of Richard Meyer and Scope of Archeological Testing dated 7/10/2017
- A-9 Historic Resources Impact Statement and Schuylkill Township Historical Commission Agenda 8/21/2017
- A-10 Historic Resources Exhibit 4/14/2017 Bohler Engineering
- A-11 Structural report prepared by Mainstay Engineering Group dated 2/27/2017
- A-18 Proposal B-Amended Robert Wise Shovel Pit Diagram

Township Exhibits

- T-1 Historic Commission Report dated 6/19/2017
- T-2 Letter Report of Robert Wise dated 6/20/2017
- T-8 Historical Commission Supplemental Recommendation dated 9/19/2017

(b) **Convenience Store Conditional Use Application**

Applicant Exhibits

- A-1 Deeds
- A-2 Agreement of Sale
- A-3 Conditional Use Application
- A-4 C.V. of Adam Benosky, RLA
- A-5 Aerial Photograph-Intersection White Horse/Valley Forge Rd.
- A-6 Boundary and Topography Survey Plan
- A-7 Alternate Conditional Use Plan
- A-8 Scope of Archaeological Testing prepared by Rick Meyer dated July 10, 2017
- A-9 Historic Commission's Agenda from Monday, August 21, 2017
- A-10 Landscape Screening Plan 8/23/2017 Bohler Engineering
- A-11 Historic Resources Exhibit 4/14/2017 Bohler Engineering
- A-12 Photometric Study and Lighting Plan 8/23/2017 Bohler Engineering
- A-13 C.V. for Matthew I. Hammond, P.E. (Tab 13)
- A-14 PennDOT Scoping Application 3/31/2017
- A-15 Traffic Planning & Design letter 8/23/2017 Response to 5/2/2017 Gilmore Review

- A-16 “Wawa Development Transportation Impact Study, for submission to Schuylkill Township, Chester County and PennDOT District 6-0,” dated June 12, 2017
- A-17 Building & Canopy Elevations Wawa U45 FB Store #8120 4/19/2017
- A-18 Proposal B-Amended Robert Wise Shovel Pit Diagram
- A-19 Bohler Engineering letter 9/25/2017 to Schuylkill Township Planning Commission-Response to 9/15/2017 Gilmore Review C. Green
- A-20 Landscape Screening Plan Exhibit Rev. 2 / 9/22/2017 Bohler Engineering (Tab 10)
- A-21 Photometric Study Exhibit Rev. 2 / 9/22/2017 Bohler Engineering (Tab 12)
- A-22 Transportation Impact Study Revised 10/19/2017 Traffic Planning & Design
- A-23 C.V. of D. Travis North, R.L.A.
- A-24 Light Pole Exhibit 1/25/2018 Bohler Engineering
- A-25 National Association of Convenience Stores Report “How Convenience Stores Work” 03/2015 Rev. 07/2017

Board of Supervisors Exhibits

- BOS-1 Notice
- BOS-2 Certificate of Posting
- BOS-3 Affidavit
- BOS-4 Letter
- BOS-5 Historic Demolition CU Application
- BOS-6 Convenience Store CU Application
- BOS- 7 Hearing Notice
- BOS-8 Letter
- BOS-9 Certification of Posting

- BOS-10 Proof of Publication
- BOS-11 Certification of Right to Vote in Matter 1/30/2018 M. Donovan

Battle Exhibits

- B-2 Aerial (Google) Merion Terrace
- B-3 Photograph Rear of Property 26 Merion Terrace
- B-4 Photographs (3) Wawa Convenience Store East Norriton Twp.

Township Exhibits

- T-1 Article, “PD: Man Robs Wawa At Gunpoint, Steals Cash and Chicken Wrap,” dated 8/8/2017
- T-2 Article, “Cigarette thief strikes at Delco’s newest Wawa,” dated 7/31/2017
- T-3 Article, “Wawa in Concord held up twice in two days: teen held,” dated 6/19/2017
- T-4 Article, ‘Good Samaritan’ stops would-be robber at South Jersey Wawa,” dated 6/7/2017
- T-5 Article, “Troopers Investigating Robbery of Claymont Wawa,” dated 4/14/2017
- T-6 Article, “3 charged in convenience store robberies” dated 6/3/2017
- T-7 Article, “N.J. man robbed gas station, Wawa at knifepoint, cops say,” dated 5/3/2017
- T-8 Historical Commission Supplemental Recommendation 9/19/2017
- T-9 Traffic Impact Assessment Review Memo 9/15/2017 Gilmore & Associates (G&A File No. 17-04018T)
- T-10 Landscaping and Lighting Plans Review Memo 9/15/2017 Gilmore & Associates (G&A File no. 17-04018T)
- T-11 Alternate Conditional Use Application and Zoning Ordinance Compliance-Second Review Memo 9/15/2017 Gilmore & Associates (G&A File No. 17-04018T)

- T-12 C.V. of John Sartor P.E.-Gilmore & Assoc. Township Engineer
- T-13 Photographs-Site Visit by Sartor 8/31/2017
- T-14 C.V. of Christopher Green R.L.A.-Gilmore & Assoc
- T-15 Landscaping and Lighting Plans Review Memo 10/24/2017 Gilmore & Associates (G&A File no. 17-04018T)
- T-16 C.V. of Damon Drummond P.E. - Gilmore & Assoc
- T-17 Traffic Impact Assessment Review 2 Memo 10/26/2017 Gilmore & Associates (G&A File No. 17-04018T)
- T-18 Landscaping Lighting Review Chart-Gilmore & Assoc 11/9/2017
- T-19 Traffic Impact Study Review-Gilmore & Assoc 11/9/2017

Morrison Exhibits

- M-1 Booklet

Sterling Exhibits

- Sterling 1 Document
- Sterling 2 Calendar 540
- Sterling 3 District Overview

Gregory Exhibits

- G-1 Watson C.V.
- G-2 Report
- G-3 Document
- G-5 Report dated 11/9/2017
- G-6 Report dated 12/4/2017
- G-7 Outdoor Residential Lighting Document
- G-8 Human & Environmental Effects of LED Community Lighting Document

G-9	Document dated 5/42010
G-10	Adverse Health Effects of Nighttime Lighting Document
G-11	John D. Snook C.V.
G-12	Cree Report
G-13	Snook letter dated 12/19/2017

11. In addition to the above-referenced conditional use relief, Applicant has acknowledged that, before any final plan approval, it is required to obtain at least the following variance relief from the Township Zoning Hearing Board:

- (a) Zoning Ordinance Sections 370-79 and 370-87 (related to the internal side yard setbacks between proposed Lots 1 and 2).
- (b) Zoning Ordinance Sections 370-86.H.(3), 370-86.J. and 370-171 (multiple uses on proposed Lot 2 (containing the Rossiter House), being less than five acres in area);
- (c) Zoning Ordinance Section 370-169.C. (from the requirement that the gas canopy be located closer than 75 feet from the legal right-of-way line);
- (d) Zoning Ordinance Section 370-183.C. (related to the placement of parking areas within the internal side yard setbacks between proposed Lots 1 and 2).

See Exhibit T-11.

12. The composition of the Board of Supervisors changed during the course of the hearings due to the intervening general municipal election. Particularly, the term of (former) Supervisor Barbara Cohen expired on December 31, 2017, and the position was filled by newly elected Supervisor Mark Donovan. As reflected in Exhibit B-11, Supervisor Donovan certified that he read the record for the proceedings, reviewed the exhibits, and was in attendance at most of the hearings since the inception of the matter. No objection was raised during the hearings as

to Mr. Donovan participating in the matter as a member of the Board of Supervisors in adjudicating the Applications.

The Property

13. The Property is comprised of three existing, adjacent parcels: Chester County Uniform Parcel Identifier Nos. 27-6A-73; 27-6A-85; and 27-6A-86. See Exhibit T-11; Exhibit A-6.

14. The Property is located in the C Commercial Zoning District, on the corner of South Whitehorse Road and Valley Forge Road (both of which are state roads). Exhibit T-11; Exhibit A-6; N.T. 6/12/2017 at p. 39.

15. Applicant is the equitable owner of the Property (under an agreement of sale), with Samuel A. Coroniti and Abbe B. Coroniti holding title to UPI # 27-6A-85 and Ricardo S. Coroniti holding title to UPI #s 27-6A-73 and 27-6A-86. See Exhibits A-1 and A-2.

16. The Property is currently improved with an existing retail building (formerly, a Royal Bank), the Jacob Rossiter House, a retail building (the building designated as the Rossiter Carriage House), and various parking areas. Exhibit A-10 (Historic Resource Demo Application). N.T. 6/12/2017 at p. 39.

17. Pursuant to the Township Zoning Ordinance, Applicant's property at 19 South Whitehorse Road is listed as a Class II Township historic resource (Schuylkill Township Historic Resource No. 24), due to the Rossiter House and attendant improvements.

18. The other three corners at the intersection of Valley Forge and Whitehorse Roads are also zoned C Commercial, and contain commercial uses (a Citgo gas station, a former Exxon gas station, and an equipment sales business). See Exhibits A-5 and A-10 (Convenience Store Conditional Use Application); see also, N.T. 12/4/2017 at p. 998.

19. The Property is at the edge of the C Commercial Zoning District, bordered by residences (and a residential neighborhood) to the south and east. See Exhibits A-5 and A-10 (Convenience Store Conditional Use Application).

20. Applicant proposes to consolidate the three parcels into two lots (designated as Lot 1 and Lot 2). Lot 1 will be comprised of 69,686 square feet and is to be developed with a 4,736 square foot Wawa convenience store with five gas pumps (ten fueling positions). Lot 2 will be comprised of 41,432 square feet and is to be developed with a 3,840 square foot retail building in place of the existing Carriage House. Exhibit T-11; A-7. The Rossiter House will be preserved.

21. Applicant further advised that the Property (Lots 1 and 2) will be owned, operated, maintained and controlled under common or unified ownership. N.T. 6/12/2017 at p. 148.

Historic Resource Demolition Conditional Use Application

22. Applicant's initial Historic Resource Demolition Conditional Use application proposed to demolish both the Rossiter House and the Rossiter Carriage House.

23. After its presentations before the Township Historical and Planning Commissions, Applicant subsequently amended its applications to preserve the Rossiter house, but to demolish the Carriage House. See Exhibit A-3.

24. Applicant stipulated and agreed that it would not pursue demolition of the Carriage House until after any land development for the Property is finally approved. N.T. 6/12/2017 at p. 50.

25. Pursuant to Zoning Ordinance Section 370-55.B.(1), the Applicant shall provide a written report containing the information set forth in Section 370-55.B.(1)(a) through (n). In

addition, pursuant to Section 370-55.B.(3) the following factors are to be considered and shown by the Applicant in a conditional use application to demolish a Class I or II historic resource:

(a) That the demolition of the historic resource in question will not adversely affect the historic significance or architectural integrity of neighboring historic properties or the historic character of the neighborhood or community;

(b) If the demolition will not result in the complete removal of the historic resource, it will minimize adverse effects on the architectural and structural integrity and the overall historic appearance of the resulting structure.

(c) That it is not feasible to continue the current use;

(d) That other uses permitted within the underlying zoning district, whether permitted as of right, by special exception, or by conditional use, have been denied or are not feasible due to constraints on the historic resource proposed to be demolished;

(e) That adaptive use opportunities do not exist due to constraints related to the historic resource proposed to be demolished or the property on which it is located;

(f) That the proposed new use of the property, including any new building or structure, will not adversely affect the historic character or architectural integrity of neighboring historic properties, the neighborhood, or the community;

(g) That the permitted uses and adaptive use potential of the historic resource proposed to be demolished do not provide a reasonable rate of return based on a reasonable initial investment; and

(h) That the Applicant has not contributed to the existing conditions, either through neglect or prior renovation, conversion, alteration, or similar physical action, warranting the proposed demolition.

26. During the Historic Resource Demolition hearing, Applicant first introduced its landscape architect, Adam Benosky. N.T. 6/12/2017 at p. 27.

27. Mr. Benosky testified generally as to the existing conditions on the property and the proposed development by Applicant. The testimony of Mr. Benosky was as follows:

(a) The Property presently consists of three parcels, two of which – the Rossiter and the Royal Bank Parcels – contain existing structures, while the third is vacant and undeveloped. N.T. 6/12/2017, p. 33; Ex. A-5, 6.

(b) The Royal Bank Parcel, on the easternmost side of the Property, contains a two-story masonry retail and office building that previously housed a Royal Bank. N.T. 6/12/2017, pp. 33-34; Ex. A-5, 6.

(c) The Rossiter Parcel, the southwestern most parcel, contains the Rossiter House and the Carriage House, along with a large parking lot and driveway. N.T. 6/12/2017, p. 35; Ex. A-5, 6.

(d) While the adjacent properties to the east and southwest are zoned R-2 residential, the properties located directly at the intersection of Valley Forge and South Whitehorse Roads are all zoned C Commercial. N.T. 6/12/2017, pp. 35-37.

(e) Two of these commercially zoned properties are existing gas stations, while the third is a former gas station that has been converted into a commercial use. N.T. 6/12/2017, pp. 37-38; Ex. A-5.

(f) The Property presently has four accesses, two on Valley Forge Road from the Royal Bank Parcel and two on South Whitehorse Road from the Royal Bank Parcel and the Rossiter Parcel. N.T. 6/12/2017, p. 35; Ex. A-5, 6.

(g) Applicant proposes eliminating two of the four accesses, so that there is one full service access onto Valley Forge Road and one partially limited access onto South Whitehorse Road. N.T. 6/12/2017, p. 39; Ex. A-7.

(h) The proposed access drive onto Valley Forge Road will be full-access, allowing right-in, right-out, left-in, left-out turning movements, while the proposed access drive onto South Whitehall Road will be partially restricted, allowing only right-in, right-out, and left-in turning movements with no left-out turns. N.T. 6/12/2017, p. 39; Ex. A-7.

(i) The original conditional use plan located the access drive onto South Whitehorse Road to the extreme south of the Property, which placed it directly where the Rossiter House is located. N.T. 6/12/2017, p. 40.

(j) Due to the Township Historical Commission's desire to retain the Rossiter House and Applicant's agreement to do so, the Alternate Conditional Use Plan relocates this access drive to the north of the Rossiter House. N.T. 6/12/2017, p. 40; Ex. A-7.

(k) This realignment of the access drive also forces the relocation of several parking spaces along the western side of the Property to the rear of the Rossiter House. N.T. 6/12/2017, pp. 40-41; Ex. A-7.

(l) In the center of the Property is the proposed Wawa convenience store with the fuel pumps and canopy located to the north along the Valley Forge Road frontage, and to the south, in the extreme rear of the Property, is the proposed retail building. N.T. 6/12/2017, p. 41; Ex. A-7.

(m) Applicant will consolidate the three parcels, then subdivide them into two lots with the convenience store and fuel pumps on Lot 1, and the Rossiter House and retail building on Lot 2 to the south. N.T. 6/12/2017, pp. 41-42; Ex. A-7.

(n) The Carriage House is proposed to be razed. N.T. 6/12/2017, p. 42.

(o) The three structures—convenience store, Rossiter House, and retail building—will have common access and parking will be shared by both lots, although the spaces in front of the retail building will generally be for the retail use, the spaces adjacent to the convenience store will generally be for the convenience store use, and the six spaces behind the Rossiter House will generally be for the use that ultimately occupies that structure. N.T. 6/12/2017, p. 43; Ex. A-7.

(p) Once all required permits and approvals have been obtained from the Township, Applicant anticipates the development will be constructed in six to nine months. N.T. 6/12/2017, pp. 43-44.

(q) Applicant will prepare a detailed landscape plan that will provide the required vegetative screening around the perimeter of the Property in compliance with Township Ordinances. N.T. 6/12/2017, p. 46.

(r) The majority of the perimeter buffer will be wider than the ten feet required by the Zoning Ordinance. N.T. 6/12/2017, p. 46.

(s) Applicant is willing to install a fence as part of the perimeter buffer if that is determined to be appropriate by the Board. N.T. 6/12/2017, p. 59.

(t) A small retaining wall will wrap around the rear of the retail building that will be five to seven feet high. N.T. 6/12/2017, p. 47.

(u) No specific occupant has been identified for the retail building, but it will be a use that is permitted in the C district. N.T. 6/12/2017, p. 49.

(v) It would be very difficult to adaptively reuse the Carriage House due to the required accesses for commercial uses, and the fact that such a small structure with such a small footprint is hard to utilize as a retail space. N.T. 6/12/2017, p. 64.

(w) No variances are believed by the Applicant to be required for the demolition of the Carriage House. N.T. 6/12/2017, p. 60.

(x) Although there is some disagreement about the extent of and effect of relevant “T-Zones” in the Township Comprehensive Plan, and although the Property abuts a residential community, the Plan generally calls for commercial type uses, which would encompass a Wawa type convenience store with accessory fuel sales, and which is permitted under the definition of a “convenience store” in the Zoning Ordinance. N.T. 6/12/2017, p. 65; Zoning Ordinance § 370-7.

(y) In the opinion of Mr. Benosky, the proposed development makes a number of improvements to the Property, including: installing green space and buffering along the perimeter; moving buildings out of the front-yard setbacks; installing sidewalks along the street frontage; eliminating two accesses that both almost directly in the intersection of Valley Forge and South White Horse Roads; and, by not developing the Property to greatest extent possible under the Zoning Ordinance. N.T. 6/12/2017, p. 58.

28. Applicant next introduced its historic expert, Richard Meyer. N.T. 6/12/2017 at p. 92. The testimony of Mr. Meyer was as follows:

(a) Mr. Meyer and a team of professionals from his firm, Commonwealth Heritage Group, conducted field examinations of the interior and exterior of the Rossiter House and Carriage House, as well as an exterior visual inspection of properties listed as historical resources within 300 feet of the Property. N.T. 6/12/2017, pp. 92-93.

(b) The Carriage House is not individually listed as a Class II historic resource by the Township, rather it is listed as a part of the Rossiter Property. N.T. 6/12/2017, p. 95.

(c) Mr. Meyer and his team, including a registered archeologist and a preservation planner, prepared the Historic Resources Impact Statement (Ex. A-9) based on these inspections, as well as a review of the following materials:

- i. the online State Historic Preservation website;
- ii. the Land Title Survey (Ex. A-6);
- iii. online aerial imagery of the Property and its vicinity (Ex. A-5,10);
- iv. files from the Pennsylvania Archeological Survey to determine the location of previously identified archeological resources within a half mile of the Property;
- v. files from the National Register of Historic Places;
- vi. the state plan for archeological resources;
- vii. the historic resource files for those nearby properties that have been identified by the state's Historic Preservation Office;
- viii. the structural report prepared by Mainstay Engineering Group (Ex. A-11);
- ix. public sources on the physiography of the history of the area;
- x. published texts;
- xi. historic maps;
- xii. historic aerials; and
- xiii. an examination of select Chester County land records pertaining to the project area. N.T. 6/12/2017, pp. 95-96, 109.

(d) The Historic Resources Impact Statement included the following:

- i. a description of the historic resources within the project area including a general description of the Carriage House and its significance;
 - ii. a description, map, and photographs of all identified historic resources within 300 feet of the project area;
 - iii. a description of the historical development of the project area from the prehistoric period to the present including the ownership history and dates of ownership of the Rossiter Parcel;
 - iv. a description of the proposed action including the reasons for demolition;
 - v. a discussion of the impacts on the identified historic resources;
 - vi. a discussion of the possible impacts on archaeological resources;
 - vii. a discussion of possible mitigation measures;
 - viii. a site plan showing all buildings and structures on the Property;
 - ix. details of the Property from historic maps and aerial photographs;
- and
- x. a number of recent interior and exterior photographs of the Rossiter House and Carriage House showing all major facades and notable interior features. Ex.

A-9.

(e) The original portions of the Rossiter House date from about 1854; however, the structure was greatly expanded around 1890 and presently reflects an 1890s character with a Queen Anne style inside and out. N.T. 6/12/2017, p. 98.

(f) The Carriage House likely dates from the late 19th Century and was probably built about the same time as the 1890 alterations to the Rossiter House. N.T.

6/12/2017, p. 98.

(g) The Carriage House is currently used for a commercial use. N.T.

6/12/2017, p. 98.

(h) In the opinion of Mr. Meyer, the Carriage House, overall, retains a “low level of integrity,” meaning it does not present as an 1890s Carriage House because the interior has been redone to look like a late 20th Century commercial space. N.T. 6/12/2017, pp. 99-100.

(i) The exterior of the Carriage House has been modified, including the addition of a storefront, and does not have its original cladding. N.T. 6/12/2017, p. 100.

(j) Based on the present condition of the Carriage House, it would be difficult for an ordinary person to know it was a Carriage House. N.T. 6/12/2017, p. 100.

(k) The surrounding area was once a historic crossroads village in the 18th through 19th Centuries; however, only a small portion of that crossroad village remains. N.T. 6/12/2017, pp. 100-101.

(l) There are current or former gasoline stations on or near three corners of the intersection, as well as a car dealership, a former bank building of no particular historic note, and an asphalt parking lot next to it. N.T. 6/12/2017, p. 101.

(m) A number of the surrounding residential properties have notable architectural characteristics from the late 19th and early 20th Centuries. N.T. 6/12/2017, pp. 101-102.

(n) Across Valley Forge Road to the north, there are two small commercial buildings, one masonry and one frame, that were related to the crossroads village, but are now isolated and lack a material sense of continuity to the historic district. N.T. 6/12/2017, p. 102.

(o) Behind these buildings is the Friends Meeting House, of which a portion of the property, not including the structure, falls within the 300-foot buffer area. The Meeting House itself, which dates from the early 19th Century, is further removed to the north and east. N.T. 6/12/2017, p. 102.

(p) To the west of the Property is a single stone structure reported to be from the late 18th Century; however, none of the surrounding farm buildings have survived and it is now put to a commercial use. N.T. 6/12/2017, p. 102.

(q) The property to the immediate south and west dates from about 1900 and is notable for its colonial revival style, as well as for the smaller structure behind it. It is currently vacant and has been for ten years, which has diminished its historical integrity simply due to neglect. N.T. 6/12/2017, p. 103.

(r) Immediately to the south and west is a building that dates from about 1900. N.T. 6/12/2017, p. 104.

(s) Across South Whitehorse Road, there exists a Class I historical resource within the 300-foot buffer; a corner of the rear of the house is within the buffer area. N.T. 6/12/2017, p. 105.

(t) This property dates from the late 18th Century, but has been remodeled and is recognizable as a 1915 Colonial Revival house and an early 20th Century country dwelling house. N.T. 6/12/2017, p. 105.

(u) An associated stone barn is further south, outside the 300 foot buffer area, which also has a spring house that dates from about 1810 and is known to have been the home of a historically significant abolitionist, Elijah F. Pennypacker, who was associated with the underground railroad. N.T. 6/12/2017, p. 105.

(v) The exterior of the Carriage House is clad in synthetic material, not original clapboard. N.T. 6/12/2017, p. 106.

(w) A cupola at the top of the Carriage House is the only exterior feature that identifies that it was a Carriage House at one time, because no carriage doorway or bays presently exist. N.T. 6/12/2017, pp. 106-107.

(x) Nothing observed in the interior of the Carriage House dates back to the 1890s era in which it was constructed, and it would be impossible to accurately date the building from the interior. N.T. 6/12/2017, p. 107.

(y) The Rossiter Parcel was originally owned by Jacob Rossiter, who died in 1878, at which time it was purchased by William K. Williams a locally prominent physician and head doctor at the Yellow Springs Hospital. N.T. 6/12/2017, p. 110.

(z) Mr. Williams bought the Rossiter Property at a public auction and likely remodeled it to be a professional office and residence somewhere between 1878 and 1905, which is likely the period when the Carriage House was built. N.T. 6/12/2017, p. 110.

(aa) The Carriage House was never mentioned in any of the research. N.T. 6/12/2017, p. 110; Ex. A-9.

(bb) While the demolition of the Carriage House would affect a Class II historic resource, the Rossiter House, because it is a contributing resource of the Rossiter Parcel,

that impact is tempered by its lack of material historical integrity and its inability to convey its historical significance. N.T. 6/12/2017, p. 111.

(cc) Demolition of the Carriage House would not have a material negative historic impact on the significance of the Rossiter House. N.T. 6/12/2017, p. 112.

(dd) Demolition of the Carriage House would not have a material negative historic impact on other surrounding historic resources because it is unable to convey its significance, and the absence of the Carriage House would only even be noticeable from the adjacent properties. N.T. 6/12/2017, p. 113.

(ee) The conclusion in Applicant's structural engineer's report (Ex. A-11) was that the Carriage House could not be moved because it lacks a first-floor structure to tie the walls together at the bottom and prevent them from buckling. N.T. 6/12/2017, p. 115.

(ff) Research indicated there was only one known prehistoric resource within a mile of the project area, and the nearest stream course was a thousand feet away, making it unlikely Native Americans would have camped here or utilized the site. N.T. 6/12/2017, p. 116.

(gg) These findings, coupled with the significant ground disturbance over the years, lead to the conclusion that there is a low probability for the presence of prehistoric artifacts or resources. N.T. 6/12/2017, p. 116.

(hh) Because the area was a historic crossroads community the probability of finding historic resources is moderate to low, but is still unlikely based on the level of disturbance. N.T. 6/12/2017, p. 116.

(ii) The Carriage House is constructed on a slab, meaning that to remove it would not require extensive or deep excavation. N.T. 6/12/2017, p. 167.

(jj) Applicant's Alternate Conditional Use Plan does not propose construction in the location of the Carriage House that would require excavation so if there was anything subsurface it would not be affected by the construction of this project. N.T. 6/12/2017, p. 117.

(kk) The preferred means to mitigate impact would be to create documentation of the Rossiter Parcel in the form of photographs and measured drawings of the Carriage House, and the preparation and submission of a state historic preservation form. N.T. 6/12/2017, pp.119, 130.

(ll) The principal element of the Carriage House worthy of preservation is the cupola. N.T. 6/12/2017, p. 119.

(mm) The demolition of the Carriage House would not materially adversely affect the historic significance or architectural integrity of the neighboring historic properties because the neighboring properties are primarily important for their architectural characteristics. Their association with the crossroads community was many years ago. N.T. 6/12/2017, p. 119.

(nn) The setting of these neighboring properties is not, relatively speaking, as important as their architectural character. To the extent that demolition would have a minimal impact on the setting, those changes could be mitigated through the placement of vegetative screening along the eastern and southwestern sides of the Property. N.T. 6/12/2017, pp. 121-122.

(oo) No screening presently exists between the Royal Bank building and the neighboring property. N.T. 6/12/2017, p. 122.

(pp) After careful and formal review, the Schuylkill Township Historic Commission considered that the original development plan proposed demolition of the Rossiter House. In order to secure the preservation of the Rossiter House, it recommended approval of

demolition of the Carriage House subject to three conditions: that the Rossiter House be preserved, that the project be developed in accordance with the Alternate Conditional Use Plan, and that Applicant prepare a detailed preservation plan for the Rossiter House that would be approved by the Board. N.T. 6/12/2017, pp. 123-124.

(qq) The preservation plan should include a description of the Rossiter Parcel, identification of the materials in the Rossiter House that contribute to its significance on a room by room and façade by façade basis, a consideration of the proposed use and how that use could impact the preservation of those historic materials. N.T. 6/12/2017, p. 128.

(rr) It would be possible to restore the Rossiter House to its original historic integrity but it would not be reasonably possible to restore the Carriage House. N.T. 6/12/2017, p. 134.

29. The testimony of Samuel Coroniti was as follows:

(a) Mr. Coroniti and his wife are the legal owners of the Rossiter Parcel, which they purchased in 2000 for \$385,000. N.T. 7/11/2017, p. 192.

(b) The current Chester County assessed value of the land and improvements on the Rossiter Parcel is \$378,000. N.T. 7/11/2017, pp. 192-193.

(c) When the Rossiter Parcel was purchased, a restaurant occupied the Rossiter House, while the first floor of the Carriage House was occupied by an art gallery and the second floor was vacant. N.T. 7/11/2017, p. 193.

(d) A total of four restaurants have come and gone from the Rossiter House, as well as a flower shop operated by the Coronitis. N.T. 7/11/2017, p. 195.

(e) The first floor of the Carriage House is a consignment shop, which formerly occupied a portion of the Rossiter House, and the second floor is a nail salon. N.T. 7/11/2017, p. 196.

(f) The Rossiter House is used for storage for the consignment shop, and a 200 square foot office for Mr. Coroniti's courier service. N.T. 7/11/2017, p. 196.

(g) At the time the Historic Site Overlay District was created by the Township in 2011, Mr. Coroniti did not realize the ordinance affected his property. N.T. 7/11/2017, pp. 194-195.

(h) Since 2000, Mr. Coroniti has not made any exterior renovations to the Rossiter House or the Carriage House. N.T. 7/11/2017, pp. 196-197.

(i) It is no longer feasible to continue operating the current commercial uses from the Rossiter Parcel because the rents do not support the operational costs and Mr. Coroniti is losing money. The monthly mortgage payment is \$4,500, while the rents from the Carriage House are only \$2,000. When combined with taxes and various maintenance costs Mr. Coroniti has a \$4,000-\$4,500 monthly loss on the Rossiter Parcel. N.T. 7/11/2017, pp. 197, 203.

(j) Mr. Coroniti has been attempting to sell the Rossiter Parcel for the last three years, but has had no offers. N.T. 7/11/2017, p. 198.

(k) It would not be feasible to renovate the existing structure because it is unclear what use could go into the space. N.T. 7/11/2017, p. 199.

(l) Despite Mr. Coroniti's active efforts over the last five years to locate tenants, he has been unable to keep the buildings at full occupancy. His efforts have included posting Craigslist ads and hiring several different real estate brokers. N.T. 7/11/2017, pp. 198, 203-204.

(m) The best opportunity for preserving the Rossiter House is to sell the Rossiter Parcel in combination with the Vacant Parcel and the Royal Bank Parcel, which are both owned by Mr. Coroniti and his father. N.T. 7/11/2017, p. 199.

(n) The tenants in the Carriage House are currently under month-to-month leases with a 60-day notice to vacate. N.T. 7/11/2017, p. 203.

(o) The last time the Rossiter Parcel was fully rented was in 2013. N.T. 7/11/2017, p. 206.

(p) The Rossiter Parcel was initially listed for a price of \$899,000 and the price was reduced by \$50,000 after six months, but no offers have been made. N.T. 7/11/2017, pp. 208-210.

30. After the close of the Applicant's case-in-chief in this hearing, the Township presented Exhibits T-1 (the report and recommendation of the Township Historical Commission) and T-2 (the June 20, 2017 report and analysis of the Township's Historical Consultant, Robert Wise of RGA Consultants).

31. As reflected in Exhibit T-1, the Township Historical Commission recommended approval of the historic resource demolition application, with the preservation of the Rossiter House, subject to a number of conditions (as are reflected in the Conditions set forth below). Exhibit T-1. See also, N.T. 7/11/2017 at p. 234-37.

32. With Exhibit T-2, the review of the Township's Historical Consultant, Bob Wise, was presented, reflecting the support and backup for the recommendations issued by the Historical Commission. Exhibit T-2.

33. This report was submitted into evidence with the agreement between Applicant and counsel for Schuylkill Township without the need for Mr. Wise to be directly presented. No other parties raised an objection to doing so. N.T. 7/11/2017 at p. 255.

34. Mr. Wise noted the several advantages to retaining the Rossiter House, pursuant to the preservation plan and other conditions reflected below.

35. Applicant's counsel agreed to the concepts set forth in Exhibit T-2 at the July 11, 2017 hearing, with the exception of its outright agreement at that time to the requirement that it supply landscaping plans during the conditional use process (which were subsequently supplied), the Township approval of the architectural design of the proposed Wawa and retail buildings; and the scope of the archeological study. N.T. 7/11/2017 at pp. 242-48.

36. With respect to the scope of the archeological study, Applicant initially took the position that it was unnecessary as there would be a low likelihood of discovering certain artifacts at the site. To the contrary, Mr. Wise noted in his report at Exhibit T-2 that the corner was an early commercial intersection of the Township that could contain valuable archeological materials. Exhibit T-2.

37. After further presentation by the Applicant before the Township Historical Commission and consultation between Applicant's historical resource consultant and that of the Township, the Historical Commission's recommendation on the archeological testing was supplemented as reflected in Exhibits T-8 (Convenience Store Conditional Use Application) and A-18 (Bob Wise Shovel Pit Diagram). See Exhibits T-8 and A-18.

38. Pursuant to those materials, it was recommended that the Applicant conduct a Terminal Phase 1B Archeological study, with thirty-two hand-dug shovel test pits at

approximately three feet in depth dug pursuant to the diagram at Exhibit A-18. N.T. 9/19/2017 at pp. 461-63.

39. Applicant's counsel agreed to that condition, as modified from the Historical Commission's original recommendation and as reflected above. N.T. 9/19/2017 at p. 465.

Convenience Store Conditional Use Application

40. The hearings on the Convenience Store Conditional Use Application immediately followed the close of the hearings on the Historic Resource Demolition Application.

41. While filed as separate applications for relief under distinct portions of the Zoning Ordinance, the Applications are inextricably intertwined (in that they apply to the same property, as components of the same proposed overall land development).

42. The following individuals testified during the course of the hearings on the Convenience Store Conditional Use Application:

- (a) Adam Benosky – Applicant's registered landscape architect;
- (b) Matthew Hammond – Applicant's traffic engineer;
- (c) Christopher Hoffman – Real estate project manager for Wawa;
- (d) John Sartor, P.E. – Township Engineer;
- (e) Christopher Green – Township landscape and lighting engineer;
- (f) Damon Drummond – Township traffic engineer;
- (g) Carl Watson – Lighting consultant of Neighboring Property Owner John Gregory;
- (h) John Snook – Land planner presented by Neighboring Property Owner John Gregory;
- (i) Lee Ledbetter – Township resident; and

(j) D. Travis North – Applicant’s lighting consultant.

43. The Zoning Ordinance defines a “convenience store” as “[a]n area of land together with any structures erected thereon, used for the retail sale of food, beverages, personal care items, automotive fuel and lubricants and similar items in one store under one operator as further limited in § 370-169, but not a supermarket.” Zoning Ordinance Section 370-7.

44. Pursuant to Zoning Ordinance Section 370-86.H., convenience stores are permitted by conditional use in the C Commercial Zoning District, subject to compliance with all provisions of Section 370-169.

45. Section 370-169, in turn, provides that the plan for a convenience store use shall meet the following criteria:

(a) Unless otherwise set forth in this section, the regulations of the district in which the lot is located shall govern.

(b) All gasoline pumps (two dispensers for each pump) shall be covered by a canopy and shall be illuminated by overhead lighting during non-daylight hours.

(c) All gasoline pumps and the canopy covering such pumps shall be set back at least 75 feet from the legal right-of-way line and 50 feet from the ultimate right-of-way of all streets abutting the lot upon which the convenience store is located.

(d) Equipment intended to be utilized for the washing of windows of motor vehicles, as well as places for the storage of such equipment, shall be permitted within the canopy area, or in the building only.

(e) The building used as the convenience store shall contain no more than 10,000 square feet of gross floor area, exclusive of any area of such lot being used for gasoline pump dispensers or a canopy over such dispensers.

(f) All ingress and egress from any lot upon which there is proposed to be located a convenience store shall provide safe and convenient travel.

(g) The internal circulation pattern of any lot upon which there is proposed to be located a convenience store with the retail sale of gasoline shall not entail vehicles waiting for such gasoline service stacking onto public streets.

(h) No outdoor display of products shall be permitted.

(i) All trash generated from a convenience store shall be stored in a completely fenced-in or screened enclosure and may be so stored for periods not to exceed seven days. Bins shall be subject to setbacks in underlying districts.

(j) Parking on any lot used as a convenience store shall be provided as required by § 370-181.B.(20) of the Zoning Ordinance.

(k) Landscaping and screening on any lot used as a convenience store shall be provided as required by this chapter and § 320-34 of Chapter 320, Subdivision and Land Development; provided that, so as to allow for the safe and efficient circulation of vehicles utilizing gasoline dispensing pumps, internal parking lot landscaping shall not be required on a lot used as a convenience store with the retail sale of gasoline, to the extent that waiver from a requirement of internal parking lot landscaping is necessary to accommodate the retail sale of gasoline, but such landscaping shall, in such cases, be located around the perimeter of such a lot.

(l) The Board of Supervisors may require the Applicant to submit a traffic study illustrating the adequacy of existing or proposed roadways to accommodate any increase in traffic from the proposed convenience store. Any such traffic study shall be prepared in sufficient detail to determine peak traffic volumes and roadway capacity and provide acceptable solutions to traffic congestion.

(m) The maximum number of gasoline pump dispensers and the location of the same on any lot upon which there is proposed to be located a convenience store shall be as permitted by the Commonwealth of Pennsylvania Department of Labor and Industry, or any successor agency or entity, but shall not intrude on any setbacks.

(n) No direct or sky-reflected glare, whether from spotlights, floodlights; searchlights or other sources, shall be visible from adjoining streets or adjacent lots when viewed by a person standing on ground level or from floor level on an adjacent property.

(o) The use of a lot as a convenience store shall not emit odorous fumes, gases or other odorous matter in such quantities as to be offensive at any point on or beyond the lot lines of such lot. The guide for determining such quantities of offensive odors shall be the 50% response level of Table 1 (Odor Thresholds in Air), "Research on Chemical Odors: Part 1 – Odor Thresholds for 53 Commercial Chemicals," October 1968, Manufacturing Chemicals Association, Inc.

(p) Any activity producing intense heat which is conducted on a lot used as a convenience store shall be performed within an enclosed building or behind a solid fence in such manner as to be completely imperceptible from any point on any other lot or property.

(q) Exterior lighting on any lot used as a convenience store shall be properly shielded so as to not be directed towards, or shine onto, other lots.

(r) Except as provided herein, the use shall conform to all requirements of this chapter and Chapter 320, Subdivision and Land Development.

46. The Zoning Ordinance sets forth that the criteria for special exception relief under Section 370-208 are likewise applicable and that:

“the Board shall, among other things:

- A. Assure itself that the proposed change is consistent with the spirit, purpose and intent of this chapter.
- B. Determine that the proposed changes will not substantially injure or detract from the use of the neighborhood property or from the character of the neighborhood, and that the use of the property adjacent to the area included in the proposed change or plan is adequately safeguarded.
- C. Determine that the proposed changes will serve the best interests of the Township, the convenience of the community (where applicable) and the public welfare.
- D. Consider the effect of the proposed change upon the logical efficient, and economical extension of public services, and facilities such as public water, sewers, police and fire protection, and public schools.
- E. Be guided in its study, review and recommendations by sound standards or subdivision practice, where applicable.
- F. Guide the development of state and county highway frontage insofar as possible so as to limit the total number of access points and encourage the frontage of buildings on parallel marginal roads or on roads perpendicular to the highway.
- G. Consider the suitability of the proposed location with respect to probable effects upon highway traffic, and assure adequate access arrangements in order to protect highways from undue congestion and hazard.
- H. Ascertain the adequacy of sanitation and public safety provisions, where applicable, and require a certificate of adequacy of sewage and water facilities from the County Department of Health or the appropriate governmental health agency in any case required herein or deemed advisable.
- I. Require that all commercial or industrial parking, loading, access or service areas shall be adequately illuminated at night while in use, and that such lighting, including sign lighting, shall be arranged so as to protect the highway and neighboring properties from discomfort or hazardous interference of any kind.

- J. Impose such conditions, in addition to those required, as are necessary to assure that the general purpose and intent of this chapter is complied with, which conditions may include, but are not limited to, harmonious design of buildings, planting and its maintenance as a sight or sound screen, and the minimizing of noxious, offensive, or hazardous elements.
- K. Review the recommendations of the Planning Commission on the proposed development plan, where such plan is required. The Board shall not be bound by which recommendations nor shall the Board be bound by the action of the Township Supervisors in relation to the development plan.”

47. As indicated above, Applicant acknowledged that it requires variance relief from certain provisions associated with the Convenience Store Use. N.T. 7/11/2017 at p. 33-35.

48. Applicant, the Township consultant witnesses and the Neighboring Parties each addressed a variety of issues related to the potential impact of the Convenience Store Use, generally covering the scope of the use, lighting, landscaping, traffic, property values, noise and environmental pollution (related to the underground fuel tanks).

General Plan Design and Operations

49. Applicant first presented the testimony of Adam Benosky, who provided a general description of the Property and the proposed on-site civil improvements. See N.T. 7/11/2017 at p. 11-119.

50. Mr. Benosky testified as well as to various changes incorporated into the Plans pursuant to review comments by the Township Engineers.

51. Despite references in a variety of the documents submitted by the Applicant, Mr. Benosky confirmed that neither an urgent care nor medical office are being proposed at the present time for the second retail building on the Property. N.T. 7/11/2017 at p. 38.

52. Mr. Benosky testified that the interior vehicle circulation on the site was designed to permit tractor trailer deliveries to the store, but not for tractor trailers to purchase fuel from the

site. Indeed, there are no parking spaces or fueling positions that would accommodate them. He acknowledged that more details will be flushed out during the land development process as to signage and other elements necessary to deter non-Wawa tractor trailer traffic accessing the site. N.T. 7/11/2017 at p. 39-40.

53. Mr. Benosky testified that the design anticipates Wawa tractor trailer deliveries would enter and exit the site off of Valley Forge Road (not South Whitehorse Road). N.T. 7/11/2017 at pp. 84-85. This testimony was confirmed by Wawa project manager Chris Hoffmann who also acknowledged that Wawa can control the timing of its deliveries to ensure that they do not create traffic safety or circulation issues. N.T. 8/29/2017 at p. 433.

54. Mr. Benosky further noted that landscaping trucks with trailers will not be prohibited from accessing the site, but acknowledged that there are no specific parking areas to accommodate them. N.T. 7/11/2017 at p. 47.

55. The site currently has no stormwater management facilities, and no finalized stormwater management plan has been prepared, but new stormwater management facilities are planned for the Property, the final design and engineering for which will be addressed during the land development process. All final stormwater management plans will be in full compliance with Township regulations. N.T. 7/11/2017 at pp. 55-57.

56. Mr. Benosky testified that the Applicant will comply with all provisions of the Township's sign regulations. N.T. 7/11/2017 at p. 66.

57. Mr. Benosky further testified that he has been involved in approximately 20 other Wawa developments, and has not been involved in any prior Wawa developments with fewer than the five pumps (ten fueling positions) proposed on the Property, although, he acknowledged

that it would be physically possible to do so (not that the Applicant is proposing to do so). N.T. 7/11/2017 at p. 68.

58. In the context of Mr. Benosky's testimony and at other points during the hearing, Neighboring Party Sarah Sterling inquired as to whether the location of the proposed Wawa underground fuel tanks could disqualify neighboring residential properties from eligibility under Federal Housing Administration ("FHA") insurance (to the extent that the tanks are located within 300 feet of the neighboring property lines). See Sterling-1.

59. Although the precise scope of FHA regulations was not articulated, the Township Engineer, John Sartor, testified that certain neighboring properties are within the 300 feet radius. He recommended that consideration be given during the land development process as to whether the location of the proposed tanks would harm neighboring property owners and whether tanks could be situated so as to minimize the number of neighboring properties directly affected by the introduction of the Wawa fuel tanks (per the apparent FHA insurance regulations). N.T. 11/9/2017 at p. 784-85.

60. Wawa project manager Chris Hoffman testified as to various operational aspects of the proposed Wawa. N.T. 8/29/2017 at p. 299.

61. Mr. Hoffman noted that Wawa is open to working with the Township as to certain of the design elements associated with the building. N.T. 8/29/2017 at p. 315.

62. Deliveries to the site and trash removal are to be made through a variety of types of trucks: including small box trucks, garbage trucks, larger tractor trailer and fuel trucks. N.T. 8/29/2017 at pp. 332-35.

63. Mr. Hoffman noted that Wawa is open to limiting or eliminating the music that could be played at or near the gas pumps. N.T. 8/29/2017 at pp. 331-32, 402.

64. He further testified that Wawa utilizes double-walled fiberglass underground fuel tanks, with a variety of safety features to prevent and detect leakage. N.T. 8/29/2017 at p. 326-31.

65. As to the customer use, no indoor or outdoor seating is proposed for the site. N.T. 8/29/2017 at p. 335.

66. The Township Engineer, John Sartor, reviewed the Convenience Store Conditional Use applications and plans against the various provisions of the Township Zoning Ordinance. See Exhibit T-11; N.T. 11/9/2017 at p. 773. (Mr. Sartor addressed the zoning and regulatory review, with the exception of the lighting and landscaping review performed by Chris Green, and the traffic review performed by Damon Drummond).

67. Mr. Sartor noted his opinion that Applicant complied with the specific, *prima facie* elements of conditional use relief under Zoning Ordinance Section 370-169, subject to: Applicant obtaining the above-referenced variance relief; further review and refinement of the plans and grading during the land development process; extension of the proposed, opaque fencing; further information being provided as to the monitoring wells located on the Property; and further inspection and rehabilitation of the area of suspected ground subsidence (sinkhole) located on the Property. N.T. 11/9/2017 at p. 773-87.

Lighting and Landscaping Plan Considerations

68. At the time of his initial testimony, Mr. Benosky had not submitted the requisite lighting or landscaping plans, but those materials were subsequently submitted into the Record and for Township Engineer review, comment and revision during the course of the hearings. See, e.g., Exhibits A-10, A-12, and A-19 – A-21; N.T. 7/11/2017 at p. 43; N.T. 10/26/2017 at p. 610-23.

69. Of note, the landscaping plan reflects a variety of types of landscaping on the boundaries of the Property (except those boundaries with direct road frontage). The landscaping is shown all on the Applicant's Property, but it acknowledged the potential of approaching immediately neighboring property owners for the purpose of reviewing whether supplemental landscaping could be incorporated in those areas to enhance the buffer. N.T. 8/23/2017 at pp. 177-82, 10/26/2017 at pp. 612-623. See also, N.T. 11/9/2017 at p. 839.

70. Moreover, Mr. Benosky acknowledged the appropriateness of a long-term landscaping and property maintenance plan as a component of the project, which Applicant intends on submitting for Township approval during the land development process. N.T. 10/26/2017 at p. 623.

71. With respect to lighting from the Convenience Store Use, Applicant presented lighting plans in support of its position that the project will not create any "sky-reflected glare," will incorporate full cut-off lighting elements, and that it complies in all respects with the Zoning Ordinance requirements. N.T. 8/23/2017 at p. 165.

72. Applicant has acknowledged that the design of the lighting plans will depend, in part, on the final grading plans for the Property. N.T. 8/23/2017 at p. 221-22; N.T. 1/30/2018 at p. 1212.

73. Mr. Benosky testified, however, that grading is not proposed on the perimeter areas of the Property. N.T. 10/26/2017 at p. 622. This grading was not assessed compared to the grading of nearby, lower properties. N.T. 11/9/2017.

74. In reaching the above conclusions, Applicant's lighting plans do not assume or model any landscaping around the perimeter of the site, but the opaque fencing proposed on the plans is assumed as a mitigation measure. (In other words, the landscaping around the site may

provide additional buffer from the light emanating from the site, and the opaque character of the fencing is a necessary component of the lighting design). N.T. 1/30/2018 at p. 1202.

75. Mr. Benosky testified that the lit or LED elements of the gas price signage will be situated so that they are not visible to the residences to the south and east of the Property, but the full sign package has not yet been prepared. N.T. 8/23/2017 at p. 190.

76. Questions were raised as to whether the light poles could be lowered. Applicant's witnesses testified that doing so could result in the requirement for additional light poles (albeit at lower heights) and therefore possibly result in increased lighting conditions on the site. N.T. 1/30/2018 at pp. 1214-15, 1238. It would appear from the evidence that although lowered poles could possibly result in increased lighting conditions, lowered poles could also result in a lessening of light which will be experienced by neighbors, and that a reasonable design with lower poles is possible.

77. Applicant's witnesses did confirm that the light fixtures proposed on the site are dimmable. N.T. 1/30/2018 at p. 1240.

78. Applicant did not propose dimming of the site during overnight hours (even the area of the second proposed retail building), due to perceived safety considerations associated with the "24/7" operation of the proposed Wawa. N.T. 10/19/2017 at pp. 623-24.

79. Testimony was also presented as to the lighting levels under the proposed gas canopy.

80. Applicant's lighting plans reflect that an average of 24.64 foot candles proposed under the gas canopy. Exhibit A-21; N.T. 1/30/2018 at p. 1205.

81. Pursuant to the IESNA (Illuminating Engineers Society of North America) guidelines incorporated pursuant to the Zoning Ordinance, an average light level under the gas canopy between 15 and 30 foot candles is recommended. N.T. 1/30/2018 at p. 1204-05.

82. Carl Watson, the lighting consultant presented by Neighboring Property owner John Gregory, testified as to his belief that this level could be reduced to 8 foot candles, but his assessment did not appear to apply the appropriate IESNA standard and he did not conclude whether 8 foot candles would be sufficient for the task. N.T. 12/4/2017 at pp. 1009-10.

83. In Mr. Watson's review of other gas stations (in other areas), they had gas canopy levels that ranged from 10 to 20 foot candles. N.T. 12/4/2017 at p. 1011.

84. Questions were raised as to why the lighting levels underneath the gas canopy could not be reduced to the lower end of the recommended average (e.g., 15 foot candles). Applicant's lighting witnesses noted that doing so would be a possibility to consider during the land development process (subject to possible revision to certain aspects of the canopy design and fixture selection). N.T. 1/30/2018 at p. 1224-25.

85. As to the neighborhood impact, Applicant's lighting expert testified that, with the incorporation of the fencing and the proposed lighting, light *sources* will not be visible from the site, but "you will always be able to see the light" from the proposed use. N.T. 10/26/2017 at p. 628.

86. Nearby residents will likely be able to see the glow of light from the Convenience Store Use on the Property. N.T. 1/30/2018 at p. 1235-36.

87. The Township's Lighting and Landscaping Engineer, Chris Green, testified that Applicant satisfied the *prima facie* elements of the ordinance from a compliance standpoint. See Exhibits T-15, T-18; N.T. 11/9/2017 at pp. 815, 829.

88. He noted, however, that the landscaping and lighting plans would necessarily be subject to further review during the land development application (to ensure, *inter alia*, that the plans continue to comply with the regulatory requirements of the Township). *Id.*

89. Mr. Green noted his interpretation that the project will not be noncompliant with the Zoning Ordinance because the glow of light from the Property will be visible from the surrounding properties. N.T. 11/9/2017 at p. 815.

90. Mr. Green testified that, during the land development process, further consideration should be given to areas where the lighting levels can be reduced as balanced against public safety issues during the hours of operation of the store, as well as modifications to the color of the light in order to dampen its impact on the neighborhood. N.T. 11/9/2017 at pp. 815-18, 832; Exhibit T-18.

91. He further testified that the lighting levels could be further reduced if certain components or parts of the property are not operating during overnight hours. N.T. 11/9/2017 at p. 823.

92. Further monitoring and possible limitation of the light projected from the site is also possible under the nuisance light provisions of the Zoning Ordinance, Section 370-130.C.(6). N.T. 11/9/2017 at p. 819-20.

93. Mr. Green further testified as to his conclusion that the landscaping plans comply with the Zoning Ordinance criteria, subject to ongoing review during the land development process. Exhibit T-18; N.T. 11/9/2017 at p. 815-22.

94. Neighboring Party John Gregory presented his own lighting consultant, Carl Watson. N.T. 12/4/2017 at p. 930.

95. Mr. Watson testified as to his conclusions that the Applicant's lighting plan did not comply with the Zoning Ordinance, would negatively impact the neighboring residences, and that the color temperature of the light should be reduced. N.T. 12/4/2017 at p. 934.

96. However, Mr. Watson did not review the most recent lighting and landscaping plans submitted into the record in this matter, and his assessment of the compliance was premised on descriptive portions of the Zoning Ordinance that have been supplanted by the most recent IESNA standards. N.T. 12/4/2017 at pp. 987-89, 1001-02.

97. Mr. Watson also testified as to his conclusion that the color of the light temperature should be reduced in order to reduce the impact of the light emanating from the Property on the adjacent neighborhood. N.T. 12/4/2017 at p. 1010.

98. Neighboring Party John Gregory also presented the testimony and report of John Snook, an experienced land planner, who asserted that the "24/7" operation of the convenience store would negatively impact the nearby residences. N.T. 12/19/2017 at p. 1077.

99. After being qualified as an expert land planner, Mr. Snook gave the following testimony on December 19, 2017:

"[Section] 370-208.B. states that the Board ... shall determine that the proposed changes, which in this case is the new use, will not substantially injure or detract from the use of the neighborhood property or from the character of the neighborhood, and that the use of the property adjacent to the area included in the proposed change or plan is adequately safeguarded. N.T. at p. 1076.

...

"In my view, the residential quality of the neighborhood beyond the immediate intersection will definitely be adversely impacted by not a business in that location but by a 24/7 convenience store with gasoline dispensing with light, glare, music under the canopies, noise, traffic, et cetera.

“It will be a significant change from what is there now, and it will be significant from an impact standpoint in the context of the residential neighbors. N.T. at p. 1077.

...

“The other key provision is also in 370-208 and it is Subsection A which says that the Board shall assure itself that the proposed change is consistent with the spirit, purpose and intent of this Chapter, meaning Zoning.

“The Zoning Ordinance brings the Comprehensive Plan into play, notably in the Purpose Statement which is 370-2. N.T. at p. 1078.

...

“The Comp Plan in my belief intends that that redevelopment ... fit into a hamlet style of building placement; in other words, not a building sitting in the middle of a large well-lit platter of parking, but rather, even though that may be needed, buildings closer to the street, perhaps partially hiding the impact of the lighting and the parking, and in a sense recreating what may have been there years ago before what is there now. N.T. at p. 1080.

...

“I also believe that the current plan is not in accordance with the Comprehensive Plan’s desire to foresee redevelopment in more of what it calls a hamlet style. N.T. at p. 1086.

...

“It is the character of the business from the standpoint of the 24/7 operation, the extensive lit canopy area and lit parking area for the gas, the noise, et cetera, that will be with that 24/7. That is out of character with the businesses that have been at that corner to date, and it’s simply out of character with the immediate, residential neighbors. N.T. at p. 1087.

...

“... but the real key in my view is a reduction of hours to less than 24/7, like 16 to 18 hours, stay closed 11:00 p.m. to 6:00 a.m. or even 5:00 a.m. N.T. at p. 1088.”

100. The Board found Mr. Snook’s testimony to be credible.

101. Applicant supplemented its presentation on the lighting aspects of the Convenience Store Use with testimony from D. Travis North. N.T. 1/30/2018 at p. 1194.

102. Mr. North testified as to his belief that the project will not create glare conditions, that the fixtures will meet full-cutoff criteria and that the color temperature does not affect glare or the health of nearby residents. N.T. 1/30/2018 at p. 1195-96.

103. With respect to the color temperature issue, Mr. North indicated that the primary issue with the color temperature of the light is the color temperature in relation to the color temperature of other nearby light sources. N.T. 1/30/2018 at p. 1218-19.

Traffic

104. Applicant's traffic engineer, Matthew Hammond from Traffic Planning and Design, Inc., presented two separate traffic impact studies during the course of the hearings.

105. The first traffic study that he presented was flawed in that: (1) it contained incorrect references to the types of uses being proposed; (2) it relied upon incorrect references to the size of the second proposed retail building; (3) it did not incorporate the full scope of traffic intersections as directed by the Township Traffic Engineer; and (4) the traffic counts on which it was premised were conducted on a day on which there was no school and over a holiday weekend. See, generally, N.T. 9/19/2017 at pp. 467-588.

106. A revised, updated traffic impact study was thereafter introduced as Exhibit A-22.

107. Relying on the traffic impact study and the design of the site, Mr. Hammond testified as to his belief that the project will improve certain aspects of the traffic conditions (over the present site conditions) because it will reduce and limit the number of traffic access points as well as incorporate certain additional traffic improvements, but he acknowledged that the amount of traffic will increase if the Wawa is permitted to operate. N.T. 8/23/2017 at p. 274.

108. He acknowledged that there are existing traffic issues and delays for certain of the turning movements at the intersection (during the AM and PM peaks), and that the proposed site would cause an increase in certain delays at the studied intersections. N.T. 9/19/2017 at p. 487.

109. Applicant has proposed certain modifications to the intersection, which are under review by the Pennsylvania Department of Transportation and will be reviewed further by the Township Engineer during the land development process. Ex. A-21; N.T. 9/19/2017 at p. 473-74.

110. He ultimately concluded that in his opinion the project will not adversely impact the public health, safety or welfare in terms of traffic related issues. N.T. 8/23/2017 at p. 274; N.T. 10/26/2017 at p. 686.

111. It was acknowledged that the precise impact of any traffic delays caused by the proposed development has not been fully established. Indeed, the traffic review by Applicant was based on one days' worth of traffic counts (that is, one weekday and one weekend day), and traffic volumes can vary by 5% and 10%. N.T. 10/26/2017 at p. 699.

112. The Township's Traffic Engineer, Damon Drummond, testified at the hearing on November 9, 2017, and presented his reports at Exhibits T-17 and T-19.

113. He noted his expectation that the proposed new uses will generate an additional 82 AM peak hour trips, 98 PM peak hour trips, and 111 Saturday peak hour trips. Exhibit T-17.

114. Ultimately, he concluded that the traffic increase is a level considered to be acceptable, subject to further assessment and mitigation measures as recommended by his office, and by PennDOT. N.T. 11/9/2017 at p. 854.

115. Mr. Drummond testified that there will be increased traffic at the intersection of Valley Forge and Whitehorse Roads, but that Applicant has proposed mitigation measures (to be

augmented by additional mitigation measures recommended by his office). N.T. 11/9/2017 at p. 848.

116. Mr. Drummond testified that many of the outstanding review comments are technical corrections, with the exception of his ongoing recommendation that turns from west-bound traffic on Valley Forge Road into the site be prohibited. N.T. 11/9/2017 at p. 846-47.

117. He further noted his recommendation that Applicant be made to incorporate traffic signal upgrades and to optimize the regional traffic signals, and that designated parking areas be incorporated for landscaping vehicles with trailers (at the northwestern corner of the property). N.T. 11/9/2017 at pp. 846-47, 849.

118. Mr. Hammond also produced a supplemental memorandum, Exhibit T-19, in which he assessed the questions raised as to the levels of service at the intersection and the difference between the two traffic impact studies presented by the Applicant. N.T. 11/9/2017 at p. 850.

119. Noteworthy in his assessment is that the traffic signal optimization was assumed with the second traffic impact study (which had not been assumed with the prior study). N.T. 11/9/2017 at p. 851.

120. Questions were nonetheless raised as to the suitability of the proposed convenience store use with respect to the probable negative effects of highway traffic which is already extremely congested at the intersection particularly at AM and PM peak hours, with adequate access measures being provided to protect highways from undue congestion and hazard, in that traffic from the site will not be completely mitigated. N.T. 11/9/2017 at p. 863-68.

Public Safety Considerations and the Impact of the Use on Neighboring Properties

121. Competing testimony and opinions were introduced as to the safety of the proposed Wawa operating twenty-four hours per day.

122. Applicant's Wawa project manager, Chris Hoffman, testified as to his belief that doing so (and not dimming evening lights) is more safe than closing during overnight hours. N.T. 8/29/2017 at p. 336.

123. As reflected in Exhibits T-1 through T-7, there have been multiple robberies (some at knife and gunpoint) between April 2017 through August 2017 at certain Wawa locations. See Exhibits T-1 through T-7. See N.T. 8/29/2017 at pp. 337-46.

124. Those robberies identified in Exhibit T-1 through T-7 took place in the late evening and early morning hours, generally after 11:00 PM and before 6:00 AM. *Id.*

125. The use also brings potentially attractive elements, convenient to would-be robbers: they have a ready supply of tobacco behind the counter; they have ATMs within the stores; and their doors are unlocked and open all night. N.T. 1/30/2018 at p. 1267.

126. Two of the referenced Wawa robberies were new or newly-renovated (i.e., the Media Wawa and the Concord Wawa), both of which were robbed in the overnight hours within a matter of days of opening. *Id.*

127. Applicant's representative has indicated that each of these facilities would have had the same internal safety and security systems as the proposed Wawa here. N.T. 1/30/2018 at 1267.

128. Applicant, for its part, disagrees with the concept that its stores are unsafe during the overnight hours. Wawa representative Chris Hoffman testified that no armed robberies

occurred in its selection of three nearby Wawa stores, stating the belief that the Wawa would take on the character of the nearby area. N.T. 1/30/2018 at p. 1253.

129. As noted, land planner John Snook testified that several additional planning factors dictate against allowing the Wawa as a “24/7” operation, including the light, glare, traffic and activity on the site during overnight hours; the immediately surrounding residences (those located in a character zone identified by the Schuylkill Township Comprehensive Plan as being predominately residential in character); and that none of the other nearby business uses are “24/7” operations. N.T. 12/19/2017 at pp. 1077-92, 1133.

130. He characterized his position as not being against the application per se, but instead as against the “24/7” nature of it. N.T. 12/19/2017 at pp. 1087 and 1133.

Procedural

131. The record as to witness testimony was closed on January 30, 2018, with the Township scheduling a further hearing to accept public comment and oral argument from counsel on February 8, 2018, and with the parties having the opportunity until March 12, 2018, to present proposed findings of fact, legal memoranda and conclusions of law. The parties waived all MPC review and decision periods associated with the above schedule. N.T. 2/8/2018 at p. 1312-13.

II. LEGAL ANALYSIS.

Legal Standards of Review

The standards for assessing a conditional use application are well-established. A conditional use is a use that is permitted by the Township's Zoning Ordinance, subject to certain criteria being established on the record and subject to the rights of objectors to establish that the application cannot comply with those or certain other criteria. *In re Maibach*, 26 A.3d 1213, 1216 (Pa. Cmwlth. 2011).

The appellate court caselaw favors allowing conditional use approval as a form of permitted use. "An applicant is entitled to a conditional use as a matter of right, unless it is determined 'that the use does not satisfy the specific, objective criteria in the zoning ordinance for that conditional use.'" *In re Drumore Crossings, L.P.*, 984 A.2d 589, 595 (Pa. Cmwlth. 2009). "If the applicant demonstrates compliance with the zoning ordinance, the governing body must grant the application unless the objectors introduce sufficient evidence that the proposed use has a detrimental effect on the public health, safety and welfare." *In re Maibach*, 26 A.3d at 1216. "A conditional use involves the use of the land, as opposed to the particular design details of the development." *Kretschmann Farm, LLC v. Twp. of New Sewickley*, 131 A.3d 1044, 1052 (Pa. Cmwlth. 2016).

The role of the Board of Supervisors in the process is one of judge and fact-finder rolled into one. The Board is tasked with making all credibility determinations of the testimony of the various witnesses, assigning weight to the evidence presented, and making the ultimate legal conclusion as to whether the conditional use criteria were satisfied. *Elizabeth/Mt. Joy Associates v. Mt. Joy Twp. Zoning Hearing Board*, 934 A.2d 759, n. 5 (Pa. Cmwlth. 2007). As a conditional use is nothing more than a special exception that falls within the jurisdiction of the municipal

body, rather than the zoning hearing board, the caselaw citing the standards for review of the same are cited interchangeably. *Williams Holding Group, LLC v. Board of Supervisors of West Hanover Tp.*, 101 A.3d 1202, 1212 (Pa. Cmwlth. 2014). The conclusions of the Board are measured on appeal based on whether they are supported by “substantial evidence.” *Id.* However, the term is somewhat of a misnomer. “Substantial evidence” need not be an overwhelming mountain of evidence. Instead, “substantial evidence has been defined as such relevant evidence *as a reasonable mind might accept as adequate to support a conclusion.*” *Id.*

The burden of establishing the conditional use criteria shifts during the course of the hearings. The applicant initially bears the burden of establishing the application complies with the specific, objective standards set out in the zoning ordinance. *In re AMA/Am. Mktg. Ass’n, Inc.*, No. 643 C.D. 2015, 2016 WL 3258103, at *2 (Pa. Cmwlth. June 14, 2016), citing *Visionquest Nat’l, Ltd. v. Bd. of Supervisors of Honey Brook Twp., Chester Cnty.*, 524 Pa. 107, 569 A.2d 915 (1990) and *City of Hope v. Sadsbury Twp. Zoning Hearing Bd.*, 890 A.2d 1137 (Pa. Cmwlth. 2006).

“Satisfaction of the applicant’s burden establishes a legislative presumption that the use is consistent with the health, safety, and welfare of the community.” *Id.* If the applicant satisfies this initial burden, “the burden then ‘shifts to objectors to rebut the presumption by proving that there is a high degree of probability the proposed use will adversely affect the welfare of the community in a way not normally expected from the type of use.’” *Kretschmann Farm*, 131 A.3d at 1053. The Courts have held that speculation of possible harm is not sufficient to meet this burden. *Id.* “Pointedly, a ‘conditional use application must be granted unless objectors present sufficient evidence that the proposed use has a detrimental effect on the public health, safety and welfare.’” *Id.*, citing *In re McGlynn*, 974 A.2d 525, 537 (Pa. Cmwlth. 2009). In

effect, the objectors have the burden as to all general policy concerns and general detrimental effects of a proposed conditional use. *Spencer v. McKean Tp. Zoning Hearing Bd.*, 537 A.2d 943 (Pa. Cmwlth. 1988).

The analysis does not end there, however. Section 913.2 of the MPC gives the Board of Supervisors discretion to impose “reasonable conditions.” 53 P.S. § 10913.2(a). It provides that: “In granting a conditional use, the governing body may attach such conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act in the zoning ordinance.” *Id.*

The appellate courts have held that reasonable conditions on the grant of a conditional use are those that advance a valid zoning interest, are supported by the record, and relate to the specific zoning ordinance at issue. *In re Maibach*, 26 A.3d at 1216. A municipality cannot, however, “devise conditions out of thin air and without any reference to the record evidence.” *HHI Trucking and Supply v. Borough of Oakmont*, 990 A.2d 152, 160 (Pa. Cmwlth. 2010). Instead, conditions must be supported by evidence in the record. *Id.* “In sum, to be reasonable, a condition must relate to a zoning ordinance standard or be authorized by the MPC. Factual findings on which the condition is premised must be supported by record evidence. If not, a zoning hearing board, or municipality, abuses its discretion when it imposes such a condition.” *Id.* at 161.

Against the above-framework, the Applicant has satisfied its *prima facie* burden of meeting the specific ordinance criteria (generally those set out in Zoning Ordinance Section 370-169) – subject to the conditions referenced by Township consultants, including the obligation of Applicant to obtain additional variance relief).

The Neighboring Parties have not satisfied their burden of proving that there is a high degree of probability the proposed use will adversely affect the welfare of the community in a way not normally expected from the type of use (generally the criteria set out in Zoning Ordinance Section 370-208). However potential conditions may be imposed to mitigate potential concerns for lighting, traffic, landscaping and hours of operation as acknowledged by the land planner for one of the Neighboring Parties (John Snook).

During the hearings Applicant has acknowledged that it would or might comply with most (but not all) of the proposed conditions. Questions were also raised during the hearings as to concerns over traffic impacts for the proposed development. A discussion on each of those components is set forth below.

A. Historic Resource Demolition and the Proposed Architectural Design Conditions.

Applicant did not explicitly agree on the Record to the condition that the architectural design of the proposed Wawa convenience store and the retail building being subject to further review and consideration of the Township during the subdivision and land development process. However, this condition is supported by the record, is reasonable and is necessary in order for Applicant to have established its right to the historic resource demolition conditional use relief. Particularly, 370-55.B. requires that the Applicant establish that the demolition of the historic resource will not adversely affect the historic significance or architectural integrity of neighboring historic resources or the historic character of the neighborhood. See Zoning Ordinance Section 370-55.B.(1).

Here, the carriage home (to be demolished) is within close proximity to the existing Rossiter House, see Exhibit A-10 (Convenience Store Conditional Use), and several other Class II and Class I historic resources are located in the immediate vicinity of the Property.

See Exhibit A-10 (Historic Resources Demolition Conditional Use). Exterior elements of the Carriage House have contributed toward the historic setting around the Rossiter House. As testified by Applicant's historic resource consultant (Richard Meyer), the most prominent, notable aspect of the historic Carriage House is its cupola. N.T. 6/12/2017 at p. 106. Mr. Meyer further acknowledged that there is merit to ensuring that the design of the proposed Wawa and retail buildings are sensitive to the nearby historic resources. N.T. 6/12/2017 at p. 131. These sentiments were echoed in the historic resources impact report submitted by the Applicant, and in the review submitted by the Township's Historical Consultant (Bob Wise). Moreover, Wawa has demonstrated itself to be a flexible, community partner elsewhere in applying varied architectural designs to its stores in order to suit neighborhood character. See Morrison-1.

Accordingly, the design of the proposed Wawa and retail buildings directly impact on Applicant establishing that the demolition of the Carriage House will not impact the historic integrity of the surrounding resources (resources within the viewshed of the Carriage House and Rossiter House). In order to ensure that it does not do so, the condition requiring that the design elements of those buildings be further considered during the land development process is entirely within the prerogative of the Board of Supervisors to impose.

B. Convenience Store Application.

1. Traffic.

The traffic impacts of proposed developments are frequently areas of contention and concern in zoning and subdivision/land development matters. However, the authority of the Township in this area is somewhat restricted. As noted by the treatise, *Ryan on Zoning*, § 5.2.6, all uses have an adverse traffic impact on the community to some degree. The trend and weight of the caselaw has been against an application being denied for traffic reasons

unless it creates a substantial and material increase or impact on the traffic conditions beyond that normally anticipated with the type of proposed, permitted use and where abnormal traffic conditions threaten safety. See *Joseph v. North Whitehall Tp. Board of Supervisors*, 16 A.3d 1209, 1217 (Pa. Cmwlth. 2011) (holding that “an anticipated traffic increase resulting from a proposed use would not on its own defeat a conditional use request,” and “the mere fact that a proposed use would contribute to projected traffic congestion primarily generated by other sources is not a sufficient basis for denying a conditional use.”); and *Oasis v. Zoning Hearing Bd. Zoning Hearing Bd. of South Annville Township*, 94 A.3d 457, 465 (Pa. Cmwlth. 2014) (noting that the Courts have often held that an increase in traffic is insufficient to deny zoning relief); *Accelerated Enterprises, Inc. v. The Hazel Tp. Zoning Hearing Bd.*, 773 A.2d 824, 827 (Pa. Cmwlth. 2001) (“[A]n increase in traffic is generally not grounds for denial of a special exception unless there is a high probability that the proposed use will generate traffic not normally generated by that type of use and that the abnormal traffic threatens safety.”).

There are exceptions –when traffic generated by a particular use is materially and significantly higher than a normal traffic anticipated in a proposed permitted use, or when the applicant’s traffic presentation is unfounded. See *Elizabethtown/Mt. Joy Associates, L.P.*, 934 A.2d 759, 765 (Pa. Cmwlth. 2007) (finding that the testimony of an applicant’s traffic engineer was faulty in that it was premised on erroneous data and unfounded assumptions, and that the traffic engineer’s conclusions were premised on essential traffic improvements that he could not establish would be installed or funded); and *Berman v. Manchester Tp. Zoning Hearing Board*, 540 A.2d 8, 9-10 (Pa. Cmwlth. 1988) (noting that a 79% increase in traffic was material and significant in supporting the denial of a special exception application).

The issue for the Board to resolve in weighing the credibility of the Applicant's Traffic Engineer, the Township Traffic Engineer and the witnesses and testimony presented by the Neighboring Parties, is whether the increase in traffic from the site will be a material and significant increase so as to warrant denial of the Plans, i.e., whether the resulting traffic condition will be much worse than would be reasonably expected with a new Wawa convenience store. The Applicant's Traffic Engineer believes that it does not; the Township Engineer noted that the level of increased traffic is within the acceptable range; but the Neighboring Parties expressed concern about the increase to an already badly congested intersection.

At a minimum, the Township's Traffic Engineer recommended against a left turn "in" movement westbound on Valley Forge Road and several additional traffic mitigation measures to be incorporated. The full scope of them is set forth in the Exhibit T-17 and in the Proposed Conditions below.

2. Hours of Operation.

Lastly, among the potential conditions for the Board to consider imposing is whether the hours of operation for the proposed Wawa should be limited. Applicant has indicated its staunch opposition to any such limitation, while Township/special counsel's position is that doing so is within the discretion of the Board of Supervisors given the 24-hour nature of the proposed Wawa convenience store use.

Apart from the generalized reasonableness standard for the Board imposing conditions, the Pennsylvania Commonwealth Court has addressed the concept of applying limits on hours of operation in several notable decisions. First, in *HHI Trucking v. Borough of Oakmont*, the Court struck down such a condition (but for reasons not applicable in

the instant matter). In *HHI Trucking*, HHI sought conditional use approval for a ready-mix concrete plant within the Borough's Industrial Zoning District. *HHI Trucking*, 990 A.2d at 155. Neighbors comprised of approximately 20 nearby residents objected to the application, while HHI presented evidence that the immediate area had been used for heavy industrial uses (with heavy truck traffic) since the early 1960s. *Id.* Ultimately, the application was approved, subject to several conditions, including that the hours of operation be limited to 7:00 AM to 5:00 PM, Monday through Friday. *Id.* at 157-58. The approval also limited HHI to one cement truck per week. *Id.* at 161.

On appeal, the Commonwealth Court found that the record lacked any evidence that the longer hours of operation would cause some harm that violates the Zoning Ordinance, and found that HHI established affirmatively that the hours of operation would make it uncompetitive in the industry. *Id.* As there was no evidence of record as to the limitation on the hours of operation, the Commonwealth Court found that the Board's decision lacked the requisite "substantial evidence" necessary to impose the condition. *Id.* at 163. (Note, again, the low threshold for establishing "substantial evidence" as set forth above). However, it is most notable that the Court's decision was centered on the lack of evidence in the record supporting the challenged conditions. *Id.* ("In the absence of evidence in the record explaining their need, these conditions appear to have been drawn from thin air, which is arbitrary and capricious. Further, without evidence, it is impossible to determine whether the municipality has acted reasonably in its imposition of a condition.").

Here, the Board deems the hours of operation limits appropriate. It contends that *HHI* is distinguishable in that the record of this matter may be construed so as to provide support for restriction overnight operations. Further, notable by its absence in the *HHI*

decision is any absolute prohibition by the Commonwealth Court on municipalities imposing hours of operation limitations in the context of conditional use/special exception applications – merely that the township in *HHI* did not have the requisite evidence of record to support the same.

Next, in *In re Appeal of Dippolito*, the Commonwealth Court recognized that a limitation on the hours of operation is a valid means by which the adverse impacts of a proposed use can be mitigated through zoning relief. *Dippolito*, 833 A.2d 336 (Pa. Cmwlth. 2003). Dippolito owned two acres of property located in a heavy industrial zoning district, on which he operated a tree/landscaping service. *Id.* at 338. In 2001, Dippolito sought special exception relief in order to operate a 98,000 pound tub grinder for the purpose of grinding up trees obtained from his landscaping operations. *Id.*

The operation was apparently very noisy and drew the ire of the Zoning Officer (as a violation of the noise ordinance). *Id.* Through his special exception application, Mr. Dippolito agreed to limit the hours of operation of the (noisy) grinder tub to 9:00 AM to 4:00 PM (in addition to agreeing to install additional vegetative buffer to limit noise). *Id.* at 339-40. However, the Zoning Hearing Board denied the application. On appeal, the trial court and Commonwealth Court held that the denial was inappropriate. *Id.* Instead, it noted that “[b]ecause Dippolito testified that he would make provisions to adequately reduce or minimize the noxious or offensive features of the tub grinder [notably including the limit on the hours of operation], we agree with the trial court that he was entitled to the grant of a special exception.” *Id.* at 342.

In *Good v. Zoning Hearing Board of Heidelberg Township*, 967 A.2d 421 (2009) Pa. Commonwealth Ct. the issue concerned a special exception granted for operation of a

kennel. The Zoning Hearing Board imposed a number of conditions, including condition 27 which required that dogs be kept indoors between 9:00 PM and 7:00 AM. The Court noted “this condition responds to the concerns of neighbors regarding noise generated by the kennel.”

The Court in *Good* also referenced three other cases where time restrictions were approved of. In *Leckey v. Lower Southampton Township Zoning Hearing Bd.*, 864 A.2d 593, 596 (Pa. Commonwealth Ct. 2004), the Court upheld time restrictions on business hours of operation due to concerns over noise. In *Scalise v. Zoning Hearing Bd. of the Borough of W. Mifflin*, 756 A.2d 163 (Pa. Commonwealth Ct. 2000), the Court upheld conditions on a variance authorizing a storage use while restricting loading and unloading to 8:00 AM to 6:00 PM. In *Hill v. Zoning Hearing Bd. of Maxatawny Twp.*, 142 Pa. Commonwealth 539, 597 A.2d 1245 (Pa. Commonwealth Ct. 1991), the Court affirmed conditions limiting business hours of operation which were supported by record evidence.

With respect to the Wawa Convenience Store Conditional Use Application, there has been “substantial evidence” in the record to support that its hours of operation could be limited. As reflected in Exhibits T-1 through T-7, there have been multiple robberies (some at knife, ax and gunpoint) over just the limited period between April 2017 and August 2017. See Exhibits T-1 through T-7. Each took place in the late evening hours (generally after 11:00 PM and before 6:00 AM). *Id.* Applicant’s representative has indicated that each of these facilities would have had the same internal safety and security systems as the proposed Wawa here. N.T. 1/30/2018 at p. 1267.

The use also brings elements attractive and convenient to would-be criminals. They have a ready supply of tobacco behind the counter. N.T. 1/30/2018 at p. 1267. They have ATMs within the stores, and their doors are unlocked and open. N.T. 1/30/2018 at p.

1267. Two of the referenced Wawa robberies were new or newly-renovated (i.e., the Media Wawa and the Concord Wawa), both of which were robbed in the overnight hours within a matter of days of opening. *Id.*²

Applicant, for its part, disagrees with the concept that its stores are necessarily unsafe during the overnight hours. It provided testimony from a Wawa representative that none of those robberies occurred in its selection of three nearby Wawa stores (which had limited 9-1-1 calls in the last year), stating the belief that the Wawa would take on the character of the nearby area. N.T. 1/30/2018 at p. 1253. This issue is therefore one of credibility for the Board to resolve.

Applicant's representative indicated in response that the need for Wawa to be open "24/7" is to promote its brand identity as being always available to provide third shift workers with a cup of coffee, a late dinner or an early breakfast. N.T. 1/30/2018 at pp. 1252, 1276. A reasonable question can be raised as to whether those interests outweigh the potential safety threat or the impact of a "24/7" operation on the immediately surrounding residential uses (below) – a question the Board seemingly has the ability to mitigate through the potential of limiting the hours of operation.

Applicant also introduced a report at Exhibit A-25 setting forth the benefits of convenience stores and the propriety of allowing them to operate through overnight hours. Exhibit A-25. However, this report was prepared by a convenience store industry group, the NACS, National Association of Convenience Stores; no author of the report was presented to substantiate its findings; and the parties were therefore deprived the right to question the veracity

² It should be noted that the above implication should not be seen as implying that the potential threat of robbery is unique to the Wawa brand. Instead, consistent with the testimony of Mr. Snook, the threat of a convenience store robbery appears guided by the 24 hour operation of the facility.

of its conclusions. The various percentages and findings referenced in the report are also premised on a survey of its own membership – see Exhibit A-25, page 16 (noting that the source of the data is a 2014 NACS retail member survey). This is perhaps not the most neutral or credible source for these assertions. Either way, in a manner similar to the impropriety of considering the Stan Stubbe report proffered by one of the Neighboring Parties, it should not be considered as controlling on this issue.

Additionally and/or alternatively, apart from the safety concerns, land planner John Snook testified that several planning factors dictate against allowing the Wawa as a “24/7” operation, including the light, glare, traffic and activity on the site during overnight hours; the immediately surrounding residences (those located in character zone identified by the Comprehensive Plan as being predominately residential in character); and that none of the other nearby business uses are “24/7” operations. N.T. 12/19/2017 at pp. 1077-92, 1133. He characterized his position as not being against the application *per se*, but instead as against the “24/7” nature of it. N.T. 12/19/2017 at pp. 1087 and 1133. This result could be supported with the testimony that the lighting conditions on the site (the glow of which will be visible to neighboring property owners) are contingent on the fact that the business is operating 24 hours per day.

Applicant, for its part, points to other commercial areas outside of the immediate vicinity of the South Whitehorse/Valley Forge Road intersection; that the “vast majority” of other Wawa stores are “24/7”; and that certain other elements of the Comprehensive Plan support more of a commercial tone to the intersection. N.T. 12/19/2017 at pp. 1099-1110. The Board must balance between these competing concepts and the evidence supporting them

rests largely on credibility determinations as to the impact of the “24/7” use on the immediately surrounding neighborhood.

It merits mention that the question was raised of various witnesses as to the fact that the Zoning Ordinance does not expressly limit the hours of operation. This is correct. However, this is not controlling. The conditions to be imposed by the Board need not be expressly provided for in the Zoning Ordinance. Instead, per the Section of the MPC authorizing the Board to impose conditions, it provides that: “[i]n granting a conditional use, the governing body may attach such conditions and safeguards, *in addition to those expressed in the ordinance*, as it may deem necessary to implement the purposes of this act in the zoning ordinance.” 53 P.S. § 10913.2 (emphasis supplied).

The Board believes that a limitation on the hours of the convenience store is a reasonable discretionary exercise of its power. The Board believes that limited hours furthers the Zoning purposes of ensuring that direct or sky-reflected light is not visible from contiguous residential areas (Zoning Ordinance Section 370-86.N.); that exterior lighting does not negatively impact neighboring lots (Zoning Ordinance Section 370-86.Q.); that the proposed use provides harmonious design of buildings, planting and its maintenance as a sight or sound screen, and the minimizing of noxious, offensive, or hazardous elements (Zoning Ordinance Section 208(J)); and in determining whether the proposed use will substantially detract from the use of the neighboring property or the character of the neighborhood, such that the properties adjacent to the proposed change is adequately safeguarded (Zoning Ordinance Section 370-208.B.)

III. CONCLUSIONS OF LAW.

1. The Schuylkill Township Board of Supervisors has exclusive jurisdiction to hear and decide the subject conditional use application pursuant to the MPC and the Schuylkill Township Zoning Ordinance.

2. The Conditional Use hearings were properly advertised and conducted in accordance with the Township Zoning Ordinance and the MPC.

3. Certain neighboring parties were appropriately granted party status, pursuant to the discretion vested with the Board of Supervisors in doing so in Section 908 of the MCP.

4. Applicant has satisfied the requirements for conditional use approval for the demolition of the Carriage House pursuant to Zoning Ordinance Section 370-55, subject to compliance with the conditions noted below.

5. Applicant has satisfied the requirements for conditional use approval for the proposed Wawa convenience store use pursuant to Zoning Ordinance Sections 370-86.H. and 370-169, subject to compliance with the conditions noted below.

6. With respect to the Historic Resource Demolition Conditional Use Application, the Neighboring Parties have not established the heavy burden imposed on them to establish that the proposed conditional use relief will adversely affect the public health, safety or welfare of the community in a way not normally expected from the type of use (as would warrant a denial of this Application).

7. With respect to the Convenience Store Conditional Use Application, the Neighboring Parties have not established the heavy burden imposed on them to establish that the proposed conditional use relief will adversely affect the public health, safety or welfare of the

community in a way not normally expected from the type of use (as would warrant a denial of this Application).

8. The Board is entitled to impose such reasonable conditions and safeguards, in addition to those standards expressed in the Zoning Ordinance, as it may deem necessary to implement the purposes of the MPC and Zoning Ordinance.

9. The conditions noted below are reasonable and necessary conditions designed to implement and advance the purposes of the Zoning Ordinance, and to mitigate potential adverse impacts from the proposed historic resource demolition and convenience store use.

10. All conclusions of law set forth in the Findings of Fact and Discussion sections above are incorporated herein by reference.

11. This Decision, and the conditions imposed herein, shall be binding on the Applicant, its heirs, successors and assigns. Moreover, the conditions of this Decision, as a collective, are an integral component of the Township's determination that the Applicant has satisfied the standards and criteria set forth in the Zoning Ordinance Sections 370-169 and 370-208. In the absence of the imposition of such conditions, the Board would have found that the Application failed to satisfy the standards and criteria set forth in such Zoning Ordinance provisions, *inter alia*, to the extent that such conditions would not have been imposed, the Board would have found that the proposed use (absent such conditions): substantially detracts or injures the use of the neighboring properties; detracts from and negatively impact the logical, efficient and economical extension of public services; would be unsuitable for the proposed use with respect to the probable effects upon highway traffic and inadequate to protect highways from undue congestion and hazard; and fails to minimize noxious, offensive or hazardous

elements of the proposed use; all of the foregoing being in violation of Zoning Ordinance Sections 370-169 and 370-208.

12. An appeal may be taken to the Chester County Court of Common Pleas within 30 days from the Board's issuance of its Decision in accordance with the terms and provisions of the MPC. Failure to do so within such time period shall constitute a waiver of any challenge to the Decision or the conditions imposed herein.

CONDITIONS

HISTORIC RESOURCE DEMOLITION CONDITIONAL USE APPLICATION NO. 2017-01

The following conditions are imposed on the grant of the conditional use:

1. The Rossiter House is to be preserved as a historic resource, and not demolished.
2. Demolition of the Carriage House is approved but shall not be conducted until after the Township Board of Supervisors grants Final Subdivision and Land Development Approval for the site, which approval shall be beyond the possibility of adverse appeal.
3. Applicant shall professionally document the Carriage House prior to demolition pursuant to Section 8.1 of the Historic Resources Impact Statement, subject to review and approval by the Township's Historical Preservation Consultant during the subdivision and land development review process.
4. Parking on the Rossiter Parcel shall be in accordance with Exhibit A-7.
5. Consistent with the recommendation set forth in Section 8.1 of the Historic Resources Impact Statement, Applicant shall submit for Township review and approval a plan that depicts fencing and/or vegetative screening along the southern and eastern boundaries of the Property satisfactory to the Township Engineer or Board of Supervisors, to incorporate an effective screen pursuant to Zoning Ordinance section 370-83 as a means to mitigate any nearby adverse visual impacts and improve the visual environment of nearby Class I and II Historic Resources.
6. Applicant shall preserve the Rossiter House pursuant to a Preservation Plan to be approved by the Township Board of Supervisors prior to execution or release of any final subdivision and land development plans for the Property. The Preservation Plan shall include a process by which Applicant will document the historical components and characteristics of the

Rossiter House as testified by Applicant's Historical Preservation Consultant, a plan to set out the general scope of the potential uses of the Rossiter House, and a schedule of a required maintenance and inspections by the Applicant or its successors, or Wawa, Inc., in order to ensure that the Rossiter House is properly preserved and does not deteriorate. A note shall be placed on the approved subdivision and land development plans to reflect this ongoing obligation.

7. Applicant shall make reasonable efforts to offer the relocation or salvaging of all or components of the Carriage House to any interested third parties prior to demolition. Applicant shall not be required to bear the costs of relocation or salvaging of components of the Carriage House.

8. Applicant shall conduct Terminal Phase 1B Archeological testing under the supervision of an experienced and competent archeologist in accordance with Exhibit A-8 "Scope of Archeological Testing" dated 7-10-2017 and consisting of a maximum of 32 hand-shoveled test pits with a maximum depth of 3' to be completed concurrent with the site work but prior to any mass grading. Applicant shall provide any discovered artifacts to the Township.

CONDITIONS

CONVENIENCE STORE CONDITIONAL USE APPLICATION NO. 2017-02

9. Testimony: Applicant's development and use of the Property shall comport with the testimony presented by its representatives during the Conditional Use hearings (as modified pursuant to the instant conditions). All promises and commitments made in the Record by Applicant shall be binding upon the Applicant or any successor in interest.

10. The exterior design of the Wawa building and the retail building, and associated signage, is subject to further review and approval by the Township Board of Supervisors prior to final subdivision and land development approval with the goal of incorporating architectural

design features (such as the cupola and front end gable elements) into those buildings that complement, maintain and improve the historic setting of the Rossiter House and nearby resources. The exterior facing of the Wawa building must not be more than 50% dark material or red brick. The proposed design shall be architecturally compatible with the majority of nearby buildings, a sampling of which appear in Morrisson Exhibit 1, provided that any such architectural design features requested by the Township Board of Supervisors shall not increase the construction cost of the Wawa building by more than \$32,500.00 and the retail building by more than \$26,000.00, and shall not materially alter the prototypical design of the Wawa building as shown in Exhibit A-17.

11. Unified Ownership: The Property shall, at all times, remain under single or unified common ownership, subject to declarations and restrictions to be approved by the Board of Supervisors during the land development process. Such declarations and restrictions shall address ongoing maintenance of the parking lots, trash receptacles and littering prevention, lighting, stormwater management facilities, landscaping/perimeter buffering and other common improvements proposed in the development.

12. Applicant shall comply with the comments in the review letters of the following Township consultants, Mr. Sartor, Mr. Greene, and Mr. Drummond, except for comment 1 of Mr. Drummond's November 9, 2017 review letter recommending a restriction on left turns into the Property from Valley Forge Road and recommending installation of a median on Valley Forge Road. As to the aforesaid recommendations, the Township shall be advised of all communications with and meetings between the Developer and PennDOT concerning PennDOT's ultimate evaluation and approval of roadway design and access design in accordance with PennDOT regulations.

13. The Wawa convenience store shall have no outdoor music or outdoor advertising screens located at or near gas pumps.

14. The Wawa convenience store shall have no outdoor storage or display of any merchandise.

15. Opaque fencing as shown on the Revised Landscape Screening Plan, Exhibit A-20 shall be installed around the perimeter of the Property.

16. Applicant shall enter into an agreement with the Township, on terms acceptable to the Township, for the long-term maintenance of the landscaping as depicted on the Revised Landscape Screening Plan, Exhibit A-20 and as recommended by the Township engineer in Exhibit T-11.

17. The Wawa convenience store shall have no outdoor or indoor seating for customers.

18. The Wawa convenience store shall install “no loitering” signage approved by the Township.

19. Access to the Property for deliveries by Wawa tractor-trailers shall be limited to Valley Forge Road and precluded from accessing on South Whitehorse Road.

20. Township Engineer Review Letters: Applicant shall comply with the outstanding items referenced in the Township Engineer’s review letters at Exhibits T-11, T-15, T-17 and T-19.

21. Variance Relief: Before approval of final plans Applicant shall be required to obtain variance relief from the Schuylkill Township Zoning Hearing Board with respect to Zoning Ordinance Sections 370-79, 370-87, 370-86.H.(3), 370-86.J., 370-169.C., 370-171 and 370-183.C. (or shall otherwise establish compliance with such Zoning Ordinance Sections).

22. Perimeter Landscaping: Applicant is encouraged to approach the contiguous neighboring property owners as to the potential for placing, by agreement, additional landscaping and buffer plantings on their properties to bolster the screening of the new uses.

23. Potential Sinkholes: Applicant shall provide an evaluation of the two areas of ground subsidence (commonly known as sinkholes) as part of the land development process, for review and comment by the Township Engineers. Applicant shall make any repairs necessary for public safety.

24. Lighting: Applicant's proposed Lighting Plan shall be subject to further review, modification and approval by the Township during the land development process, with further consideration to be given to the lighting elements related to: the color temperature of light; the placement of light poles and mounting height of light fixtures; and the intensity of light (particularly under the gas canopy and the possibility of reducing the average number of foot candles for lighting under the gas canopy to approximately 15 foot candles). The Applicant shall be under the ongoing obligation to ensure that the lighting levels for the development conform to the Lighting Plan to be considered for final approval during the land development application (including the obligation that all fixtures be full cut-off). In any event, the height limit shall be 15 feet for each lighting pole, and the fueling canopy lighting temperature shall be 4000K unless otherwise approved by the Township during the land development process.

25. FHA Insurance Regulations: To the maximum extent practical, and provided that FHA insurance is jeopardized in any way by the proposed development, Applicant shall locate the underground tanks on the Property so that neighboring residential properties are not disqualified from receiving mortgage insurance under the standards espoused by the U.S. Department of Housing and Urban Development or the Federal Housing Administration

(identified in Exhibit Sterling-1 as being a location greater than 300 feet from neighboring residential property lines). This proposed condition is not intended to be applicable with respect to those circumstances where other, existing above- or underground storage tanks disqualify such properties pursuant to the above-regulations.

26. Traffic Design: Applicant shall comply with the traffic and road design recommendations of the Township Traffic Engineer, noting that the parameters and scope of the same shall be further assessed and established during the land development process in conjunction with the consultant meetings, review and recommendations of the Pennsylvania Department of Transportation.

27. Internal Circulation: Applicant shall incorporate designated parking for larger vehicles, such as landscaping vehicles/small delivery trucks (UPS), in the northwestern corner of the Property, subject to review and approval of the same by the Township Engineer during the land development process.

28. Hours of Operation: Hours of operation for the convenience store shall be limited to no later than 11:00 PM, and no earlier than 5:00 AM.

29. No deliveries to the property shall be made while the Wawa store is closed to the public between 11:00 PM and 5:00 AM each day.

30. Before issuance of a building permit for construction, Applicant shall offer, in writing, to pay for standard baseline testing of water wells by a licensed and experienced contractor chosen by Applicant for the following property owners:

27-6A-74	Joseph W. Benyish & Stacie L. Benyish	800 Wells Rd.	Phoenixville, PA	19460-2635
27-6B-42.2	William J. Balle & Marie I. Balle	810 Wells Rd.	Phoenixville, PA	19460-2635
27-6B-24	Francis P. Coughlin	815 Wells Rd.	Phoenixville, PA	19460-2634

27-6B-42.1	Jeremiah D. Kulp & Kristina D. Converse	820 Wells Rd.	Phoenixville, PA	19460-2635
27-6B-42	Ernest Falasco & Vera Falasco, et al	830 Wells Rd.	Phoenixville, PA	19460-2635
27-6B-36	Cody Jens West & Quinn Dwyer	844 Wells Rd.	Phoenixville, PA	19460-2635
27-6B-24.1	Jeffrey T. Martin	845 Wells Rd.	Phoenixville, PA	19460-2634
27-6B-37	Mary Lou McGuigan	890 Wells Rd.	Phoenixville, PA	19460-2635
27-6B-23	Eric A. Toonder & Lori R. Toonder	895 Wells Rd.	Phoenixville, PA	19460-2634
27-6B-38	John J. Schramm & Dawn C. Schramm	896 Wells Rd.	Phoenixville, PA	19460-2635
27-6B-25	Joan E. Hicks	905 Wells Rd.	Phoenixville, PA	19460-2636
27-6B-39	Phillip W. Dannibale	902 Wells Rd.	Phoenixville, PA	19460-2637
27-6B-40	Joan M. Barkman & Marshall Barkman, Jr.	908 Wells Rd.	Phoenixville, PA	19460-2637
27-6B-41	Michael J. Hinkle	916 Wells Rd.	Phoenixville, PA	19460-2637

31. The Applicant must consult with the Township’s Fire Chief and demonstrate to him that the fire protection system is adequate including sufficient fire extinguishers and hydrants, and that the lot is configured properly for the fire vehicles to access the property and that fire protection/extinguishing coverage will specifically cover the gasoline pumps.

32. The Applicant will employ best management practices to deal with stormwater management in an innovative manner and minimize the impact of stormwater runoff.

33. Sales of alcoholic beverages shall not be permitted.

34. Diesel fuel shall not be sold at the property.

35. An electrical vehicle charge facility shall be installed and maintained at the property.

DECISION/ORDER

AND NOW this 18th day of April, 2018, the Decision and Order of the Board of Supervisors of Schuylkill Township is as follows:

As to Conditional Use No. 2017-01 Historic Resource Demolition, the Conditional Use Application is granted, subject to the following conditions:

1. The Rossiter House is to be preserved as a historic resource, and not demolished.
2. Demolition of the Carriage House is approved but shall not be conducted until after the Township Board of Supervisors grants Final Subdivision and Land Development Approval for the site, which approval shall be beyond the possibility of adverse appeal.
3. Applicant shall professionally document the Carriage House prior to demolition pursuant to Section 8.1 of the Historic Resources Impact Statement, subject to review and approval by the Township's Historical Preservation Consultant during the subdivision and land development review process.
4. Parking on the Rossiter Parcel shall be in accordance with Exhibit A-7.
5. Consistent with the recommendation set forth in Section 8.1 of the Historic Resources Impact Statement, Applicant shall submit for Township review and approval a plan that depicts fencing and/or vegetative screening along the southern and eastern boundaries of the Property satisfactory to the Township Engineer or Board of Supervisors, to incorporate an effective screen pursuant to Zoning Ordinance section 370-83 as a means to mitigate any nearby adverse visual impacts and improve the visual environment of nearby Class I and II Historic Resources.
6. Applicant shall preserve the Rossiter House pursuant to a Preservation Plan to be approved by the Township Board of Supervisors prior to execution or release of any final

subdivision and land development plans for the Property. The Preservation Plan shall include a process by which Applicant will document the historical components and characteristics of the Rossiter House as testified by Applicant's Historical Preservation Consultant, a plan to set out the general scope of the potential uses of the Rossiter House, and a schedule of a required maintenance and inspections by the Applicant or its successors, or Wawa, Inc., in order to ensure that the Rossiter House is properly preserved and does not deteriorate. A note shall be placed on the approved subdivision and land development plans to reflect this ongoing obligation.

7. Applicant shall make reasonable efforts to offer the relocation or salvaging of all or components of the Carriage House to any interested third parties prior to demolition. Applicant shall not be required to bear the costs of relocation or salvaging of components of the Carriage House.

8. Applicant shall conduct Terminal Phase 1B Archeological testing under the supervision of an experienced and competent archeologist in accordance with Exhibit A-8 "Scope of Archeological Testing" dated 7-10-2017 and consisting of a maximum of 32 hand-shoveled test pits with a maximum depth of 3' to be completed concurrent with the site work but prior to any mass grading. Applicant shall provide any discovered artifacts to the Township.

As to Conditional Use No. 2017-02 Convenience Store Use, the Conditional Use Application is granted, subject to the following conditions:

9. Testimony: Applicant's development and use of the Property shall comport with the testimony presented by its representatives during the Conditional Use hearings (as modified pursuant to the instant conditions). All promises and commitments made in the Record by Applicant shall be binding upon Applicant or any successor in interest.

10. The exterior design of the Wawa building and the retail building, and associated signage, is subject to further review and approval by the Township Board of Supervisors prior to final subdivision and land development approval with the goal of incorporating architectural design features (such as the cupola and front end gable elements) into those buildings that complement, maintain and improve the historic setting of the Rossiter House and nearby resources. The exterior facing of the Wawa building must not be more than 50% dark material or red brick. The proposed design shall be architecturally compatible with the majority of nearby buildings, a sampling of which appear in Morrisson Exhibit 1, provided that any such architectural design features requested by the Township Board of Supervisors shall not increase the construction cost of the Wawa building by more than \$32,500.00 and the retail building by more than \$26,000.00, and shall not materially alter the prototypical design of the Wawa building as shown in Exhibit A-17.

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12. Applicant shall comply with the comments in the review letters of the following Township consultants, Mr. Sartor, Mr. Greene, and Mr. Drummond, except for comment 1 of Mr. Drummond's November 9, 2017 review letter recommending a restriction on left turns into the Property from Valley Forge Road and recommending installation of a median on Valley Forge Road. As to the aforesaid recommendations, the Township shall be advised of all

communications with and meetings between the Developer and PennDOT concerning PennDOT's ultimate evaluation and approval of roadway design and access design in accordance with PennDOT regulations.

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32. The Applicant will employ best management practices to deal with stormwater management in an innovative manner and minimize the impact of stormwater runoff.

33. Sales of alcoholic beverages shall not be permitted.

34. Diesel fuel shall not be sold at the property.

35. An electrical vehicle charge facility shall be installed and maintained at the property.

ATTEST:

SCHUYLKILL TOWNSHIP
BOARD OF SUPERVISORS

Madeline M. Harbison,
Township Secretary

Martha Majewski, Chair

Fred Parry, Vice-Chairman

James Morrisson, Member

Susan Guerette, Member

Mark Donovan, Member

Date: April 18, 2018