

Cheltenham Township, believing that public input is appropriate on any items coming before the Commissioners, will recognize any citizen wishing to address a specific item prior to the vote on that issue. In order to be recognized, please raise your hand.



AGENDA

COMMISSIONERS' MEETING

Wednesday, May 21, 2014

Curtis Hall

7:30 p.m.

1. Pledge of Allegiance.
2. Roll Call.
3. Approval of the Board of Commissioners' Regular Meeting Minutes dated April 4, 2014.
4. Acceptance of the Executive Summary Financial Report of the Manager/Secretary for the month of April, 2014.
5. Acceptance of the Accounts Paid Report for the month of April, 2014.
6. Presentation of a Certificate and Pin to Officer Andrew Lambrechtse recognizing his 20-years of service with the Cheltenham Township Police Department.
7. Presentation of a Resolution to Bruce Williams honoring his retirement as Principal of the Glenside Elementary School.
8. Presentation of a Community Service Award to Sean Bradley in recognition of his attainment of the rank of Eagle Scout.
9. Presentation of a Community Service Award to Vignesh Murali in recognition of his attainment of the rank of Eagle Scout.
10. Review of the Pension Board Regular Meeting Minutes dated May 2, 2014.
11. Review of the Parks and Recreation Committee Regular Meeting Minutes dated May 14, 2014.
12. Review of the Public Works Committee Regular Meeting Minutes dated May 14, 2014.
 - a. Award of a contract for Furnishing Rates for Concrete Curb and Sidewalk Replacement.
 - b. Award of a Montgomery County Consortium Contract for Furnishing Biodegradable Paper Leaf and Grass Collection Bags.
 - c. Approval of five Change Orders to cover additional expenses involved in the Point Repair Projects.
 - d. Schedule a Public Hearing in the future to consider an Ordinance pertaining to the former Dominican Retreat House property located at 1750 Ashbourne Road, Elkins Park, to allow for its adaptive reuse, rezoning of the property to the M4 Zoning District amending the subdivision and land development Ordinance to provide consistency and a change of the Township's zoning map to reflect said change (see attached).
 - e. Award of a Contract for Multi-space Parking Pay Stations.

AGENDA – BOARD OF COMMISSIONERS’ MEETING

May 21, 2014

Page Two

13. Review and acceptance of the Public Safety Committee Regular Meeting Minutes dated May 7, 2014.
14. Review and acceptance of the Public Affairs Committee Regular Meeting Minutes dated May 7, 2014.
 - a. Adoption of an Ordinance authorizing the incurring of non-electoral debt and the refunding of Series 2004B and 2009 General Obligation Bonds.
 - b. Adoption of a Resolution authorizing the Township’s filing of Transportation and Community Development Initiative Grant to assist in a walk-ability/bike-ability audit sponsored by the Delaware Valley Regional Planning Commission.
15. Review and acceptance of the Building and Zoning Committee Regular Meeting Minutes dated May 7, 2014.
 - a. Schedule a Public Hearing to hear any and all comments from the public regarding the adoption of a proposed Ordinance amending the Code of the Township, Section 925, “Zoning”, Article XXI, establishing a Floodplain Conservation District Overlay on Wednesday, May 21, 2014, at 7:30 p.m., at Curtis Hall (see attached).
 - b. CONDUCT PUBLIC HEARING: To hear any and all comments from the public regarding the adoption of a proposed Ordinance amending the Code of the Township, Section 925, “Zoning”, Article XXI, establishing a Floodplain Conservation District Overlay (see attached).
16. Old Business.
17. New Business.
 - a. Approval of the change in the investment structure of the Township pension plan advisor, PFM Advisors, and authorization to execute the Consent form.
 - b. Selection of a voting delegate and alternate delegate for the PA State Association of Township Commissioners’ (PSATC) Convention.
 - c. Approval to execute a Stipulated Settlement with Matrix Development Corp. (see attached).
 - d. Continued discussion of a proposed Ordinance and presentation of a conceptual plan allowing for the adaptive reuse of the former Dominican Retreat property on Ashbourne Road.
18. Citizens’ Forum.
19. Adjournment.



Bryan T. Havir
Township Manager

Article XXXIV

M4 – HISTORIC PRESERVATION, CULTURAL AND ARTISTIC USE, AND OTHER MULTIPLE USES DISTRICT

§295 - _____ Purpose.

The purpose of the M4 Zoning District is to promote and provide for the adaptive re-use of buildings that are historic resources and of properties with significant character, uses and development patterns that might otherwise be obsolete and be likely to deteriorate or be demolished due to obsolescence; to preserve and promote the use of such historic resources and other land and buildings for cultural and artistic purposes; and to provide for such development in a manner that integrates new development and adaptive re-use into an existing community, transitions between lower and higher density uses, and accomplishes such goals by allowing a mix of compatible uses that provide for community-benefitting services as well as a variety of living opportunities.

§295 - _____ Applicable Regulations.

In the M4 Historic Preservation, Cultural and Artistic Use, and Other Multiple Uses District the regulations contained in this Article shall apply. Article XXIV Preservation Overlay District of this Zoning Ordinance shall not apply in the M4 District.

§295- _____ Use Regulations

A building may be erected, altered or used, and a lot or premises may be used, for the following purposes and no others and more than one of the uses described below is permitted on the same lot or within the same building provided that compliance with both of the following Paragraphs A and B occurs for any development under this Article, regardless of whether development of Multiple Dwellings under Paragraph C is proposed or exists:

- A. All of the lot(s) under common ownership which contain Historic Resources (as defined in Section 295-_____ provided, however, for purposes of this Zoning District, the term “Historic Resources” shall refer only to those Historic Resources that are buildings or portions of buildings constructed before 1910) shall be subjected to a deed restriction at the time of recording of the land development plan for development of the lot according to this Article, with terms written to the satisfaction of the Township Solicitor, recorded against the lot(s) stating that the pre-1910 facades, rooflines, and interiors of the Historic Resource(s) shall be preserved in perpetuity in their current or better state of repair, including but not limited to pre-1910 facades, rooflines and interiors, as further defined below, except as otherwise provided in this Article; or if there are more than two (2) Historic Resources on the lot(s) then designating which two (2) or more will be preserved pursuant to Section C.1a. below. For the purposes of

this Article, the terms “interior” and “interiors” shall mean only the entrance halls, lobbies, and foyers on the first, main floors of the Historic Resources, as well as the staircases accessing such areas.

- B. The use of lot(s) in the M4 District shall include, at a minimum, two (2) of the following uses and those uses shall occupy, when aggregated, at least three thousand (3,000) square feet of floor space dedicated exclusively to: classroom(s), lecture hall(s), auditorium, studio(s), and/or performance and exhibition space for dance, art, music, photography and other arts and media, for educational, cultural, artistic and community purposes.
- C. 1. Multiple Dwellings are permitted in the M4 District subject to a maximum density of eight (8) dwelling units for each one (1) acre of Developable Acreage but in the aggregate no more than two hundred fifty (250) units of Multiple Dwellings per tract held in common ownership at the date of establishment of the M4 District, subject further to subsections 1.a., 1.b., 1.c. and D.4. below:
- a. In order to facilitate the historic preservation, cultural and artistic use, and other multiple use purpose of this M4 District the following shall apply:
- (i) Multiple Dwellings are permitted only as part of a common land development plan of contiguous land in the M4 District submitted in the form of a master plan (see Sections _____, _____ and _____ below) meeting the requirements of Paragraphs A and B above and the other requirements of this Article, which includes (by depiction in the master plan) proposed development of non-Multiple Dwelling uses as permitted in the M4 District as well as all Multiple Dwelling uses intended to be developed on the tract held in common ownership at the date of establishment of the M4 District;
- (ii) Multiple Dwellings shall be approved only as part of a common land development plan of contiguous land which also includes preservation of at least two buildings that are Historic Resources which shall be the two largest and/or most historically significant buildings that are Historic Resources if there are more than two within the area of contiguous land that is part of the common land development plan, or the preservation of only one (1) building which is an Historic Resource if the tract only contains one (1) building; and
- (iii) the calculated density of Multiple Dwellings per one (1) acre of Developable Acreage shall not be reduced by the presence of non-residential buildings or uses (including but not limited to

hotels) within the same lot, though the lot shall be required to comply with the minimum lot area, Building Coverage and Impervious Coverage limitations applicable in the M4 District, provided, however, that for each two (2) bedrooms in a hotel or apartment hotel the Multiple Dwelling density calculation shall be reduced by one (1) unit.

b. Preservation of an Historic Resource within the meaning of this Article shall be deemed to have occurred even if any of the following circumstances exist or are proposed: (a) any portion of the Historic Resource is, or is proposed to be, demolished which was added after 1910; (b) the building that is an Historic Resource is demolished after at least seventy-five percent (75%) of the Historic Resource is lost due to, or is duly ordered to be demolished following, a fire or other casualty loss; (c) the building that is an Historic Resource can reasonably be demonstrated to be substantially deteriorated or structurally compromised at the date of adoption of the ordinance applying the M4 Zoning District to the Historic Resource to such a degree that it would create an unreasonable financial hardship to restore the building, in which case the building may either be demolished or restored to economic usefulness without preservation of its historic features, provided that this exception shall not apply to the building (or two if there are two or more) which caused the designation as an Historic Resource; (d) in order to allow for building additions and adaptation to modern uses and needs no more than two facades that are most architecturally significant and prominently visible from a public street, and including the same façade from which the public view is to be protected pursuant to Section 295-_____ below, must retain their/its historical architectural appearance; or (e) additions or alterations may be made even to protected facades in order to accommodate modern uses and the needs of owners and guests such as, but not limited to, doors and awnings, lights and signs (the latter two subject to all lighting and sign requirements of the Zoning Ordinance and the Subdivision and Land Development Ordinance) so long as such addition or alterations are historically relevant and impact the historic features as minimally as reasonably feasible.

c. In buildings which contain or are attached to Multiple Dwellings, or on the same lot as Multiple Dwellings, the following shall, as examples and not for limitation, be considered permitted "accessory uses": commissary, beauty parlor, barbershop, indoor pet care facilities, flower shop, restaurant, and tailor shop.

d. "Common ownership" shall mean ownership by the same persons or entities, or directly or indirectly by persons or entities which are affiliates of one another and/or under common control by legal structure or by agreement, and all successors and assigns thereof or purchasers or

transferees therefrom, by agreement or operation of law. Ownership of percentage interests in an entity that do not constitute control of that entity shall not alone constitute common ownership, but ownership of a controlling equity interest, or contractual management control, in a controlling entity such as the general partner of a limited partnership, or contractual control by an individual or by minority interests having management authority under the organizational documents of an entity such as the operating agreement of a limited liability company, or common control under any other contractual relationship such as a management contract, shall be common ownership. "Ownership" shall include leasehold interests and shall include the right to ownership under an agreement of sale or option agreement.

- D. The following uses in a single building (whether or not a separate building with only that use or uses), more than one in a building, or in multiple buildings, including in hotels and apartment hotels as set forth in Section D.4. below, or not in a building, are permitted:
1. Restaurant, tea room, bar, tavern; brewery or distillery when associated with operation of a restaurant, bar or tavern.
 2. Health and wellness clinic which incorporates elements such as: outpatient medical or chiropractic treatment or therapy, exercise and physical rehabilitation, outpatient diagnostic or health screening procedures and testing, dietary consultation, and preventive medicine services, not including drug dispensary.
 3. Fitness center which incorporates a gym or similar exercise facility and which may also include, among other facilities, a swimming pool, spa, and offices or other rooms for providing fitness, dietary and wellness treatments or consultation.
 4. Apartment hotel lodging up to eighteen (18) units per acre or hotel lodging up to thirty-two (32) units per acre but in no event more than 250 units in the aggregate per tract, defined as all contiguous lots in common ownership at the date this District is established. In a building containing or attached to an apartment hotel or hotel, or on the same lot, the following shall be permitted "accessory uses": conference center, event hall (including wedding receptions and similar events), restaurant, bar, tea room, tavern, retail goods store, studio, personal service shop, bank, financial institution, commissary, beauty parlor, barbershop, indoor pet care facilities, flower shop and tailor shop. The total number of Multiple Dwellings, hotel rooms and apartment hotel bedrooms, on the tract described in this paragraph, shall be a maximum of five hundred (500) less the number of Multiple Dwelling Units resulting from the calculation under C.1.a. (iii) above.

5. Classrooms, lecture halls, auditoriums, studios, performance and exhibition spaces for dance, art, music, photography, and other arts and media, for educational, exhibition, conference or performance purposes.
 6. Bakery, confectionery or custom shop for the production of articles to be sold at retail on the premises.
 7. Offices related to or serving any other permitted use in this District.
 8. Public gardens for exhibition or community gardening use; or farmer's market defined as the seasonal selling or offering for sale at retail of vegetables or produce, flowers, home-produced or studio-produced arts and crafts, orchard products, and similar non-animal agricultural products, occurring in a predesignated area, where the vendors are individuals who have raised the vegetables or produce or have taken the same on consignment for retail sale and subject to any further regulations or ordinances adopted by the Township Board of Commissioners regulating what may be sold, hours and days of operation, responsibilities for cleanup, and zones for farmer's markets could be located in relation to residential uses.
 9. Amphitheater, located not closer than two hundred (200) feet to any residential use, when authorized by a special exception.
 10. In addition to any other accessory use expressly permitted in this District, any accessory use on the same lot with and customarily incidental to any of the above permitted uses.
 11. Any use of the same general character as any of the uses hereinbefore specifically permitted when authorized as a special exception but not to include any use permitted only in a less restricted district.
- E. The following shall be allowed in connection with preservation of Historic Resources: 1. the interior of each building which is an Historic Resource may be reasonably but not substantially altered (cleaning, repair, restoration, upgrading or enhancement of the existing character of the interior of an Historic Resource shall not be considered to be an alteration and shall be permitted); 2. the applicant may make any and all alterations to the Historic Resource required by the Americans With Disabilities Act, the Pennsylvania Fire and Panic Act, the Township Fire Code and all other required fire and public safety codes, statutes, ordinances and regulations; 3. the applicant may modernize HVAC, plumbing, electrical and mechanical equipment as well as all interior alterations reasonably necessary to accomplish same; 4. in each of 1., 2. and/or 3., the applicant shall use all reasonably practicable efforts to preserve the historic character and details of the exterior and interior of the building or buildings which are Historic Resources;

and 5. the applicant shall include a depiction of the resulting historic character and details of the exterior and interior of the building or buildings which are Historic Resources in the master plan referred to in Section _____.

§ 295-____ Lot area and lot width.

A lot area of not less than twenty-five thousand (25,000) square feet and a lot width of not less than one hundred fifty (150) feet at the street line and extending for that width from the street line to the depth of the rear yard shall be provided for every building hereafter erected, altered or used in the M4 District.

§ 295-____ Building Coverage and Impervious Coverage.

- A. The Building Coverage shall not exceed twenty percent (20%) of the Developable Acreage of the lot.
- B. Impervious Coverage shall not exceed fifty five percent (55%) of the Developable Area of the lot.
- C. Building Coverage and Impervious Coverage in the Multiple Use District may be calculated based on the Developable Acreage of contiguous lots under common ownership, but not if the lot is separated by a public street.

§ 295-____ Yard regulations.

A. Front yard.

1. There shall be a front yard, the depth of which shall be at least forty (40) feet, provided that, in the case of a lot extending through from one street to another, the street lines of which are not more than one hundred fifty (150) feet apart, the depth of the front yard on the rear street line may be decreased with approval of the subdivision or land development plan. Vehicular parking shall not be permitted within fifteen (15) feet of any street line.

2. In the case of a corner lot, a front yard as provided for in Subsection A(1) shall be required on each street on which the lot abuts, provided that, in the case of a corner lot held in single and separate ownership at the effective date of this chapter of a width less than one hundred (100) feet, the depth of the front yard on the long side may be decreased with approval of the subdivision or land development plan.

- B. Side yards. There shall be two side yards, one on each side of the main building, each at least fifteen (15) feet wide.
- C. Rear yard. There shall be a rear yard, the depth of which shall be at least forty (40) feet.

- D. Lots greater than ten (10) acres in area shall be exempt from the requirements of subsections A., B. and C. of this Section but shall be required to maintain a setback distance of fifty (50) feet between any building on such lot and the ultimate right-of-way line of any public street and between any building on such lot and the boundary of an adjoining lot.

§ 295-____ Green area.

A green area, completely landscaped, shall be required. This area shall be not less than twenty five percent (25%) of the lot area and shall include a landscaped buffer strip at least ten (10) feet wide abutting the entire perimeter of the lot, excluding driveways for ingress. Green area may be calculated based on the area of contiguous lots under common ownership within the M4 District, or a common development plan under common ownership within the M4 District at the time of application under the subdivision and land development process, excluding areas and lots separated by a public street. The landscaped buffer requirement in perimeter locations may be deemed to be satisfied by existing conditions where the distance between a proposed building and the applicable perimeter is more than one hundred fifty (150) linear feet or if the purpose of a buffer is effectively accomplished by existing trees or other existing landscaping.

§ 295-____ Building height.

A building located within one hundred (100) feet of any street line may not exceed three (3) stories and thirty six (36) feet in height and a building located more than one hundred feet (100) feet from any street line may not exceed four (4) stories and forty-eight (48) feet in height; except that portions of additions to buildings that are a Historic Resource having an aggregate building footprint up to one hundred fifty percent (150%) of the building footprint of the Historic Resource (at the date of establishment of the M4 District including any portion of the building constructed after 1910) to which the addition is attached may exceed the height and story restrictions of this Section and may extend up to the same building height as the Historic Resource though no more than two (2) additions of such building height shall be permitted on each Historic Resource, and in no event may any portion of such addition be within eighty (80) feet of any street line.

§ 295-____ Parking.

The following off-street parking requirements shall apply in the M4 District:

- A. There shall be two (2) off-street parking spaces provided for every residential dwelling unit.
- B. There shall be one (1) off-street parking space provided for every rental unit for hotels, apartment hotels and motels.
- C. There shall be one (1) off-street parking space provided for every two hundred fifty (250) square feet of gross floor area of uses in §295-____D.4.-12. (except

hotels, apartment hotels or motels for which §295-____ B. is applicable), including, but not limited to, accessory uses.

- D. There shall be one (1) off-street parking space provided for every three hundred (300) square feet of gross floor area of all other uses permitted in the M4 District not enumerated above.
- E. At least thirty percent (30%) of the off-street parking spaces shall be underground parking.
- F. There shall be no parking garages with parking spaces above the ground level unless 1. all exterior garage walls are at least one hundred fifty (150) feet from all public streets and 2. all exterior façades directly visible from a public street and not shielded from view by other buildings are designed and constructed to appear generally consistent with the character and aesthetics of the Historic Resources.
- G. No parking on perimeter streets surrounding the tract shall count toward the required parking.

§ 295-____ View shed.

No buildings or additions to buildings shall be erected, or new landscaping shall be installed, such that the view from a public street to the primary façade of an Historic Resource is materially impaired; provided that if that primary façade can be viewed directly from more than one street or if there is more than one façade that is primary, then this restriction shall apply only to the view from one street to one façade which is determined by the Board of Commissioners to be the primary façade.

§295-____ Traffic Impact

A traffic impact study shall be required for any hotel, apartment hotel, event facility, conversion of a Historic Resource for any use permitted in the M4 District or for Multiple Dwellings in order to determine the impact of the proposed use and offer solutions to mitigate the potential negative impacts, if any, of the proposed use or uses. The traffic impact study shall be prepared by a qualified traffic engineer who possesses the credentials outlined for a Municipal Traffic Engineer as defined in Pennsylvania Code Chapter 612, as amended from time to time, entitled "A Municipal Traffic Engineering Certification". The applicant shall pay all costs associated with preparation and submission of the study.

A. The study must demonstrate that the proposed use will not adversely affect the surrounding areas or traffic circulation generally in the Township; or else identify any traffic problems that might be caused or aggravated by the proposed use or uses and delineate solutions to those problems. Based upon the findings of the study the Township may require other improvements both onsite and offsite, which would alleviate hazardous or congested situations directly attributable to the proposed development.

B. The traffic impact study shall include an analysis of all significant intersections within the study area extending to a minimum of one-half mile from the boundary on all roads which the traffic generated by the proposed development would be reasonably expected to utilize. Intersections greater than one-half mile away shall also be studied if deemed necessary by the Township Engineer. The traffic study shall also include an analysis of existing and proposed sidewalks and pedestrian trails.

§ 295-___ Additional Procedures

See Article IX of the Cheltenham Township Subdivision and Land Development Ordinance.

Article IX

ADDITIONAL PROCEDURES FOR DEVELOPMENT ACTIVITY IN THE M4 – HISTORIC PRESERVATION, CULTURAL AND ARTISTIC USE, AND OTHER MULTIPLE USES DISTRICT

§ 260-___ Additional Procedures For Development Activity in the M4 Zoning District

A. Prior to any construction or demolition in the M4 District, in addition to the standard subdivision and land development submissions, the developer of such proposed construction/demolition shall submit to the Township Building and Zoning Department and to the Board of Commissioners a master plan of the development under the provisions of this Chapter and Article XXXIV of the Zoning Ordinance, setting forth in reasonable detail (1) the construction/demolition planned on the tract proposed to be developed, (2) the common development scheme of the lot, (3) the quantity and type of all proposed buildings, structures and uses proposed, including Multiple Dwelling units, and non-Multiple Dwelling uses, the proposed locations of buildings and/or structures, the historic character and details of the Historic Resource(s) preserved/to be preserved as set forth in Article XXXIV of the Zoning Ordinance, the heights, elevations and architectural style, proposed driveways, parking areas and ingress and egress for the entire tract and each building to be preserved, sufficient to demonstrate, among other things, whether the provisions of Article XXXIV of the Zoning Ordinance are satisfied.

B. The subdivision and/or land development plan for the lot shall conform to the master plan submitted pursuant to A. above. The developer shall submit a revised master plan if any changes are proposed to the submitted master plan which shall be reviewed by the Township Building and Zoning Department for compliance with the provisions of Article XXXIV of the Zoning Ordinance. The Township Planning Commission, Shade Tree Advisory Commission and any other Township advisory committee given the right to comment on the subdivision land/or development plan by the Board of Commissioners, shall also receive for review the master plan and revised master plans.

C. A revised master plan shall be submitted to the Board of Commissioners at the same time that a revised subdivision and/or land development plan is submitted that does not conform to a previously approved master plan. The developer shall coordinate any changes to a previously approved master plan with any subsequent subdivision and/or land development plans.

D. The Board of Commissioners shall render a decision approving or denying approval of the master plan or revised master plan within ninety (90) days after the date of its first regular meeting after the date the master plan or revised master plan is submitted, unless an extension is granted by the developer.

CHELTENHAM TOWNSHIP

ORDINANCE NO. ____-14

**AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF CHELTENHAM,
CHAPTER 295 THEREOF, ENTITLED "ZONING", ARTICLE XXI, CREATING A
"FLOODPLAIN OVERLAY CONSERVATION DISTRICT" FOR THE PURPOSE OF ADOPTING
FLOODPLAIN MANAGEMENT REGULATIONS**

§295-2100. STATUTORY AUTHORIZATION

- A. The Legislature of the Commonwealth of Pennsylvania has, by the passage of the Pennsylvania Flood Plain Management Act of 1978, delegated the responsibility to local governmental units to adopt floodplain management regulations to promote public health, safety, and the general welfare of its citizenry. Therefore, the Board of Commissioners of Cheltenham Township does hereby order as follows.

§295-2101. LEGISLATIVE INTENT

- A. The intent of this Ordinance is to:
1. Protect areas of the floodplain necessary to contain floodwaters.
 2. To permit only those uses in the floodplain that are compatible with preserving natural conditions and stream flow.
 3. Promote the general health, welfare, and safety of the community by preventing development in areas prone to flooding.
 4. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
 5. Minimize danger to public health by protecting water supply and natural drainage.

6. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing excessive development in areas subject to flooding.
7. Comply with federal and state floodplain management requirements.

§295-2102. APPLICABILITY

A. The Floodplain Conservation District is defined and established as a district applicable to those areas of the township subject to inundation by the waters of the one-hundred-year flood as delineated on the Flood Insurance Rate Map (FIRM) for Montgomery County, Pennsylvania, as prepared by the Federal Emergency Management Agency, dated December 19, 1996 and subsequent revisions thereto. Said floodplain areas shall consist of the following specific areas:

1. Flood Zones Applicable to Municipality: Zones A, AO, A1-A30, AE, A99 and AH.
2. Soils with a frequency of flooding of 1% or greater per year, as delineated by the Natural Resources Conservation Service, United States Department of Agriculture Web-Based Soil Survey (available online at <http://websoilsurvey.nrcs.usda.gov/>), including the following soils:
 - a. Bowmansville (Bo)
 - b. Knauers (Bo)
 - c. Gibraltar (Gc)
 - d. Hatboro (Ha)
 - e. Rowland (Rt)
 - f. Rowland (RwA)
 - g. Rowland (RwB)
 - h. Urban Land Occasionally Flooded (UIA)

B. In lieu of the above, Cheltenham Township may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and

hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Township.

- C. The Floodplain Conservation District shall be delineated according to FEMA's Flood Insurance Rate Map (FIRM) for Cheltenham Township which is hereby made a part of this article, and additional area based on soils as described in Section 295-2102.A.2. The FIRM is available for inspection at the municipal Office.
- D. The Floodplain Conservation District shall be deemed an overlay on any zoning district now or hereafter applicable to any lot.
- E. It shall be unlawful for any person, partnership, business or corporation to undertake, or cause to be undertaken, any construction or development anywhere within Cheltenham Township unless a Permit has been obtained from the Floodplain Administrator.
- F. A Permit shall not be required for minor repairs to existing buildings or structures.

§295-2103. ABROGATION AND GREATER RESTRICTIONS

- A. This ordinance supersedes any other conflicting provisions which may be in effect in the Floodplain Conservation District. However, any other ordinance provisions shall remain in full force and effect to the extent that those provisions are more restrictive. If there is any conflict between any of the provisions of this Ordinance, the more restrictive shall apply.

§295-2104. SEVERABILITY

- A. If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of the Ordinance, which shall remain in full force and effect,

and for this purpose the provisions of this Ordinance are hereby declared to be severable.

§295-2105. WARNING AND DISCLAIMER OF LIABILITY

- A. The degree of flood protection sought by the provisions of this Ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur or flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that areas outside the Floodplain Conservation District, or that land uses permitted within such areas will be free from flooding or flood damages.

- B. This Ordinance shall not create liability on the part of Cheltenham Township or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made there under.

§295-2106. DEFINITIONS

- A. Unless specifically defined below, words and phrases used in this Ordinance shall be interpreted so as to give this Ordinance its most reasonable application.
 - 1. Accessory use or structure – a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

 - 2. Base flood – a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood").

 - 3. Base flood elevation (BFE) – the elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or

- exceeded in any given year. The BFE is also shown on the FIS profile, and can be determined for Zone A Floodplains.
4. Basement – any area of the building having its floor below ground level on all sides.
 5. Building – a combination of materials to form a permanent structure having walls and a roof. Included shall be all manufactured homes and trailers to be used for human habitation.
 6. Development – any man-made change to improved or unimproved real estate, including but not limited to subdivision of land; construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures; the placement of manufactured homes; streets and other paving; utilities; fill; grading and excavation; mining; dredging; drilling operations; or storage of equipment or materials.
 7. Existing manufactured home park or subdivision – a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.
 8. Existing Structure/Existing Construction – a structure for which the “start of construction” commenced before the effective date of the FIRM.
 9. Expansion to an existing manufactured home park or subdivision – the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
 10. Flood – a temporary inundation of normally dry land areas.

11. Flood Insurance Rate Map (FIRM) – the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
12. Flood Insurance Study (FIS) – the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.
13. Floodplain area – a relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source.
14. Floodproofing – any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
15. Floodway – the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
16. Floodway Fringe – That part of the floodplain adjacent to and extending from the floodway and subject to inundation by the 100-year flood.
17. Freeboard – A factor of safety usually expressed in feet above a flood level for purposes of floodplain management.
18. Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

19. Historic structures – any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Pennsylvania Historical and Museum Commission (PHMC) as meeting the criteria for individual listing on the National Register;
- b. Certified or preliminarily determined by the Pennsylvania Historical and Museum Commission (PHMC) as contributing to the historical significance of a National Register historic district or a district preliminarily determined by the PHMC to be eligible to qualify for listing in the National Register, or;
- c. Designated as historic by a municipal ordinance:
 - i. Identified individually or as part of a local historic district by a zoning ordinance under the authority of the Pennsylvania Municipalities Planning Code, or
 - ii. Located in a local historic district that has been certified by the Pennsylvania Historical and Museum Commission as meeting the requirements of the Pennsylvania Historic District Act.

20. Lowest floor – the lowest floor of the lowest fully enclosed area (including basement). An unfinished, flood resistant partially enclosed area, used solely for parking of vehicles, building access, and incidental storage, in an area other than a basement area is not considered the lowest floor of a building, provided that such space is not designed and built so that the structure is in violation of the applicable non-elevation design requirements of this ordinance.

21. Manufactured home – a structure, transportable in one or more sections, which is built on a permanent chassis, and is designed for use with or without a permanent foundation when attached to the required utilities. The term includes park trailers, travel trailers, recreational and other similar vehicles which are placed on a site for more than 180 consecutive days.

22. Manufactured home park or subdivision – a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
23. Minor repair – the replacement of existing work with equivalent materials for the purpose of its routine maintenance and upkeep, but not including the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements; nor shall minor repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, oil, waste, vent, or similar piping, electric wiring or mechanical or other work affecting public health or general safety.
24. New construction – structures for which the start of construction commenced on or after November 16, 1976 and includes any subsequent improvements thereto.
25. New manufactured home park or subdivision – a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.
26. One hundred-year flood – The flood having a 1% chance of being equaled or exceeded in any given year. Also referred to as the '1% frequency flood', or the 'Base Flood', as defined by FEMA in the Flood Insurance Study for Cheltenham Township
27. Person – an individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity whatsoever, which is recognized by law as the subject of rights and duties.

28. Post-FIRM Structure – A structure for which construction or substantial improvement occurred after December 31, 1974, or on or after the community's initial FIRM dated May 20, 1976, whichever is later, and, as such would be required to be compliant with the regulations of the NFIP.
29. Pre-Firm Structure – A structure for which construction or substantial improvement occurred on or before May 20, 1976, or before the community's initial FIRM dated 12/19/1996, and, as such would not be required to be compliant with the regulations of the NFIP.
30. Recreational vehicle – a vehicle which is
- a. built on a single chassis;
 - b. not more than 400 square feet, measured at the largest horizontal projections;
 - c. designed to be self-propelled or permanently towable by a light-duty truck,
 - d. not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
31. Redevelopment Area – A census tract or group of census tracts eligible for the Montgomery County Revitalization Program and identified in the adopted municipal revitalization plan.
32. Regulatory flood elevation – The regulatory flood elevation is the elevation to which development is regulated for purposes of elevation and/or dry floodproofing. It is equal to the base flood elevation (BFE) plus a freeboard of 1.5 feet.
33. Repetitive loss – flood related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.

34. Special permit – a special approval which is required for hospitals, nursing homes, jails, and new manufactured home parks and subdivisions and substantial improvements to such existing parks, when such development is located in all, or a designated portion of a floodplain.
35. Special flood hazard area (SFHA) – means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, A1-A30, AE, A99, or, AH.
36. Start of construction – includes substantial improvement and other proposed new development and means the date the Permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit and shall be completed within 12 months after the date of issuance of the permit unless a time extension is granted, in writing, by the Floodplain Administrator. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
37. Structure – a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

38. Subdivision – the division or redivision of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devisees, transfer of ownership or building or lot development: Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.
39. Substantial damage – damage from any cause sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent or more of the market value of the structure before the damage occurred. Substantial damage also means a structure that meets the definition for repetitive loss.
40. Substantial improvement – Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred substantial damage or repetitive loss regardless of the actual repair work performed. The term does not, however include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions. For alteration of historic structures, see Section 295-2115.A.5
41. Uniform Construction Code (UCC) – The statewide building code adopted by The Pennsylvania General Assembly in 1999 applicable to new construction in all municipalities whether administered by the municipality, a third party or the Department of Labor and Industry. Applicable to residential and commercial buildings, The Code adopted The International Residential Code (IRC) and the International Building Code (IBC), by reference, as the construction standard applicable with the State floodplain construction. For coordination purposes,

references to the above are made specifically to various sections of the IRC and the IBC.

42. Violation – means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

§295-2107. IDENTIFICATION OF FLOODPLAIN AREAS

- A. The Floodplain Conservation District shall be any areas of Cheltenham Township classified as special flood hazard areas (SFHAs) in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) dated December 19, 1996, and issued by the Federal Emergency Management Agency (FEMA), or the most recent revision thereof, including all digital data developed as part of the Flood Insurance Study.
- B. The Floodplain Conservation District shall also include areas with soils listed in Section 295-2102.C, along with any community identified flood hazard areas.
- C. The above referenced FIS and FIRMs, and any subsequent revisions and amendments are hereby adopted by Cheltenham Township and declared to be a part of this ordinance.

§295-2108. DESCRIPTION AND SPECIAL REQUIREMENTS OF THE FLOODPLAIN CONSERVATION DISTRICT

- A. The Floodplain Conservation District shall consist of the following specific areas/districts:

1. The Floodway Area/District shall be those areas identified as Floodway on the FIRM as well as those floodway areas which have been identified in other available studies or sources of information for those special floodplain areas where no floodway has been identified in the FIS. The floodway represents the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation by more than one (1) foot at any point.
2. Within any floodway area, no encroachments, including fill, new construction, substantial Improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
3. No new construction or development shall be allowed, unless a permit is obtained from the Department of Environmental Protection Regional Office.
4. The AE Area/District without floodway shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA and for which base flood elevations have been provided in the FIS but no floodway has been delineated.
 - a. In AE Area/District without floodway, no new development shall be permitted unless it can be demonstrated that the cumulative effect of all past and projected development will not increase the BFE.
 - b. No permit shall be granted for any construction, development, use, or activity within any AE Area/District without floodway unless it is demonstrated that the cumulative effect of the proposed development would not, together with all other existing and anticipated development, increase the BFE.
5. Community Identified Flood Hazard Areas shall be those areas where Cheltenham Township has identified local flood hazard or ponding areas, as delineated and

adopted on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks, soils or approximate study methodologies.

6. The A Area/District shall be the areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no one-percent (1%) annual chance flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable source shall be used when available. Where other acceptable information is not available, the elevation shall be determined by using the elevation of a point on the boundary of the Floodplain Conservation District which is nearest the construction site.
7. In lieu of the above, the municipality may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the municipality.
8. The Shallow Flooding Area/ District shall be those areas identified as Zones AO and AH on the FIRM and in the FIS. These areas are subject to inundation by 1-percent-annualchance shallow flooding where average depths are between one and three feet. In Zones AO and AH, drainage paths shall be established to guide floodwaters around and away from structures on slopes.

§295-2109. CHANGES IN IDENTIFICATION OF AREA

- A. The Floodplain Conservation District may be revised or modified by Township Board of Commissioners where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change, approval must be obtained from the FEMA. Additionally, as soon as practicable, but not later than six (6) months after the date such information becomes available, a

community shall notify FEMA of the changes by submitting technical or scientific data.

§295-2110. BOUNDARY DISPUTES

- A. Should a dispute concerning any identified floodplain boundary arise, an initial determination shall be made by the Cheltenham Planning Commission and any party aggrieved by this decision or determination may appeal to the Township Board of Commissioners. The burden of proof shall be on the appellant.

§295-2111. CORPORATE BOUNDARY CHANGES

- A. Prior to development occurring in areas where annexation or other corporate boundary changes are proposed or have occurred, the community shall review flood hazard data affecting the lands subject to boundary changes. The community shall adopt and enforce floodplain regulations in areas subject to annexation or corporate boundary changes which meet or exceed those in CFR 44 60.3.

§295-2112. USES PERMITTED BY RIGHT

- A. The following uses are permitted by right in the floodplain Conservation District in compliance with the requirements of this Article:
 - 1. Up to half of any required yard setback area on an individual residential lot may extend into the Floodplain Conservation District.
 - 2. Open space uses that are primarily passive in character shall be permitted to extend into the floodplain including:
 - a. Wildlife sanctuaries, nature preserves, forest preserves, fishing areas, passive areas of public and private parklands, and reforestation.
 - b. Streambank stabilization.

3. Forestry operations reviewed by the Montgomery County Conservation District.
4. The following floodplain crossings are permitted, provided disturbance to any existing woodlands and degradation of water quality are minimized to the greatest extent practicable:
 - a. Agricultural crossings by farm vehicles and livestock.
 - b. Driveways serving single family detached dwelling units, roadways, recreational trails, railroads, and utilities.
5. Agricultural uses conducted in compliance with methods prescribed in the latest version of the Department of Environmental Protection's Erosion and Sediment Pollution Control Manual. In the event that the municipality has a Riparian Corridor Conservation District or similar regulation, the more restrictive regulation shall apply.
6. Public sewer and/or water lines and public utility transmission lines running along the corridor.
7. Development of elevated and flood-proofed buildings on brownfield sites in redevelopment areas encouraging economic revitalization, in compliance with Section 9.02.

§295-2113. USES PROHIBITED IN THE FLOODPLAIN CONSERVATION DISTRICT

- A. Any use or activity not authorized within Section 295-2112, herein, shall be prohibited within the Floodplain Conservation District and the following activities and facilities are specifically prohibited, except for as part of a redevelopment project in compliance with Section 295-2125.B herein:
 1. No new construction, alteration, or improvement of buildings and any other type of permanent structure, including fences shall be permitted in the floodway or the 100-year floodplain.

2. Placement of fill within the 100 year floodplain is prohibited.
3. No encroachment, alteration, or improvement of any kind shall be made to any watercourse.
4. Clearing of all existing vegetation, except where such clearing is necessary to prepare land for a use permitted under Section 295-2112, herein, and where the effects of these actions are mitigated by re-establishment of vegetation.
5. Use of fertilizers, pesticides, herbicides, and/or other chemicals in excess of prescribed industry standards.
6. Roads or driveways, except where permitted as corridor crossings in compliance with Section 295-2112, herein.
7. Motor or wheeled vehicle traffic in any area not designed to accommodate adequately the type and volume.
8. Parking lots.
9. Subsurface sewage disposal areas.
10. Sod farming.
11. Stormwater basins, including necessary berms and outfall facilities.

§295-2114. NONCONFORMING STRUCTURES AND USES IN THE FLOODPLAIN CONSERVATION DISTRICT

- A. The provisions of this Ordinance do not require any changes or improvements to be made to lawfully existing structures. However, when an improvement is made to any

existing structure, the provisions of Section 295-2112 of this ordinance, and Section 295-227 Nonconforming Uses shall apply.

§295-2115. IMPROVEMENTS TO EXISTING STRUCTURES IN THE FLOODPLAIN CONSERVATION DISTRICT

- A. The following provisions shall apply whenever any improvement is made to an existing structure located within any Floodplain Conservation District:
1. No expansion or enlargement of an existing structure shall be allowed within any floodway area that would cause any increase in the elevation of the base flood elevation.
 2. No expansion or enlargement of an existing structure shall be allowed within any AE Area/District with floodway, as defined in Section 295-2108.A.4 that would, together with all other existing and anticipated development, increase the BFE.
 3. No expansion or enlargement of an existing structure shall be undertaken in the direction of the streambank.
 4. Any modification, alteration, reconstruction, or improvement, of any kind to an existing structure, to an extent or amount of fifty (50) percent or more of its market value, shall constitute a substantial improvement and shall be undertaken only in full compliance with the provisions of this Ordinance.
 5. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined in this ordinance must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic Places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any

exemption from the ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

6. The above activity shall also address the requirements of the 34 PA Code, as amended and the 2009 IBC and the 2009 IRC.
7. Any modification, alteration, reconstruction, or improvement of any kind that meets the definition of "repetitive loss" shall be undertaken only in full compliance with the provisions of this ordinance.

§295-2116. VARIANCES

- A. If compliance with any of the requirements of this Ordinance would result in an exceptional hardship to a prospective builder, developer or landowner, Cheltenham Township may, upon request, grant relief from the strict application of the requirements.
- B. Variance Procedures and Conditions:
 1. For a use other than those permitted in 295-2112., an application seeking approval by variance shall be forwarded to the Zoning Hearing Board along with required studies or information and the findings of the Zoning Officer.
 2. No variance shall be granted for any construction, development, use, or activity within any floodway area that would cause any increase in the BFE.
 3. No variance shall be granted for any construction, development, use, or activity within any AE Area/District without floodway that would, together with all other existing and anticipated development, increase the BFE.
 4. No variance shall be granted for any of the other requirements pertaining specifically to development regulated by Section 295-2121 (pertaining to special

technical requirements for activities requiring a Special Permit) or to Development Which May Endanger Human Life (Section 295-2119.A).

C. Special Requirements for Subdivisions and Developments:

1. All subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, in flood hazard areas where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision.

D. Special Requirements for Manufactured Homes:

1. Within the Floodplain Conservation District, manufactured homes shall be prohibited within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.
2. Where permitted by variance within the Floodplain Conservation District, all manufactured homes, and any improvements thereto, shall be:
 - a. placed on a permanent foundation,
 - b. elevated so that the lowest floor of the manufactured home is at least one and one half (1 ½) feet above the Base Flood Elevation, and
 - c. anchored to resist flotation, collapse, or lateral movement.
3. Installation of manufactured homes shall be done in accordance with the manufacturers' installation instructions as provided by the manufacturer. Where the applicant cannot provide the above information, the requirements of

Appendix E of the 2009 International Residential Building Code ("IBC") or the U.S. Department of Housing and Urban Development's Permanent Foundations for Manufactured Housing, 1984 Edition, draft or latest revision thereto shall apply and 34 PA Code Chapter 401-405.

4. Consideration shall be given to the installation requirements of the 2009 IBC, and the 2009 IRC or the most recent revisions thereto and 34 PA Code, as amended where appropriate and/or applicable to units where the manufacturers' standards for anchoring cannot be provided or were not established for the proposed installation.

E. Special Requirements for Recreational Vehicles

1. Recreational vehicles in Zones A1-30, AH and AE must either:
 - a. be on the site for fewer than 180 consecutive days, and
 - b. be fully licensed and ready for highway use, or
 - c. meet the permit requirements for manufactured homes in Section 295-2116.D.

F. Variance Conditions:

1. If granted, a variance shall involve only the least modification necessary to provide relief.
2. In granting any variance, the Zoning Hearing Board shall attach the reasonable conditions and safeguards outlined herein. These conditions and safeguards are necessary in order to protect the public health, safety, and welfare of the residents of the municipality.
3. Whenever a variance is granted, the Zoning Hearing Board shall notify the applicant in writing that:

- a. The granting of the variance may result in increased premium rates for flood insurance.
 - b. Such variances may increase the risks to life and property.
4. In reviewing any request for a variance, the Zoning Hearing Board shall consider, at a minimum, the following:
 - a. That there is good and sufficient cause, including:
 - i. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
 - ii. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - iii. That such unnecessary hardship has not been created by the appellant.
 - iv. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
 - b. That failure to grant the variance would result in exceptional hardship to the applicant.

- c. That the granting of the variance will:
 - i. neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense,
 - ii. nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances and regulations.

- 5. A complete record of all variance requests and related actions shall be maintained by Cheltenham Township. In addition, a report of all variances granted during the year shall be included in the biennial report to FEMA.

§295-2117. TECHNICAL PROVISIONS IN THE EVENT OF A VARIANCE BEING GRANTED

- A. In granting any variance, Cheltenham Township shall attach the following technical provisions to the proposal for which the variance has been granted. These conditions and safeguards are necessary in order to protect the public health, safety, and welfare of the residents of the municipality.

- B. Pertaining To The Alteration or Relocation of Watercourse
 - 1. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the municipality, and until all required permits or approvals have been first obtained from the Department of Environmental Protection Regional Office.

 - 2. No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity will not reduce or impede the flood carrying capacity of the watercourse in any way.

3. In addition, the FEMA and Pennsylvania Department of Community and Economic Development, shall be notified prior to any alteration or relocation of any watercourse.
- C. The municipality shall require technical or scientific data to be submitted to FEMA for a Letter of Map Revision (LOMR) within six (6) months of the completion of any new construction, development, or other activity resulting in changes in the BFE. A LOMR or Conditional Letter of Map Revision (CLOMR) is required for:
1. Any development that causes a rise in the base flood elevations within the floodway; or
 2. Any development occurring in Zones A1-30 and Zone AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation; or
 3. Alteration or relocation of a stream (including but not limited to installing culverts and bridges).
- D. Any new construction, development, uses or activities allowed by variance within any Floodplain Conservation District shall be undertaken in strict compliance with the provisions contained in this Ordinance and any other applicable codes, ordinances and regulations. In addition, when such development is proposed within the area measured fifty (50) feet landward from the top of bank of any watercourse, a permit shall be obtained from the Department of Environmental Protection Regional Office.

§295-2118. ELEVATION AND FLOODPROOFING REQUIREMENTS

A. Residential Structures

1. In AE, A1-30, and AH Zones, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation. The design and construction standards and

specifications contained in the 2009 International Building Code (IBC) and in the 2009 International Residential Code (IRC) or the most recent revisions thereof and ASCE 24 and 34 PA Code (Chapters 401-405 as amended) shall be used.

2. In A Zones, where there are no Base Flood Elevations specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation determined in accordance with Subsection 295-2108.A.6 of this ordinance.
3. In AO Zones, any new construction or substantial improvement shall have the lowest floor (including basement) at or above the highest adjacent grade at least as high as the depth number specified on the FIRM.
4. The design and construction standards and specifications contained in the 2009 International Building Code (IBC) and in the 2009 International Residential Code (IRC) or the most recent revisions thereof and ASCE 24 and 34 PA Code (Chapters 401-405 as amended) shall be utilized.

B. Non-residential Structures

1. In AE, A1-30 and AH Zones, any new construction or substantial improvement of a non-residential structure shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation, or be designed and constructed so that the space enclosed below the regulatory flood elevation:
 - a. is floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and,
 - b. has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
2. In A Zones, where there no Base Flood Elevations are specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated or completely floodproofed up to, or above, the

regulatory flood elevation determined in accordance with Subsection 295-2108.A.6 of this ordinance.

3. In AO Zones, any new construction or substantial improvement shall have their lowest floor elevated or completely floodproofed above the highest adjacent grade to at least as high as the depth number specified on the FIRM.
4. Any non-residential structure, or part thereof, made watertight below the regulatory flood elevation shall be floodproofed in accordance with the WI or W2 space classification standards contained in the publication entitled "Flood-Proofing Regulations" published by the U.S. Army Corps of Engineers (June 1972, as amended March 1992) or with some other equivalent standard. All plans and specifications for such floodproofing shall be accompanied by a statement certified by a registered professional engineer or architect which states that the proposed design and methods of construction are in conformance with the above referenced standards.
5. The design and construction standards and specifications contained in the 2009 International Building Code (IBC) and in the 2009 International Residential Code (IRC) or the most recent revisions thereof and ASCE 24 and 34 PA Code (Chapters 401-405 as amended) shall be used.

C. Space below the lowest floor

1. Fully enclosed space below the lowest floor (excluding basements) which will be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, shall be designed and constructed to allow for the automatic entry and exit of flood waters for the purpose of equalizing hydrostatic forces on exterior walls. The term "fully enclosed space" also includes crawl spaces.
2. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:

- a. A minimum of two openings each on a separate wall having a net total area of not less than one (1) square inch for every square foot of enclosed space.
- b. The bottom of all openings shall be no higher than one (1) foot above grade.
- c. Openings may be equipped with screens, louvers, etc. or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

D. Accessory structures

- 1. Structures accessory to a principal building need not be elevated or floodproofed to remain dry, but shall comply, at a minimum, with the following requirements:
 - a. The structure shall not be designed or used for human habitation, but shall be limited to the parking of vehicles, or to the storage of tools, material, and equipment related to the principal use or activity.
 - b. Floor area shall not exceed 100 square feet.
 - c. The structure will have a low damage potential.
 - d. The structure will be located on the site so as to cause the least obstruction to the flow of flood waters.
 - e. Power lines, wiring, and outlets will be elevated to the regulatory flood elevation.
 - f. Permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc. are prohibited.
 - g. Sanitary facilities are prohibited.

- h. The structure shall be adequately anchored to prevent flotation or movement and shall be designed to automatically provide for the entry and exit of floodwater for the purpose of equalizing hydrostatic forces on the walls. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
 - i. A minimum of two openings each on a separate wall having a net total area of not less than one (1) square inch for every square foot of enclosed space.
 - ii. The bottom of all openings shall be no higher than one (1) foot above grade.
 - iii. Openings may be equipped with screens, louvers, etc. or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

§295-2119. SPECIAL TECHNICAL REQUIREMENTS

A. Development Which May Endanger Human Life:

1. In accordance with the Pennsylvania Flood Plain Management Act, and the regulations adopted by the Department of Community and Economic Development as required by the Act, any new or substantially improved structure which will be used for the production or storage of any of the following dangerous materials or substances; or, will be used for any activity requiring the maintenance of a supply of more than 550 gallons, or other comparable volume, of any of the following dangerous materials or substances on the premises; or, will involve the production, storage, or use of any amount of radioactive substances; shall be subject to the provisions of this section, in addition to all other applicable provisions. The following list of materials and substances are considered dangerous to human life:

- Acetone
- Ammonia
- Benzene
- Calcium carbide
- Carbon disulfide
- Celluloid
- Chlorine
- Hydrochloric acid
- Hydrocyanic acid
- Magnesium
- Nitric acid and oxides of nitrogen
- Petroleum products (gasoline, fuel oil, etc.)
- Phosphorus
- Potassium
- Sodium
- Sulphur and sulphur products
- Pesticides (including insecticides, fungicides, and rodenticides)
- Radioactive substances, insofar as such substances are not otherwise regulated.

B. Where permitted by a variance within the floodplain area, any new or substantially improved structure of the kind described in Subsection A., above, shall be:

1. elevated or designed and constructed to remain completely dry up to at least one and one half feet (1 ½) above the Base Flood Elevation and,
2. designed to prevent pollution from the structure or activity during the course of a base flood elevation.
3. Any such structure, or part thereof, that will be built below the regulatory flood elevation shall be designed and constructed in accordance with the standards for completely dry floodproofing contained in the publication "Flood-Proofing Regulations (U.S. Army Corps of Engineers, June 1972 as amended March 1992), or with some other equivalent watertight standard.

§295-2120. DESIGN AND CONSTRUCTION STANDARDS

A. The following minimum standards shall apply for all construction and development proposed within any Floodplain Conservation District:

1. Fill. If fill is used, it shall:

a. extend laterally at least fifteen (15) feet beyond the building line from all points;

b. consist of soil or small rock materials only - Sanitary Landfills shall not be permitted;

c. be compacted to provide the necessary permeability and resistance to erosion, scouring, or settling;

d. be no steeper than one (1) vertical to two (2) horizontal, feet unless substantiated data, justifying steeper slopes are submitted to, and approved by the Floodplain Administrator; and

e. be used to the extent to which it does not adversely affect adjacent properties.

2. Drainage Facilities. Storm drainage facilities shall be designed to convey the flow of storm water runoff in a safe and efficient manner. The system shall insure proper drainage along streets, and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.

3. Water and Sanitary Sewer Facilities and Systems

- a. All new or replacement water supply and sanitary sewer facilities and systems shall be located, designed and constructed to minimize or eliminate flood damages and the infiltration of flood waters.
 - b. Sanitary sewer facilities and systems shall be designed to prevent the discharge of untreated sewage into flood waters.
 - c. No part of any on-site sewage system shall be located within any Floodplain Conservation District except in strict compliance with all State and local regulations for such systems. If any such system is permitted, it shall be located so as to avoid impairment to it, or contamination from it, during a flood.
 - d. The design and construction provisions of the UCC and FEMA #348, Protecting Building Utilities From Flood Damages and The International Private Sewage Disposal Code shall be utilized.
4. Other Utilities. All other utilities such as gas lines, electrical and telephone systems shall be located, elevated (where possible) and constructed to minimize the chance of impairment during a flood.
5. Streets. The finished elevation of all new streets shall be no more than one (1) foot below the Regulatory Flood Elevation.
6. Storage. All materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal, or plant life, and not listed in Section 295-2119A, Development Which May Endanger Human Life, shall be stored at or above the Regulatory Flood Elevation and/or flood proofed to the maximum extent possible.
7. Placement of Buildings and Structures. All buildings and structures shall be designed, located, and constructed so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum effect upon the flow and height of flood water.

8. Anchoring

- a. All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.
- b. All air ducts, large pipes, storage tanks, and other similar objects or components located below the regulatory flood elevation shall be securely anchored or affixed to prevent flotation.

9. Floors, Walls and Ceilings

- a. Wood flooring used at or below the Regulatory Flood Elevation shall be installed to accommodate a lateral expansion of the flooring, perpendicular to the flooring grain without causing structural damage to the building.
- b. Plywood used at or below the regulatory flood elevation shall be of a "marine" or "water-resistant" variety.
- c. Walls and ceilings at or below the regulatory flood elevation shall be designed and constructed of materials that are "water-resistant" and will withstand inundation.
- d. Windows, doors, and other components at or below the regulatory flood elevation shall be made of metal or other "water-resistant" material.

10. Paints and Adhesives

- a. Paints and other finishes used at or below the regulatory flood elevation shall be of "marine" or "water-resistant" quality.
- b. Adhesives used at or below the regulatory flood elevation shall be of a "marine" or "water-resistant" variety.

- c. All wooden components (doors, trim, cabinets, etc.) shall be finished with a "marine" or "water-resistant" paint or other finishing material.

11. Electrical Components

- a. Electrical distribution panels shall be at least three (3) feet above the base flood elevation.
- b. Separate electrical circuits shall serve lower levels and shall be dropped from above.

12. Equipment. Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the Regulatory Flood Elevation.

13. Fuel Supply Systems. All gas and oil supply systems shall be designed to prevent the infiltration of flood waters into the system and discharges from the system into flood waters. Additional provisions shall be made for the drainage of these systems in the event that flood water infiltration occurs.

14. Uniform Construction Code Coordination

- a. The Standards and Specifications contained 34 PA Code (Chapters 401-405), as amended and not limited to the following provisions shall apply to the above and other sections and sub-sections of this ordinance, to the extent that they are more restrictive and/or supplement the requirements of this ordinance.
 - i. International Building Code (IBC) 2009 or the latest edition thereof: Sections 801, 1202, 1403, 1603, 1605, 1612, 3402, and Appendix G.

- ii. International Residential Building Code (IRC) 2009 or the latest edition thereof: Sections R104, R105, R109, R322, Appendix AE101, Appendix E and Appendix J.

§295-2121. ACTIVITIES REQUIRING SPECIAL PERMITS

- A. General. In accordance with the administrative regulations promulgated by the Department of Community and Economic Development to implement the Pennsylvania Flood Plain Management Act, the activities indicated in Sections 295-2121.B and 295-2121.C shall be prohibited within any Floodplain Conservation District unless a Special Permit has been issued by Cheltenham Township. In order to apply for a special permit, a variance must first be obtained, as outlined in Section 295-2116.

- B. The commencement of any of the following activities; or the construction enlargement, or expansion of any structure used, or intended to be used, for any of the following activities:
 - 1. Hospitals

 - 2. Nursing homes

 - 3. Jails or prisons

- C. The commencement of, or any construction of, a new manufactured home park or manufactured home subdivision, or substantial improvement to an existing manufactured home park or manufactured home subdivision.

§295-2122. APPLICATION REQUIREMENTS FOR SPECIAL PERMITS

- A. Applicants for Special Permits shall provide five copies of the following items:
 - 1. A written request including a completed Special Permit Application Form.

2. A small scale map showing the vicinity in which the proposed site is located.
3. A plan of the entire site, clearly and legibly drawn at a scale of one (1) inch being equal to one hundred (100) feet or less, showing the following:
 - a. north arrow, scale and date;
 - b. topography based upon the North American Vertical Datum (NAVD) of 1988, showing existing and proposed contours at intervals of two (2) feet;
 - c. all property and lot lines including dimensions, and the size of the site expressed in acres or square feet;
 - d. the location of all existing streets, drives, other access ways, and parking areas, with information concerning widths, pavement types and construction, and elevations;
 - e. the location of any existing bodies of water or watercourses, buildings, structures and other public or private facilities, including railroad tracks and facilities, and any other natural and man-made features affecting, or affected by, the proposed activity or development;
 - f. the location of the floodplain boundary line, information and spot elevations concerning the base flood elevation, and information concerning the flow of water including direction and velocities;
 - g. the location of all proposed buildings, structures, utilities, and any other improvements; and
 - h. any other information which the municipality considers necessary for adequate review of the application.
4. Plans of all proposed buildings, structures and other improvements, clearly and legibly drawn at suitable scale showing the following:

- a. sufficiently detailed architectural or engineering drawings, including floor plans, sections, and exterior building elevations, as appropriate;
 - b. for any proposed building, the elevation of the lowest floor (including basement) and, as required, the elevation of any other floor;
 - c. complete information concerning flood depths, pressures, velocities, impact and uplift forces, and other factors associated with the base flood elevation;
 - d. detailed information concerning any proposed floodproofing measures;
 - e. cross section drawings for all proposed streets, drives, other access ways, and parking areas, showing all rights-of-way and pavement widths;
 - f. profile drawings for all proposed streets, drives, and vehicular access ways including existing and proposed grades; and
 - g. plans and profiles of all proposed sanitary and storm sewer systems, water supply systems, and any other utilities and facilities.
5. The following data and documentation:
- a. certification from the applicant that the site upon which the activity or development is proposed is an existing separate and single parcel, owned by the applicant or the client he represents;
 - b. certification from a registered professional engineer, architect, or landscape architect that the proposed construction has been adequately designed to protect against damage from the base flood elevation;
 - c. a statement, certified by a registered professional engineer, architect, landscape architect, or other qualified person which contains a complete and accurate description of the nature and extent of pollution that might possibly

occur from the development during the course of a base flood elevation, including a statement concerning the effects such pollution may have on human life;

- d. a statement certified by a registered professional engineer, architect, or landscape architect, which contains a complete and accurate description of the effects the proposed development will have on base flood elevation elevations and flows;
- e. a statement, certified by a registered professional engineer, architect, or landscape architect, which contains a complete and accurate description of the kinds and amounts of any loose buoyant materials or debris that may possibly exist or be located on the site below the base flood elevation and the effects such materials and debris may have on base flood elevation elevations and flows;
- f. the appropriate component of the Department of Environmental Protection's "Planning Module for Land Development;"
- g. where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection to implement and maintain erosion and sedimentation control;
- h. any other applicable permits such as, but not limited to, a permit for any activity regulated by the Department of Environmental Protection under Section 302 of Act 1978-166; and
- i. an evacuation plan which fully explains the manner in which the site will be safely evacuated before or during the course of a base flood.

§295-2123. APPLICATION REVIEW PROCEDURES

- A. Upon receipt of an application for a Special Permit by Cheltenham Township the following procedures shall apply in addition to those of Section 295-2125.
1. Within three (3) working days following receipt of the application, a complete copy of the application and all accompanying documentation shall be forwarded to the County Planning Commission by registered or certified mail for its review and recommendations. Copies of the application shall also be forwarded to the Cheltenham Planning commission and Cheltenham engineer for review and comment.
 2. If an application is received that is incomplete, Cheltenham Township shall notify the applicant in writing, stating in what respect the application is deficient.
 3. If Cheltenham Township decides to disapprove an application, it shall notify the applicant, in writing, of the reasons for the disapproval.
 4. If Cheltenham Township approves an application, it shall file written notification, together with the application and all pertinent information, with the Department of Community and Economic Development, by registered or certified mail, within five (5) working days after the date of approval.
 5. Before issuing the Special Permit, Cheltenham Township shall allow the Department of Community and Economic Development thirty (30) days, after receipt of the notification by the Department, to review the application and decision made by Cheltenham Township.
 6. If Cheltenham Township does not receive any communication from the Department of Community and Economic Development during the thirty (30) day review period, it may issue a Special Permit to the applicant.
 7. If the Department of Community and Economic Development should decide to disapprove an application, it shall notify Cheltenham Township and the applicant, in writing, of the reasons for the disapproval, and Cheltenham Township shall not issue the Special Permit.

§295-2124. SPECIAL TECHNICAL REQUIREMENTS

- A. In addition to the requirements of Section 295-2118 of this Ordinance, the following minimum requirements shall also apply to any proposed development requiring a Special Permit. If there is any conflict between any of the following requirements and those in Section 295-2110 of this Ordinance or in any other code, ordinance, or regulation, the more restrictive provision shall apply.

- B. No application for a Special Permit shall be approved unless it can be determined that the structure or activity will be located, constructed and maintained in a manner which will:
 - 1. Fully protect the health and safety of the general public and any occupants of the structure. At a minimum, all new structures shall be designed, located, and constructed so that:
 - a. the structure will survive inundation by waters of the base flood elevation without any lateral movement or damage to either the structure itself, or to any of its equipment or contents below the BFE,
 - b. the lowest floor (including basement) will be elevated to at least one and one half (1 ½) feet above the Base Flood Elevation, and
 - c. the occupants of the structure can remain inside for an indefinite period of time and be safely evacuated at any time during the base flood elevation.
 - 2. Prevent any significant possibility of pollution, increased flood levels or flows, or debris endangering life and property.

- C. All hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts.

Studies, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by Cheltenham Township and the Department of Community and Economic Development.

§295-2125. ADMINISTRATION

- A. Designation of the Floodplain Administrator. The Zoning Officer within the Planning and Zoning Department is hereby appointed to administer and enforce this ordinance and is referred to herein as the Floodplain Administrator.

- B. Permits Required. A Permit shall be required before any construction or development is undertaken within the Floodplain Conservation District. In the case of a proposed hospital, nursing home, jail, prison, or manufactured home park, the permit referred to here would be the Special Permit of Section 295-2122.

- C. Duties and Responsibilities of the Floodplain Administrator
 - 1. The Floodplain Administrator shall issue a Permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable codes and ordinances.

 - 2. Prior to the issuance of any permit, the Floodplain Administrator shall review the application for the permit to determine if all other necessary government permits required by state and federal laws have been obtained, such as those required by the Pennsylvania Sewage Facilities Act (Act 1966-537, as amended); the Pennsylvania Dam Safety and Encroachments Act (Act 1978-325, as amended); the Pennsylvania Clean Streams Act (Act 1937-394, as amended); and the U.S. Clean Water Act, Section 404, 33, U.S.C. 1344. No permit shall be issued until this determination has been made.

 - 3. In the case of existing structures, prior to the issuance of any Development/Permit, the Floodplain Administrator shall review the history of

repairs to the subject building, so that any repetitive loss issues can be addressed before the permit is issued.

4. During the construction period, the Floodplain Administrator or other authorized official shall inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable municipal laws and ordinances. The Floodplain Administrator shall make as many inspections during and upon completion of the work as are necessary.
5. In the discharge of his/her duties, the Floodplain Administrator shall have the authority to enter any building, structure, premises or development in the Floodplain Conservation District, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of this ordinance.
6. In the event the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the Permit and report such fact to the Township Board of Commissioners for whatever action it considers necessary.
7. The Floodplain Administrator shall maintain all records associated with the requirements of this ordinance including, but not limited to, permitting, inspection and enforcement.
8. The Floodplain Administrator shall consider the requirements of the 34 PA Code and the 2009 IBC and the 2009 IRC or latest revisions thereof.

§295-2126. APPLICATION PROCEDURES AND REQUIREMENTS

- A. Application for such a Permit shall be made, in writing, to the Floodplain Administrator on forms supplied by Cheltenham Township. Such application shall contain the following:

1. Name and address of applicant.
 2. Name and address of owner of land on which proposed construction is to occur.
 3. Name and address of contractor.
 4. Site location including address.
 5. Listing of other permits or variances required.
 6. Brief description of proposed work and estimated cost, including a breakout of flood-related cost and the market value of the building before the flood damage occurred where appropriate.
- B. If any proposed construction or development is located entirely or partially within any Floodplain Conservation District, applicants for Permits shall provide all the necessary information in sufficient detail and clarity to enable the Floodplain Administrator to determine that:
1. All such proposals are consistent with the need to minimize flood damage and conform to the requirements of this and all other applicable codes and ordinances.
 2. All utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage.
 3. Adequate drainage is provided so as to reduce exposure to flood hazards.
 4. Structures will be anchored to prevent floatation, collapse, or lateral movement.
 5. Building materials will be flood-resistant.
 6. Appropriate practices that minimize flood damage have been used.

7. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities have been designed and/or located to prevent water entry or accumulation.
- C. Applicants shall file the following minimum information plus any other pertinent information as may be required by the Floodplain Administrator to make the above determination:
1. A completed Permit Application Form.
 2. A plan of the entire site, clearly and legibly drawn at a scale of one (1) inch being equal to one hundred (100) feet or less, showing the following:
 - a. north arrow, scale, and date;
 - b. topographic contour lines, if available;
 - c. the location of all existing and proposed buildings, structures, and other improvements, including the location of any existing or proposed subdivision and development;
 - d. the location of all existing streets, drives, and other access ways; and
 - e. the location of any existing bodies of water or watercourses, the Floodplain Conservation District, and, if available, information pertaining to the floodway, and the flow of water including direction and velocities.
 3. Plans of all proposed buildings, structures and other improvements, drawn at a scale of one (1) inch being equal to one hundred (100) feet or less showing the following:
 - a. the proposed lowest floor elevation of any proposed building based upon North American Vertical Datum of 1988;

- b. the elevation of the base flood;
 - c. supplemental information as may be necessary under 34 PA Code, the 2006 IBC or the 2009 IRC.
4. The following data and documentation:
- a. If available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a base flood elevation; and detailed information concerning any proposed floodproofing measures and corresponding elevations.
 - b. Documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within an AE Area/District without floodway when combined with all other existing and anticipated development, will not increase the base flood elevation.
 - c. A document, certified by a registered professional engineer or architect, which states that the proposed construction or development has been adequately designed to withstand the pressures, velocities, impact and uplift forces associated with the base flood elevation. Such statement shall include a description of the type and extent of flood proofing measures which have been incorporated into the design of the structure and/or the development.
 - d. Detailed information needed to determine compliance with Section 295-2120.A.6., Storage, and 295-2119.A, Development Which May Endanger Human Life, including:
 - i. the amount, location and purpose of any materials or substances referred to in Sections 295-2119 and 295-2120.A.6 which are intended to be used, produced, stored or otherwise maintained on site, and

- ii. a description of the safeguards incorporated into the design of the proposed structure to prevent leaks or spills of the dangerous materials or substances listed in Section 295-2119 during a base flood.
 - e. The appropriate component of the Department of Environmental Protection's "Planning Module for Land Development."
 - f. Where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection, to implement and maintain erosion and sedimentation control.
5. Applications for Permits shall be accompanied by a fee, payable to the municipality based upon the estimated cost of the proposed construction as determined by the Floodplain Administration.

§295-2127. REVIEW BY COUNTY CONSERVATION DISTRICT

- A. A copy of all applications and plans for any proposed construction or development in any Floodplain Conservation District to be considered for approval shall be submitted by the Floodplain Administrator to the County Conservation District for review and comment prior to the issuance of a Permit. The recommendations of the Conservation District shall be considered by the Floodplain Administrator for possible incorporation into the proposed plan.

§295-2128. REVIEW OF APPLICATION BY OTHERS

- A. A copy of all plans and applications for any proposed construction or development in any Floodplain Conservation District to be considered for approval may be submitted by the Floodplain Administrator to any other appropriate agencies and/or individuals (e.g. planning commission, municipal engineer, etc.) for review and comment.

§295-2129. CHANGES

- A. After the issuance of a Permit by the Floodplain Administrator, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Floodplain Administrator. Requests for any such change shall be in writing, and shall be submitted by the applicant to Floodplain Administrator for consideration.

§295-2130. PLACARDS

- A. In addition to the Permit, the Floodplain Administrator shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the Permit the date of its issuance and be signed by the Floodplain Administrator.

§295-2131. START OF CONSTRUCTION

- A. Work on the proposed construction shall begin within 180 days after the date of issuance and shall be completed within twelve (12) months after the date of issuance of the Permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. The term, 'start of construction' shall be understood as defined in Section 295-2106 of this ordinance.
- B. Time extensions shall be granted only if a written request is submitted by the applicant, which sets forth sufficient and reasonable cause for the Floodplain Administrator to approve such a request.

§295-2132. ENFORCEMENT

- A. Notices. Whenever the Floodplain Administrator or other authorized municipal representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of this Ordinance, or of any regulations adopted pursuant thereto, the Floodplain Administrator shall give notice of such alleged violation as hereinafter provided. Such notice shall:
1. be in writing,
 2. include a statement of the reasons for its issuance,
 3. allow a reasonable time not to exceed a period of thirty (30) days for the performance of any act it requires,
 4. be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized or required by the laws of this State, and
 5. contain an outline of remedial action which, if taken, will effect compliance with the provisions of this Ordinance.
- B. Penalties. Any person who fails to comply with any or all of the requirements or provisions of this Ordinance or who fails or refuses to comply with any notice, order of direction of the Floodplain Administrator or any other authorized employee of the municipality shall pay a fine to Cheltenham Township, of not less than \$300 nor more than \$1,000 per violation plus costs of prosecution. In addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or noncompliance with, this Ordinance shall not excuse the violation or noncompliance or permit it to continue and all such persons shall be required to correct or remedy such violations and noncompliance within a reasonable time. Any development initiated or any structure or building constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this Ordinance may be

declared by the Township Board of Commissioners to be a public nuisance and abatable as such.

§295-2133. APPEALS

- A. Any person aggrieved by any action or decision of the Floodplain Administrator concerning the administration of the provisions of this Ordinance, may appeal to the Township Board of Commissioners. Such appeal must be filed, in writing, within thirty (30) days after the decision, determination or action of the Floodplain Administrator.
- B. Upon receipt of such appeal the Township Board of Commissioners shall set a time and place, within not less than ten (10) or not more than thirty (30) days, for the purpose of considering the appeal. Notice of the time and place at which the appeal will be considered shall be given to all parties.
- C. Any person aggrieved by any decision of the Township Board of Commissioners may seek relief there from by appeal to court, as provided by the laws of this State including the Pennsylvania Flood Plain Management Act.

§295-2134. ENACTMENT

- A. Adoption. This **Ordinance No. ____-14** shall be effective on May 21, 2014 and shall remain in force until modified, amended or rescinded by Cheltenham Township, Pennsylvania.

ENACTED AND ADOPTED by the Board of Commissioners this **21st** day of **May 2014**.

CHELtenham TOWNSHIP

By: _____

Harvey Portner

President

Board of Commissioners

ATTEST: _____

Bryan T. Havir, Manager and
Secretary

Article XXXIV

M4 – HISTORIC PRESERVATION, CULTURAL AND ARTISTIC USE, AND OTHER
MULTIPLE USES DISTRICT

§295 - _____ Purpose.

The purpose of the M4 Zoning District is to promote and provide for the adaptive re-use of buildings that are historic resources and of properties with significant character, uses and development patterns that might otherwise be obsolete and be likely to deteriorate or be demolished due to obsolescence; to preserve and promote the use of such historic resources and other land and buildings for cultural and artistic purposes; and to provide for such development in a manner that integrates new development and adaptive re-use into an existing community, transitions between lower and higher density uses, and accomplishes such goals by allowing a mix of compatible uses that provide for community-benefitting services as well as a variety of living opportunities.

§295 - _____ Applicable Regulations.

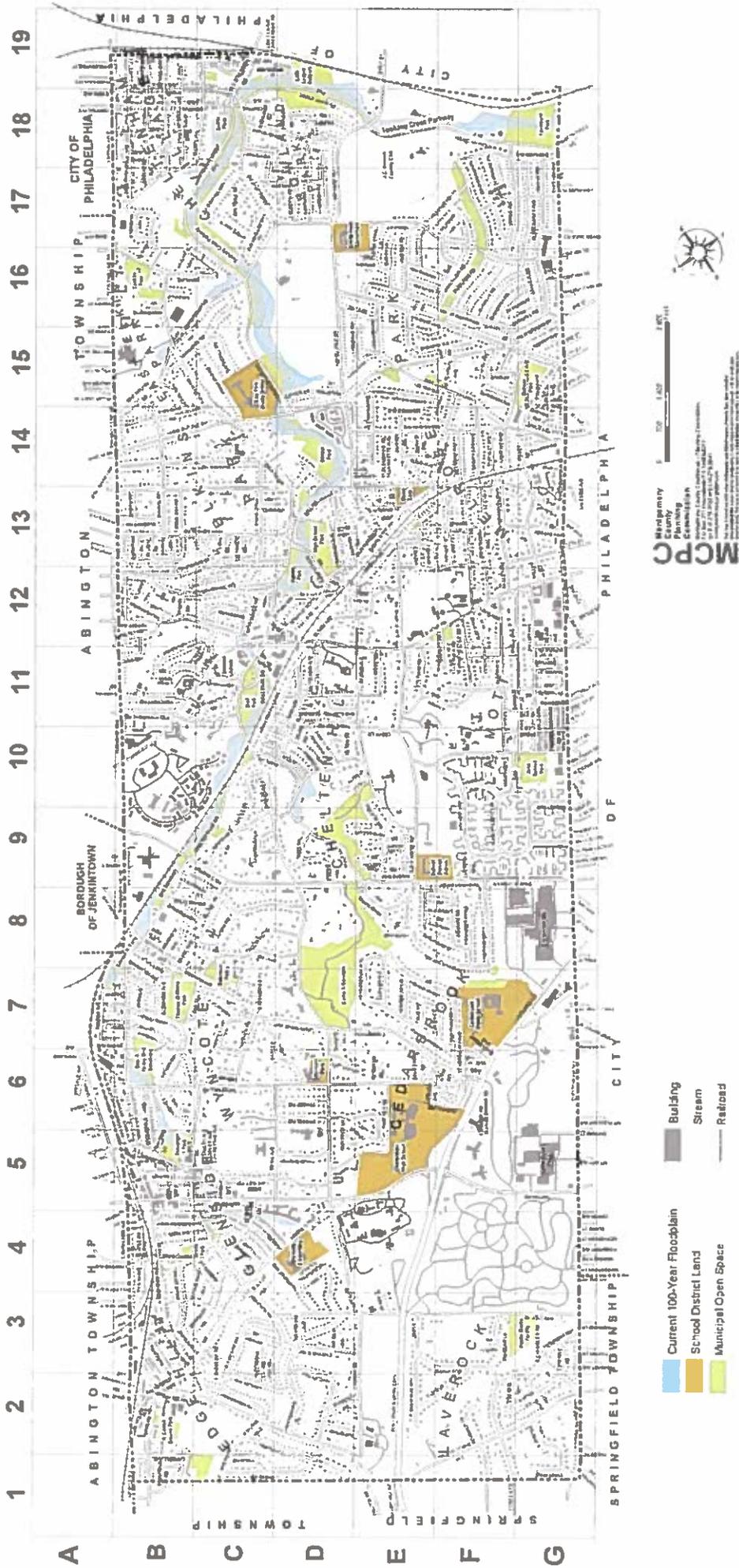
In the M4 Historic Preservation, Cultural and Artistic Use, and Other Multiple Uses District the regulations contained in this Article shall apply. Article XXIV Preservation Overlay District of this Zoning Ordinance shall not apply in the M4 District.

§295- _____ Use Regulations

A building may be erected, altered or used, and a lot or premises may be used, for the following purposes and no others and more than one of the uses described below is permitted on the same lot or within the same building provided that compliance with both of the following Paragraphs A and B occurs for any development under this Article, regardless of whether development of Multiple Dwellings under Paragraph C is proposed or exists:

- A. All of the lot(s) under common ownership which contain Historic Resources (as defined in Section 295- _____ provided, however, for purposes of this Zoning District, the term “Historic Resources” shall refer only to those Historic Resources that are buildings or portions of buildings constructed before 1910) shall be subjected to a deed restriction at the time of recording of the land development plan for development of the lot according to this Article, with terms written to the satisfaction of the Township Solicitor, recorded against the lot(s) stating that the pre-1910 facades, rooflines, and interiors of the Historic Resource(s) shall be preserved in perpetuity in their current or better state of repair, including but not limited to pre-1910 facades, rooflines and interiors, as further defined below, except as otherwise provided in this Article; or if there are more than two (2) Historic Resources on the lot(s) then designating which two (2) or more will be preserved pursuant to Section C.1a. below. For the purposes of

CHELtenham TOWNSHIP Floodplain Map



Christen G. Pionzio, Esquire
Hamburg, Rubin, Mullin, Maxwell & Lupin, P.C.
375 Morris Road
P.O. Box 1479
Lansdale, PA 19446-0773

Attorney for *Matrix Ashbourne Associates,*
L.P.

APPEAL OF MATRIX-ASHBOURNE ASSOCIATES, L.P. FROM THE DECISION OF THE CHELTENHAM TOWNSHIP ZONING HEARING BOARD DATED FEBRUARY 15, 2011 : **IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA**
: **NO. 2011-06678**
: **2011-17493**

STIPULATION AND SETTLEMENT AGREEMENT

It is hereby stipulated and agreed by and among Matrix Ashbourne Associates, L.P. ("Matrix"), by and through its attorney, Christen Pionzio, Esquire; Cheltenham Township ("Township") by and through its solicitor, Joseph Bagley, Esquire; Cheltenham Township Zoning Hearing Board ("ZHB"), by and through its solicitor, Carol Lauchmen, Esquire; and CC4A ("CC4A"), by and through its attorney, David. C. Onorato, Esquire, as follows:

BACKGROUND

At all times relevant to this appeal, Matrix has been the owner of a tract of land containing 107.6 acres, more or less, located at 1100 Ashbourne Road, Cheltenham Township, Pennsylvania, identified as Montgomery County parcel no. 31-00-00688-00-1, commonly referred to as the Ashbourne Country Club ("Property").

The Property is located in the R-1 Residence District ("R-1 District"), the Preservation Overlay District, and the Steep Slopes Conservation District and was formerly located in the Age Restricted Overlay District, all under the applicable provisions of the Cheltenham Township Zoning Ordinance. The Zoning Ordinance has been in effect at all times relevant.

In furtherance of the intent to develop the Property as a residential development, Matrix filed an application with the Cheltenham Township Zoning Hearing Board ("ZHB"), appealing the determination of the Zoning Officer and seeking relief to facilitate the development of the Property as an age-restricted residential development. The age-restricted development had been permitted as a special exception in the R-1 District pursuant to Section 295-242(B)(1) of the Zoning Ordinance.

The plan submitted with the Matrix application proposed to develop the Property as a residential development consisting of 226 lots, on which 156 attached single-family homes and 70 single-family detached homes would be constructed, together with a central clubhouse and 67 acres of "open space" land.

Following the conclusion of the public hearings, on February 15, 2011, the ZHB issued a letter confirming the ZHB's grant of relief to Matrix ("ZHB Notice of Decision"). A true and correct copy of the ZHB Notice of Decision is attached as Exhibit "A". The ZHB Notice of Decision notified Matrix that the ZHB granted a special exception to develop the Property in accordance with the Plan, subject to nine (9) enumerated conditions. Thereafter, the ZHB issued detailed Findings of Fact and Conclusions of Law in support of the ZHB Notice of Decision dated May 27, 2011 ("ZHB Detailed Decision"). A true and correct copy of the ZHB Detailed Decision is attached hereto, as Exhibit "B".

Matrix filed an appeal from the ZHB Notice of Decision, appealing the denial of certain relief and the imposition of certain conditions which was indexed at docket No. 2011-0678. CC4A filed a notice of intervention in the Matrix appeal. The ZHB filed a Motion to Quash the Matrix appeal on the basis that the appeal was untimely filed. CC4A filed an appeal from the ZHB Detailed Decision which was indexed at docket No. 2011-17493.

Matrix, Township, ZHB and CC4A have reached agreement on the terms of a settlement which will resolve all of the issues raised by CC4A's appeal (Docket No. 2011-17493) and Matrix's appeal (Docket No. 2011-06678). This Stipulation and Settlement Agreement ("Agreement") is entered into to confirm the agreement of the parties.

TERMS OF SETTLEMENT

1. **Settlement Plan.** The parties have agreed on certain terms for the development of the Property consisting of a maximum of 166 dwelling units, which shall include an open market (non-age restricted), residential subdivision containing single family detached residences and townhouse units with no more than 95 townhouse units. Market changes may cause Matrix to develop the Property entirely as single family detached dwellings with no townhouse units. Although the sketch plan for Matrix prepared by Taylor, Wiseman and Taylor dated October 25, 2013 ("Plan") depicts a 166 unit development (with a mix of single family detached dwellings and townhouses), the parties agree that the number of each housing unit may change. Therefore, and notwithstanding anything to the contrary contained herein, the parties agree that the Property shall be developed in substantial conformity with the Plan and with the following terms and physical conditions remaining fixed: the total number of dwelling units at 166 with no more than 95 townhouse units; the impact on steep slopes; the open space; the connection points to exterior road systems; the turning movement restrictions; and the protected buffer areas (together the "Fixed Terms"). For the purposes of this Agreement, the Plan, as described in this paragraph may be modified except for those certainties contained in this Agreement shall be referred to as the "Settlement Plan." The Settlement Plan is made a part of this Agreement and attached hereto as Exhibit "C." In addition, the parties acknowledge that the Property may be developed in accordance with the Uniform Planned Community Act or the Condominium Act and may be designed in a master plan-type procedure with varying phases.

2. Subdivision and Land Development Procedure. Matrix may proceed with an application to develop the Property in accordance with and in furtherance of this Agreement by preparing and filing preliminary and/or final subdivision and land development plans (“PFSLD Plans”) with the Township. The PFSLD Plans shall be in substantial conformity with the Settlement Plan and in strict compliance with the terms of this Agreement. The development of the Property shall be contained within the center of the Property as shown in white on the Settlement Plan (see Exhibit “C”); however, in no event, shall the steep slopes be disturbed in excess of what was shown to the Zoning Hearing Board at the public hearings as further discussed in Paragraph 3.j. below. Township agrees to process the PFSLD Plans and any revisions thereto in good faith and will review and process the PFSLD Plans in a single approval process so that Matrix shall not be required to obtain a separate Preliminary Plan approval (as defined in the Township’s Subdivision and Land Development Ordinance (“SALDO”)) prior to submitting Final Plans for review and approval. Instead, if Matrix chooses to combine the Preliminary and Final Plan applications and reviews into one submission, the Township shall consider both at the same time and, if warranted, grant Preliminary and Final Land Development Approval. Nothing herein should be construed to limit the authority of the Township to impose reasonable conditions upon any PFSLD Plan approval. “Reasonable conditions” shall mean any such conditions which do not reduce the density depicted on the Settlement Plan. The Township hereby grants those waivers from the Township SALDO, which are enumerated on the Settlement Plan under the heading “Waivers Granted.” In addition, the Township agrees to grant (during the Subdivision and Land Development process) such other waivers as shall be necessary to implement the Fixed Terms except for any waivers which, in the reasonable opinion of the Township Engineer, would result in an adverse impact upon the public health, safety or welfare. Matrix may request additional waivers not enumerated herein during the review of the PFSLD

Plans. Notwithstanding what is shown on the Settlement Plan and unless waived during the review and approval of the PFSLD Plans, Matrix shall install sidewalks along the entire frontage of Asbourne Road (West to East –meaning to the left of the intersection with Oak Lane Road and to the right) and then continuing North ending at Jenkintown Road, as shown on the Settlement Plan (see Exhibit “C”).

3. **Zoning Requirements.** Matrix shall have the right to develop the Property in substantial conformity with the Settlement Plan and this Agreement, without further zoning approvals or zoning variances now or hereafter required by the Zoning Ordinance, for a period of seven (7) years from the date of the Court Order approving this Agreement. However, the seven (7) year period shall be tolled for the duration of: any appeal of any approval or permit relative to the development of or construction on the Property, any legal maneuver or filing of any sort that interferes with the commencement or completion of the development of or construction on the Property or while a moratorium or prohibition of any sort is pending until such appeal(s), maneuver(s), or filing(s) is/are finally adjudicated or said moratorium or prohibition is lifted. Matrix waives the application of Act 46 of 2010 and Act 87 of 2012 to extend the validity of this Agreement and the Settlement Plan. The variances previously granted by the ZHB in the ZHB Detailed Decision are incorporated herein by reference as though set forth at length. The parties hereby agree that no further zoning relief, including but not limited to variances, is necessary to develop the Property in compliance with the Settlement Plan and this Agreement. The parties further agree that the following requirements shall govern the development of the Property and shall supersede any contrary requirements of the Zoning Ordinance, if any:

- a. **Dwelling Unit Setback.** No residential dwelling units shall be permitted to be constructed within one hundred and forty (140) feet of the perimeter of the Property with road frontage.
- b. **Clubhouse Facility.** Matrix shall not be required to construct a clubhouse facility in connection with the development of the Property.
- c. **Buffers.** Matrix shall preserve the existing mature trees on the perimeter of the Property, unless it is determined that certain trees cannot or should not be preserved due to age, species, condition or the development of the Property.
- d. **Landscaping.** Condition #6 of the ZHB Detailed Decision (see p. 34 of Exhibit "B") shall be amended and replaced with a condition that requires Matrix to install plantings within the exterior Buffer areas as illustrated on the Settlement Plan (see Exhibit "C") with 75% of the trees measuring a minimum of 4" – 5" DBH at the time of planting.
- e. **Parking.** There shall be no maximum parking ratio applicable to the development of the Property, but the impervious coverage limitations of 55% of the Property and open space limitations of 45% of the Property shall apply with due credit for the Open Space to be conveyed to the Township as set forth below. The ability to include the Open Space applies only to the development contemplated herein.
- f. **Open Space.** In order to facilitate development of the Property in accordance with the Settlement Plan, the parties acknowledge that the Township will not require open space in excess of the open space shown on the Settlement Plan. Matrix shall transfer 33± contiguous acres of open

space identified on the Settlement Plan colored in green and labeled "Open Space limits" (the "Open Space") (see Exhibit "C") to the Township at such time as the first land development and financial security agreements are funded by Matrix. The Open Space shall continuously be used exclusively for the public for recreation, public trail, public access park land, open space and/or natural resources conservation. The Open Space shall not be built upon by Matrix at any time, except in accordance with the easement referred to below in Paragraph "m" (i.e., stormwater management facilities and utilities and as otherwise provided for herein). Matrix shall also pay One Hundred Fifty Thousand Dollars (\$150,000) to the Township as a contribution towards future maintenance of the Open Space ("Maintenance Fund"). The Maintenance Fund shall be paid to the Township by Matrix at such time as the first land development and financial security agreement is funded by Matrix. The parties shall execute and record an access easement to the existing trail in the Open Space in favor of the Township and the public within 90 days of the execution and court approval of this Agreement, providing access to the trail through the Open Space from a point along Jenkintown Road to the point at the pedestrian bridge which is to remain. The access easement shall provide that the easement expires if approval of the PFSLD Plans is not granted within 180 days of their submission. The Township shall obtain insurance coverage for the trail described above and name Matrix as an additional insured on such insurance coverage. Matrix shall be fully responsible for maintenance of the Open Space in accordance with the

Township Property Maintenance Code until at least seventy-five percent (75%) of the residential dwellings constructed on the Property have been sold and occupied. In the event not already constructed, Matrix shall escrow for and construct a pedestrian trail and bridge as depicted on the Settlement Plan as part of the public improvements in the initial phase. The pedestrian trail shall be paved where it is located within ninety (90) feet of the Tookany Creek. The pedestrian trail shall be constructed of natural materials or macadam where it is more than ninety (90) feet from the Tookany Creek, the choice of which type of construction material shall be Matrix's.

- g. **Maintenance Access.** Two small, paved areas, depicted on the Settlement Plan, shall be constructed by Matrix and shall provide maintenance access to the Open Space from Ashbourne Road and from Jenkintown Road for mowers and other powered equipment. An existing maintenance access in the southwest corner of the Open Space off of Mulberry Lane and the one in the northwest corner off of Tookany Creek Parkway shall remain.
- h. **Pedestrian Access.** Pedestrian access to the trail through the Open Space depicted on the Settlement Plan shall be constructed by Matrix at points depicted in the Settlement Plan: (1) adjacent to Ashbourne Road across from its intersection with Hanes Road; and (2) along Jenkintown Road as depicted on the plan. The materials to be used for constructing the trail shall be determined during the subdivision and land development process.
- i. **Trees.** Matrix has removed 3 dead trees within the Open Space area at the time this Agreement is executed. Matrix agrees to remove additional

trees after the PFSLD Plans are recorded and the Open Space transferred to the Township, but is not obligated to spend more than \$50,000.00 on all tree removal within the Open Space. The cost of removing the 3 trees referred above shall be credited against the \$50,000.00. Receipts shall be provided to the Township upon request.

- j. **Steep Slopes.** Disturbance of steep slope areas shall be no greater than what was presented at the ZHB hearings as confirmed by a licensed professional engineer.
- k. **Lines and Grades Plans.** Applicant shall submit Lines and Grade Plans, compliant with the SALDO for areas of disturbance only, as part of Matrix's request for PFSLD Plan approval. This shall replace Condition #3 of the ZHB Detailed Decision (see p. 33 of Exhibit "B").
- l. **Bus Shelters.** Matrix shall provide bus shelters at the three bus stops on Ashbourne Road at Croyden Road, Boyer Road and Ashmead Road.
- m. **Easement.** Matrix and the Township shall execute a mutually agreed upon easement agreement which provides that Matrix or its successors shall be fully responsible for the construction, maintenance, replacement and repair of any and all stormwater conveyance facilities and utilities related to the development of the Property (including sanitary sewer conveyance facilities) including, but not limited to, reseeding and regrading of areas of the Open Space disturbed by Matrix in accordance with the foregoing easement agreement, which are constructed or installed within the Open Space. Notwithstanding the foregoing, Matrix shall be permitted to offer a deed of dedication to the Township for the completed

and approved sanitary sewer facilities within the Open Space without responsibility for future maintenance if the deed of dedication is accepted by the Township.

Matrix and the Township shall also execute a mutually agreed upon easement agreement which provides that the Township shall have a 50' wide permanent easement through the Open Space ("Permanent Easement Area") and a temporary easement area for the construction of two temporary construction areas, one within the Open Space, the other located between Tookany Creek and Tookany Creek Parkway with a construction entrance from Tookany Creek Parkway as more fully described on a Plan attached hereto as Exhibit "D" ("Temporary Construction Easement Areas"), for the construction of a sewer line referred to as the Sewer Interceptor "A" ("Sewer Line"). The Township shall include an invert and a short stub of a pipe for future connection by Matrix at Manhole #50 as part of the Sewer Line work. The Township hereby obligates itself to install the Sewer Line and permit connection by Matrix of the 166 units referred to herein; provided however, that Matrix shall be solely responsible for all costs associated with connecting to the Sewer Line, including but not limited to, the cost of constructing and maintaining the sewer line through the Open Space to connect the 166 units at Manhole #50 (the "Conveyance Line") as well as maintenance of the invert and short stub and the costs referred to in Paragraph 11 of this Agreement. It is anticipated that the Township shall begin construction of

the Sewer Line in April 2015 but the timing of construction of the Sewer Line is solely within the discretion of the Township.

The easement agreement shall be in a form that is commercially acceptable, that is reasonably acceptable to Matrix's mortgagor or potential mortgagor and shall at a minimum include the following terms and conditions:

1. The Township shall be obligated to construct the Sewer Line.
2. The Township shall be obligated to maintain and repair the Sewer Line; Matrix shall be responsible to construct and maintain the Conveyance Line and the connection between the short stub and the Conveyance Line, and to maintain the invert and short stub.
3. The Permanent Easement Area and the Temporary Construction Easement Areas (collectively "Easement Areas") shall be re-vegetated with grass and Matrix shall not be responsible for any cleanup nor any restoration except for cleanup and restoration (if any) in connection with the construction and maintenance of the invert, short stub and Conveyance Line. Neither the Township nor Matrix shall be responsible for any tree replacement within the Easement Areas. Matrix shall utilize reasonable efforts to avoid removing trees within the Open Space when constructing the Conveyance Line
4. The Township shall indemnify and hold Matrix harmless relative to the Township's use of the Easement Areas.
5. Matrix shall be listed as an additional insured in Township's insurance policies for Sewer Line construction at a commercially reasonable amount.
6. Matrix shall be permitted to do work in the Easement Areas, including but not limited to, the installation of the walking trail and the discharge of storm water which discharge shall be reviewed and approved by all applicable governmental agencies, prior to conveyance of the Open Space to the Township and none of which shall interfere with the Township's use of the Permanent Easement Area, the Temporary Construction Easement Areas nor the Township's use of the Open Space.

- n. **Pedestrian Bridges/Permits.** Matrix shall remove several pedestrian bridges as depicted on the Settlement Plan (Exhibit "C"). To the extent necessary to accomplish same, the Township acknowledges that Matrix

shall be entering the floodplain and the riparian corridor to do so. This paragraph shall not relieve Matrix of the obligation to timely obtain a demolition permit(s) and a building permit from the Township and all necessary permits from DEP and other outside agencies (if necessary) to reconstruct the designated pedestrian bridge and remove the other pedestrian bridges.

- o. **Timing of Enumerated Improvements.** The pedestrian trail in the Open Space, the landscaping to be installed in the exterior Buffer Area, the construction of the pedestrian bridge, the removal of all other pedestrian bridges, the bus shelters and the pedestrian access points referenced above, shall all be completed by Matrix before Matrix shall be entitled to a building permit which would permit construction of its 84th unit.

4. **Access to Development.** The primary entrance to the Project shall be in the location depicted on the Settlement Plan to create a four-way intersection with Ashbourne Road and Oak Lane Road. The entrance shall be designed to be perpendicular to Ashbourne Road notwithstanding the design shown on the Settlement Plan (see Exhibit "C"). A second means of access shall be provided to the Property at Boyer Road, in substantially the location depicted on the Settlement Plan. The parties acknowledge and agree that the secondary access shall be limited to right-turn-in-only and right-turn-out-only unless otherwise designed by the Pennsylvania Department of Transportation.

5. **Demolition of Existing Buildings.** During the course of construction Matrix shall apply for all applicable permits and demolish all of the existing buildings on the Property.

6. **Building Materials.** The exterior finishes of the houses shall be in keeping with the stone and brick houses in the neighborhood and shall be materials of same or greater quality as stone veneer, cementitious-like siding or siding of natural materials (not vinyl).

7. **House Orientation.** No rear of a house shall face Ashbourne Road. The parties agree that angled houses that could be situated in the lots as shown on the Settlement Plan (see Exhibit "C") are acceptable.

8. **Compacted Fill.** The bottom of the foundation footing for all structures (including building, retaining walls, etc.) within the Property shall be on subgrade competent to support the load being imposed.

9. **Fees.** Matrix shall not be required to pay any maintenance fees or recreational use fees except those referenced above. Matrix shall be responsible to pay all other costs and expenses of subdivision and development including, but not limited to routine land development application fees, the traffic improvements discussed below (see paragraph 13 below), building permit fees, required escrows including, but not limited to, engineering review expenses, and to incur all costs, expenses and fees required by the Township's standard land development and financial security agreement. These fees shall not include sewer connection and EDU fees as Matrix's obligations for these fees are set forth in paragraph 11 below.

10. **Outside Agency Permits.** The parties shall reasonably cooperate with Matrix in obtaining highway occupancy permits, approval of planning modules, NPDES permits, water quality management permits, and any other permits from regulatory agencies having jurisdiction over the development of the Property.

11. **Sewage Capacity.** The Township acknowledges that in accordance with the letter dated September 10, 2007, Matrix has paid for sufficient sewer capacity (EDUs) to service the Property. Any forthcoming credit or refund to Matrix for excess EDUs shall be for the

amount of the purchase price in 2007 only, without interest. Matrix shall apply, if not already received and only if required, for sewer planning modules and obtain approval of same from DEP prior to applying for a building permit from the Township. This Agreement does not relieve Matrix of any responsibilities for any and all sewer inspection fees, sewer rentals, and Right-of-Way Permit Application Fees (\$50 per street opening and inspection fee) which may have to be constructed or incurred in order to provide sewage service to the Property.

12. **Sales.** Matrix shall not lease any of the residential units. The residential units shall be for sale only. However, any subsequent purchaser that is (1) not a related entity (2) not an entity consisting of Matrix's principals and (3) is not a successor or assignee of Matrix, may lease an individual unit.

13. **Traffic Improvements.** Matrix will install those traffic improvements offered at the ZHB hearings, the details of which will be worked out during the review of the PFSLD Plans.

14. **Court Approval.** This Agreement shall be submitted by Matrix, ZHB, Township, and CC4A to the Court of Common Pleas of Montgomery County with a request that the provisions of the Agreement be entered as an Order of the Court in full and final settlement of all issues raised by the appeals. This Agreement is conditioned upon the issuance of Court Approval. It shall be entered on the docket of Case No. 2011-06678 and No. 2011-17493 with the Court retaining jurisdiction over the matters.

15. **Conflicts.** Where this Stipulation and Settlement Agreement conflicts with the ZHB Notice of Decision and/or the ZHB Detailed Decision, this Stipulation and Settlement Agreement shall control.

16. **Successors.** This Agreement shall be binding on and inure to the benefit of the parties hereto, their grantees, heirs, successors, and assigns. Although Matrix is the legal owner

of the Property, the obligations of Matrix contained herein are intended to be binding on any and all subsequent owners of the Property, if not Matrix, and are not to be interpreted as personal obligations of Matrix. With regard to Paragraph 3.M only, Matrix's successors shall include the homeowner's association created by Matrix or its successor in interest.

17. **Counterparts.** This Agreement may be signed in counterparts with the same force and effect as if all the parties had executed the same original of this Agreement.

IN WITNESS WHEREOF, Matrix, Township, ZHB, and CC4A and their respective counsel, have executed this Agreement as of the _____ day of _____, 2014, with intent to be legally bound.

Attest:

Matrix Ashbourne Associates, L.P.

By: _____

Hamburg, Rubin, Mullin, Maxwell & Lupin P.C.

Christen G. Pionzio, Esquire

Cheltenham Township

Witness

Wisler Pearlstine, LLP

By: _____

**Joseph Bagley, Esquire
Solicitor to Cheltenham Township**

Cheltenham Township ZHB

Amy Fan

Witness

Carol M. Lauchmen, P.C.

By: *Carol M. Lauchmen*

**Carol M. Lauchmen, Esquire
Solicitor to Cheltenham Township ZHB**

CC4A

Witness

By: _____

David C. Onorato, Esquire

EXHIBIT "A"

Ballard Spahr LLP

1733 Market Street, 31st Floor
Philadelphia, PA 19103-7499
TEL: 215.664.8300
FAX: 215.864.8999
www.ballardspahr.com

Neil Sklaroff
Direct: 215.864.8514
Fax: 215.864.8999
sklaroffn@ballardspahr.com

February 15, 2011

VIA FACSIMILE AND REGULAR MAIL

Peter S. Friedman, Esquire
Friedman, Schuman, PC
101 Greenwood Avenue, Fifth Floor
Jenkintown, PA 19046-2636

Re: **Cheltenham Township Zoning Hearing Board -- Appeal No. 3336**

Dear Mr. Friedman:

On February 14, 2011, the Cheltenham Township Zoning Hearing Board voted to take the following actions with regard to your Application to Zoning Hearing Board for Zoning Relief, referenced as Appeal No. 3336:

The Zoning Hearing Board has granted the following relief:

1. a variance from the rules and regulation of the "Floodplain District" as outlined Article XXI, Section 295-156 to allow construction or replacement of the existing 8" T.C. Sanitary Sewer Line (if required) within the 100 Year Floodplain Area;
2. a variance from rules and regulations of the "Steep Slope Conservation District" as outlined in Article XXII, Section 295-167 to allow the construction of free-standing structures, building and retaining walls, internal accessways, driveways, parking areas, swimming pools, sanitary sewers, stormwater management facilities and other underground utilities and landscaping;
3. a variance from the rules and regulations of the "Steep Slope Conservation District" outlined in Article XXII, Section 295-168, to allow a variance to be granted for the development without first meeting the requirement to submit plans conforming to the stated Lines and Grades Plan requirements;
4. a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.1 to permit an Age Restricted Development;

DMEAST #13396910 v1

5. a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.3 to permit a clubhouse with common areas and meeting rooms, indoor and outdoor recreational facilities and maintenance and security facilities;

6. a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.3 to permit a swimming pool for the residents of the Age Restricted Community only;

7. a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.a. to allow sanitary sewer facilities, if required, within the floodplain;

8. a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.d. to allow development within areas having a slope of 15% or greater;

9. a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.e. to allow sanitary sewer facilities, if required, within the Riparian Buffer Areas; and

10. variances from the rules and regulations of the "Preservation Overlay District" as outlined in Article XXIV, Sections 295-187, 295-188 and 295-189 only.

The Zoning Board has, in addition, taken the following actions:

1. denied the appeal of the determination of the Zoning Officer and/or Township Engineer regarding man-made steep slopes as provided in Article XXII, Section 295-164.B.2.;

2. denied the request for a determination that the Lines and Grades Plans as submitted with the Application or as revised during the course of the hearings substantially conforms with the requirements set forth in Article XXII, Section 295-168;

3. denied the request for a determination that the number of parking spaces shown on Applicant's plans are not in excess of the maximum permitted under Article XXIX, Section 295-221.F.;

4. denied the request for a variance from the rules and regulations of Article XXIX, Section 295-221.F. to allow parking spaces exceeding 120% of the minimum required parking spaces;

5. denied the request for variances from the rules and regulations of the "Preservation Overlay District," as outlined in Article XXIV, Section 295-190; and

6. denied the request for an interpretation that the rules and regulations of the "Preservation Overlay District," as outlined in Article XXIV, Section 295-187 *et seq.* are not applicable to this Application.

The above grants of zoning relief are subject, however, to the following conditions:

1. At applicant's expense, the Township shall direct a third-party professional geotechnical engineer, acceptable to the Township, to conduct, based upon an adequate number of soil borings, a comprehensive Geotechnical Investigation and Analysis (the "Analysis"). The Analysis shall be performed over the entire development footprint to determine the suitability of the site's soils for the proposed development and the loads to be imposed thereon. The Analysis shall document findings and set forth whatever soil remediation and/or construction methods should be taken to prevent excessive settlement, slope failure and other adverse effects to the maximum practicable extent. The Analysis shall be subject to the review and approval of the Township Engineer. Applicant shall thereafter follow the soil remediation measures and the construction methods as directed by the Township Engineer.

2. The bottom of the foundation footing for all structures (including building, retaining walls, etc.) within the development shall be on a level either a minimum of three (3) feet below the existing pre-development grade or on subgrade competent to support the load being imposed, whichever level is lower. No pile footings shall be permitted.

3. Applicant shall submit Lines and Grades Plans, compliant with no standard less than the Zoning Code, as part of Applicant's submission for preliminary or final land development approval.

4. The development may be built in stages. However, the following infrastructure improvements shall be completed with the first stage: naturalization of the property including the return of portions of the property to a natural state, the allocation of property to public use and the other features of the development plans described by applicant's land planner.

5. No building, including, but not limited to, lots 67, 68, 69 and 70 as illustrated on Exhibit A-26.1, shall have the rear elevation facing Ashbourne Road.

6. 75% of the trees planted on the development shall be a minimum of 4" – 5" DBH at the time of planting, as illustrated on Exhibit A.3, dated July 8, 2010.

Peter S. Friedman, Esq.
February 15, 2011
Page 4

7. Applicant shall provide bus shelters at the three bus stops on Ashbourne Road at Croyden Road, Boyer Road and Ashmead Road.

8. Unless otherwise prohibited by the decisions of the Zoning Hearing Board or by application of lawful federal, state or local regulations, the development shall be constructed in substantial conformity with the record, including testimony and exhibits, established by the Applicant and its witnesses during the course of the hearing in this appeal.

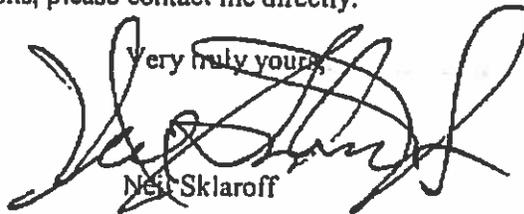
The Zoning Hearing Board will hereafter issue formal written findings of fact and conclusions of law, and appropriate parties will have 30 days from the issuance of those in which they may elect to file an appeal to the Montgomery County Court of Common Pleas. Applicants who elect to take action premised on the decision of the Zoning Hearing Board in advance of the expiration of the appeal period may do so at the applicant's own risk.

Please note that, pursuant to the Article XXVII, Section 295-210, where an application for special exception or variance has been refused or denied by the Zoning Hearing Board, the application may not be renewed within a period of one (1) year, unless there has been a change in conditions and unless the renewed application distinctly sets forth the changed conditions.

In addition, pursuant to Article XXVII, Section 295-211, unless the Zoning Hearing Board stipulates otherwise in its orders and decision, all decisions, grants of zoning relief and reasonable accommodations shall be effective for a period of two (2) years, after which time, if the applicant has failed to commence the use or obtained a building permit, the decision, grant of relief or reasonable accommodation shall cease and be of no effect.

Moreover, a building permit is required for any construction permitted or allowed in accordance with the above decisions.

If you have any questions, please contact me directly.

Very truly yours,

Neil Sklaroff

NS/lb

cc: David Onorato, Esquire
David S. Lynch
David Kraynik
Zoning Hearing Board

EXHIBIT "B"

**ZONING HEARING BOARD
OF CHELTENHAM TOWNSHIP
MONTGOMERY COUNTY, PENNSYLVANIA**

APPEAL NO. 3336

Applicant: Matrix Ashbourne Associates, L.P.

Subject Premises : 1100 Ashbourne Road ("Ashbourne Country Club"
Cheltenham, Pennsylvania

Owner of Premises: Matrix Ashbourne Associates, L.P.

Nature of Application: Applicant appeals from the determination of the Zoning Officer finding that development of the Ashbourne Country Club for age-restricted residences as proposed would violate the Cheltenham Zoning Ordinance of 1929, as amended, and, specifically, Article XXII, Sections 295-156, 164-168, regulating development in a floodplain and in areas designated as having steep slopes, Article XXIX, Section 295-221, regulating the provision of parking areas, Article XXIII, Section 295-242, regulating development in the Age-Restricted Overlay District, and Article XXIV, Section 295-241, regulating development in a Preservation Overlay District.

Applicant seeks the following zoning relief:

- (1) a variance from the rules and regulations of Section 295-156 to allow the replacement of an existing 8" T.C. Sanitary Sewer Line, if required, within the 100 Year Floodplain Area;
- (2) a decision that the determination of the Zoning Officer and/or Township Engineer pursuant to Section 295-164(B)(2) with regard to man-made steep slopes was in error;
- (3) a variance from the rules and regulations of Section 295-167 to allow the construction of free-standing structures, buildings and retaining walls, internal access ways,

driveways, parking areas, swimming pools, sanitary sewers, stormwater management facilities, other underground utilities and landscaping in areas designated as having steep slopes;

- (4) a decision that the Lines and Grade Plans submitted with the Application for Zoning Relief substantially conforms with the Line and Grade Plan(s) requirements set forth in Section 295-168;
- (5) in the alternative to (4) above, a variance from the rules and regulations of Section 295-168 to allow for the submission of plans that do not conform to requirements for Line and Grades Plans;
- (6) a decision that the number of parking spaces shown on Applicant's plans do not exceed the maximum permitted pursuant to Section 295-221(F);
- (7) in the alternative to (6) above, a variance from the rules and regulations of Section 295-221(F) to allow greater parking (568 parking spaces) instead of the maximum permitted of 120% of the required parking spaces;
- (8) a special exception to Section 295-242(B)(1) to permit an age-restricted development;
- (9) a special exception to Section 295-242(B)(3) to permit a clubhouse, meeting rooms, common areas, indoor and outdoor recreational facilities, and maintenance and security facilities appurtenant to an age-restricted development;
- (10) a special exception to Section 295-242(B)(3) to permit a swimming pool for the residents of an age-restricted development;
- (11) a variance from the rules and regulations of Section 295-242(B)(8)(a) to allow sanitary sewer facilities, if required, within the

floodplain;

- (12) a variance from the rules and regulations of Section 295-242(B)(8)(d) to allow development associated with an age-restricted development in areas designated as having a slope of 15% or greater;
- (13) a variance from the rules and regulations of Section 295-242(B)(8)(e) to allow sanitary sewer facilities, if required, within areas designated as Riparian Buffer Areas;
- (14) a variance from the application of all provisions of Article XXIV, the Preservation Overlay District, to allow the development of the proposed age-restricted development; and
- (15) in the alternative to (14) above, a decision, pursuant to Section 295-241, that the rules and regulations of the Preservation Overlay District do not apply to proposed age-restricted development.

Date and Place of Hearings:

September 14, 2009, January 11, 2010, March 8, April 12, 2010, April 20, May 10, June 8, June 21, July 13, July 27, August 9, September 14, October 14, November 23, December 14, 2010, and January 10, 2011

Curtis Hall
Church Road and Greenwood Avenue
Wyncote, Pennsylvania

FINDINGS OF FACT

1. Applicant Matrix Ashbourne Associates, L.P. ("Applicant" and "Matrix") is the owner of the premises known as 1100 Ashbourne Road, Cheltenham, Pennsylvania (the "Property" and "Ashbourne").

2. Prior to the holding of hearings in this matter, advertisements, noting the time and place of the hearings and the contents of the appeal, were placed in a newspaper of general circulation.

3. The Property is located in an R-1 Residence District and is improved by a number of buildings that were formally used in the operation of a golf course and country club.

4. In advance of the hearings and during the course of the hearings, Matrix and others filed with the Zoning Officer or presented to the Zoning Hearing Board a number of documents. Because many of the documents reflected duplication or minor revisions that the parties considered inconsequential, the parties agreed to a list of official exhibits that members of the Zoning Hearing Board would have available in deliberating on the requests for zoning relief. The following documents were derived from that list and were made a part of the record (numbers in parenthesis were original exhibit numbers):

ZHB-1. a listing of exhibits;

ZHB-2. copies of the legal notices with regard to the holding of hearing;

ZHB-3. an Application to the Zoning Hearing Board, referenced as Appeal No. 3336 with addendum (the "Application");

ZHB-4. a location map marked as Real Estate Registry Block 61, illustrating the location of the property;

ZHB-5. MEA Land Record Parcel Information on Property dated May 26, 2010;

ZHB-6, 6.01, 6.02. Building and Zoning Committee recommendation letters dated June 8, 2010, July 9, 2009 and September 22, 2009;

ZHB-7. Revised Addendum to Application dated August 14, 2009 (14.1,,2.,3);

ZHB 8. Age-Restricted Overlay District Ordinance No. 215A (10.1 – 10.11);

ZHB 9. R-1 Residence District requirements, Chapter 295, Article III, Cheltenham Code (11.1 – 11.4);

ZHB 10. letter from Peter Friedman, Esquire, dated October 4, 2009, amending the Application (17.1 – 17.2);

ZHB 11. letter from Peter Friedman, Esquire, dated February 19, 2010, amending the Application (18.1 – 18.2)

ZHB 12. Revised Addendum to Application, dated May 10, 2010 (57.1 – 57.2);

ZHB 13. O'Neil Review Letter, dated June 1, 2010 (60.1 – 60.2);

ZHB 14. Amended Zoning Plan prepared by Taylor Wiseman & Taylor, including 2 sheets, prepared August 14, 2009 and last revised May 3, 2010 (61.1 – 61.2);

ZHB 15. Amended Steep Slopes Plan prepared by Taylor Wiseman & Taylor, dated August 14, 2009 and last revised May 3, 2010 (62);

ZHB 16. Current Site Plan submitted June 2, 2010 (63);

ZHB 17. Site Plan – Conceptual Phasing Plan (64);

ZHB 18. Letter from David Onorato, Esquire, dated November 3, 2010 regarding request for relief (66);

ZHB 19. Letter from Peter Friedman, Esquire, dated November 23, 2010 with attachments (87);

A-1.1, 1.2. Amended Zoning Plan, comprised of 2 sheets and dated August 14, 2009, and last revised June 7, 2010;

A-2.1, 2.2. curriculum vitae of Stuart Appel;

A-3.1 – 3.13, 3.15 – 3.25. Plans, photographs and renderings of Ashbourne Country Club prepared by WellsAppel for Matrix Development Group;

A-4. Architectural Review including photographs and design renderings prepared by Laura Staines Giardino AIA, PP of L&M Design LLC;

A-5. certification letter from Stuart D. Appel, FASLA, PP;

A-6. curriculum vitae of Laura Staines Giardino AIA PP LEED AP;

A-7. Decision of the Zoning Hearing Board at Appeal No. 3081;

A-8. curriculum vitae of Joseph J. DeSantis, P.E., PTOE;

A-9. Traffic Impact Study for Ashbourne Country Club;

A-10. Review letter prepared by F. Tavani and Associates, Inc. and dated April 26, 2010;

A-11. Response to Comments letter prepared by McMahon Transportation Engineers and Planners and dated May 25, 2010;

A-12. letter from F. Tavani and Associates to David Kraynik, dated May 28, 2010;

A-13.1 – 13.4. Revised illustrative sections for Ashbourne Country Club prepared by WellsAppell;

A-14. curriculum vitae of Mark Mayhew, P.E.;

A-15.1 – 15.10. series of plans for Ashbourne County Club prepared by Taylor Wiseman & Taylor and dated March 25, 2010;

A-16.1 – 16.24. booklet of reduced and color rendered plans prepared by Taylor Wiseman & Taylor;

A-17. letter from Mark S. Mayhew, P.E. to David M. Lynch, PE, PLS dated July 6, 2010;

A-18.1 – 18.23. memorandum from David M. Lynch, P.E., P.L.S. to the Zoning Hearing Board and dated July 26, 2010;

A-19.1 – 19.5. plans depicting steep slopes prepared by Taylor Wiseman & Taylor and dated September 2, 2010;

A-20. curriculum vitae of Erick W. Hetzel, AICP, LEED AP;

A-21. Fiscal Impact Analysis for Ashbourne Country Club Residential Development prepared by Glackin Thomas Panzak and dated March 25, 2010;

A-22. supplement to Fiscal Impact Analysis;

A-23. Soil Erosion and Sediment Control Plan dated October 5, 2010;

A-24. Exhibit A-23 in reduced version;

A-25. Cross Section Plans last revised October 5, 2010 and consisting of 10 sheets;

A-26. Lines and Grades Plan;

A-27. LEED for Home Checklist;

A-28.1 – 28.5. photographs of sample materials board

A-29. 30 year Limited Warranty for Hardiplank Board;

A-30. Proposed Finding of Fact, Conclusions of law and Memorandum of Law submitted by Matrix Ashbourne Associates, L.P.;

P-1. letter from David M. Lynch P.E., P.L.S. to Mark S. Mayhew, P.E. dated July 21, 2010;

P-2. curriculum vitae of John O. Chambers, Jr., P.E., R.S.;

P-3. "Roads and Streets, Shallow Excavations, and Lawns and Landscaping" for Montgomery County identifying Ashbourne County Club from the Natural Resources Conservation Service and dated July 22, 2010;

P-4. Stormwater Concept Plan for Ashbourne County Club prepared by Taylor Wiseman & Taylor and annotated by John Chambers;

P-5. letter from David C. Onorato to ZHB Solicitor dated November 3, 2010, in support of objection to several of applicants' exhibits; and

P-6. Proposed Findings of Fact, Conclusions of law and Brief of Protestants submitted by CC4A;

5. Peter Friedman, Esquire, represented Matrix throughout the hearings.

6. CC4A is an unincorporated association of individuals which, along with certain named individual members, objected to the Application and participated in the hearings, Matrix having stipulated to the standing of CC4A and certain members as protestants (hereafter, "objectors"). David C. Onorato, Esquire, represented objectors throughout the hearings.

7. The Property includes approximately 104 acres bordered in part by Ashbourne Road, Jenkintown Road and Tookany Creek Parkway.

8. The Property was previously used for a golf course, clubhouse and additional accessory buildings and amenities. The Property's pre-golf course topography was substantially altered by construction and re-grading for the golf course, clubhouse and other features of the golf course.

9. Matrix proposes to develop the Property for an age-restricted community with 70 single-family detached homes and 156 attached single-family homes (clustered in groups of three) (the "Project"). The project includes a central clubhouse and swimming pool. Of the 104 available acres that make up the Property, Matrix proposes to leave approximately 67 acres as open space.

10. The central clubhouse with common areas, meeting rooms, indoor and outdoor recreation amenities and swimming pool is a use customarily incidental to an age-restricted residential community. The Project provides adequate parking for the clubhouse, swimming pool and meeting rooms.

11. In Matrix's design of the Project, of the homes that have frontage along Ashbourne Road, four (numbered 67, 68, 69 and 70 on Applicant's Exhibit A-1, the Amended Zoning Plan) face Ashbourne Road (South) with a rear elevation.

12. In the existing scheme of development along Ashbourne Road and, with few exceptions, throughout Cheltenham Township, the principal public street frontage is addressed by a home's front or side elevation. Matrix's planning expert, Appel, admitted that he was unaware of any existing home in the surrounding developed neighborhoods where the rear of a home faced the street.

13. Mr. Appel testified that the parking requirements in the Age-Restricted Overlay District did not anticipate an age-restricted development of single-family homes. Mr. Appel noted that mention is made of parking lots and the prohibition of parking between a

building and a public street. Mr. Appel testified that the ordinance is premised upon the ability to share parking spaces in a parking lot for multi-family units. There, requiring 1.5 spaces per dwelling is easily accomplished in parking lots where all spaces are open to all residences. In this project, Mr. Appel notes that parking spaces are in driveways which are not available to neighbors.

14. Construction of dwellings with the rear elevation facing the principal public street is contrary to the public interest.

15. The Project includes internal walkways linking the residential areas with the clubhouse and also features public trails through the Property.

16. Age-restricted communities were permitted as a special exception in an R-1 Residence District at the time Matrix submitted its application in accordance with the Age-Restricted Overlay District.

17. The proposed community will be ultimately maintained by a homeowners' association, which will be responsible for maintenance of the access ways, grounds, internal lighting, snow and ice removal, trash collection and, specifically, maintenance of the approximately 67 acres of open space.

18. The Board qualified Stuart Appel as an expert landscape architect and planner. The Board relied, in part, upon Mr. Appel's testimony.

19. Matrix designed the Project to have a principal access at the signalized intersection of Ashbourne and Oak Lane Roads, the current entrance to the country club. Matrix proposes a second egress along Ashbourne Road East (Ashbourne Road turns from a north/south road to an east/west road at the intersection of Ashbourne Road and Oak Lane Road).

20. A network of interior roads provides access within the Project to each of the proposed single-family dwellings, common areas and the clubhouse.

21. Each single-family dwelling will have a two-car garage as well as a driveway that will accommodate two (2) parking spaces. Each residence is set back from the property lines by no less than 122 feet.

22. Matrix proposes best management practices for the treatment of stormwater. Proposed are bio-infiltration swales, water quality basins, and bio infiltration basins which Matrix represents as exceeding the standard for water quality treatment established by the Department of Environmental Protection.

23. Matrix proposes to restore 37 of the 67 acres of open space to natural woodland and meadows.

24. The design and layout of the residences on the property results in a dwelling density of 2.2 per acre, a density which is lower than the density of the surrounding existing residential neighborhoods.

25. Matrix intends the residences to be for sale and not for rent. Purchasers will be limited to those 55 years of age or over.

26. Mr. Appel testified that the proposed age-restricted development will have no adverse effects to the public interests and will be in accordance with the Cheltenham Township Comprehensive Plan. The Comprehensive Plan encourages the development of age-restricted communities.

27. The building coverage for the Project is proposed to be 13.6 acres or approximately 13% of the Property.

28. All buildings are proposed to be set apart by no less than 30 feet.

29. Mr. Appel testified that the proposed lighting and landscaping will comply with the applicable zoning code requirements.

30. The controls governing trash removal and loading areas apply only to the clubhouse, and Mr. Appel testified that the Project is code compliant with regard to those controls.

31. Matrix proposes 116 parking spaces within the rain garden areas, a number which Mr. Appel testified was reasonable and customary for an age-restricted development.

32. Each single-family residence in the Project will have a two-car garage and a driveway that can accommodate two passenger cars.

33. Matrix's architect testified that purchasers of single-family dwellings will have a choice between one-car and two-car garages. However, this testimony is contrary to the testimony of other Matrix witnesses and representations.

34. Article XXIX, Section 295-221(F) limits the maximum number of parking spaces to "[n]o more than 120% of the required minimum parking . . ."

35. Article XXIII, Section 295-245(c)(1) requires, in part, 1.5 parking spaces for each dwelling unit. The Project, as approved and conditioned hereafter, meets the minimum requirements for parking.

36. The Project includes private roadways of 24 feet in width instead of roads of 28 feet in width. Parking is not permitted on roads less than 28 feet in width. The result is an absence of parking along the roadways. Instead, Matrix proposes parking fields that are partially obscured in the landscape and located in rain gardens.

37. Mr. Appel admitted that no home located on Ashbourne Road in the vicinity of the Project does not have the front of the residence face Ashbourne Road. Mr. Appel further agreed that four single-family homes in the Project nearest to Ashbourne Road South face inward toward the central portion of the Project, and Matrix has located the rear of these

residences toward Ashbourne Road South. Accordingly, the rear yards of the four residences are uniquely located between the buildings and Ashbourne Road South.

38. The Board qualified Laura Staines Giardino, AIA PP LEED AP, as an expert in architecture. The Board relied, in part, upon the testimony of Ms. Giardino.

39. Matrix engaged Ms. Giardino to perform architectural services related to the proposed development. Ms. Giardino visited the site and the surrounding neighborhoods, noting, observing and measuring the scale of the neighborhoods, various differences and similarities in the homes surrounding the Property.

40. Ms. Giardino testified that the project team considered the consistency of materials and variations in housing stock in the neighborhoods in arriving at the materials proposed for the Project. Accordingly, Matrix decided on variations in the architecture and in the materials used in the proposed residences.

41. Ms. Giardino testified that the materials proposed for the Project and for the clubhouse are largely sustainable with color choices sympathetic to the neighboring communities.

42. Matrix located the clubhouse and swimming pool at the Property to be centrally located for the benefit of the residents, maintaining a reasonable walking distance from the residences.

43. Ms. Giardino testified that Matrix's choice of materials, placement of windows and doors and architectural design represented a coordinated and unified approach to the development of the Project, which was architecturally in keeping with the surrounding neighborhood.

44. At the hearings, Matrix presented materials representative of those actually to be used in construction of the Project. In addition, Matrix prepared and exhibited a number of color renderings of the proposed Project. Matrix's representatives confirmed that the materials as presented to the Zoning Hearing board are the same materials and color schemes that will be used in the construction of all of the residences.

45. Matrix's proposed entranceways are designed to provide residents and visitors with protections from adverse weather conditions.

46. The Matrix design for the project contains no blank or windowless walls.

47. Various plans for the Project illustrate a network of internal walkways as well as walking trails within the open space. Other outdoor amenities include the clubhouse, swimming pool, rain gardens and outdoor seating at the rain gardens. Each unit, in addition, has a private garden and patio or terrace area.

48. Matrix does not intend to register the Project for LEED certification.

49. Matrix intends to investigate the use of sustainable materials that approach the goals embodied in the LEED certification program and to implement sustainable practices in the construction of the Project.

50. The Board qualified Joseph J. DeSantis as an expert in traffic engineering. The Board relied, in part, upon DeSantis' testimony.

51. DeSantis prepared a traffic impact analysis for the Project. In preparation of the analysis, DeSantis surveyed seven intersections in the community surrounding the Project. DeSantis also developed a trip generation study in order to anticipate the traffic expected to be generated by the Project, which study DeSantis stated was the key to the traffic impact analysis.

52. DeSantis testified that his study was based in part upon statistics derived from data published by the Institute of Traffic Engineers. At morning peak hours, DeSantis said that traffic generated would account for 71 trips entering and exiting the Project. At afternoon peak hours, the Project would generate 87 trips entering and exiting. DeSantis concluded that the traffic generated by the proposed age-restricted development would not be significant.

53. DeSantis also concluded that the traffic impact on individual roadways would be *de minimis*. To the extent that new traffic will impact two intersections, however, DeSantis recommended off-site traffic improvements to ameliorate the impacts at these intersections as well as other actions to improve traffic elsewhere.

54. DeSantis computed the number of required parking spaces for the proposed 226 single-family units to be 339 parking spaces based on a requirement of 1.5 parking space for each dwelling unit. DeSantis computed the zoning code requirement of an additional one parking space for each five dwelling units to add an additional 46 parking spaces. DeSantis added one additional parking space to meet the requirement of one parking space for each full time employee. DeSantis calculated the total required spaces to be 386 parking spaces.

55. Pursuant to the Article XXIX, Section 295-221(F), the maximum number of parking spaces permitted at the Project is 120% of the required parking spaces.

56. DeSantis computed the total number of permitted parking spaces for the Project under Section 295-221(F) to be 442 parking spaces.

57. Matrix proposed 568 parking spaces for the Project.

58. DeSantis offered his opinion that the zoning code's limitation of 120% or 56 additional parking spaces for a total of 442 parking spaces at the Project was not reasonable. DeSantis testified that, in his experience, maximum parking limitations were appropriate for large apartment complex where parking was limited to a large parking lot, given to large expanses of impervious asphalt and excess stormwater run-off leading to environmental issues.

59. Notwithstanding DeSantis' considerable expertise, the Board did not find DeSantis' testimony credible on the maximum parking issue because it was premised on the statement that two-car garages are standard. The statement has no basis in the testimony and was contradicted by common experience and by Giardino's photographs (Exhibit A-4) of residences

in the community which contain no two car garages, numerous one-car garages and several homes with no garages.

60. DeSantis noted that the streets interior to the Project and servicing the carriage homes are "only 24 feet wide," and that the Fire Marshall and DeSantis would recommend against street parking. DeSantis further testified that the proposed 116 guest parking spaces, laid out in groups of five or seven, would provide convenient, close and accessible parking.

61. DeSantis admitted that, where roads are proposed to be 28 feet wide, on-street parking would be available, although he stated that on-street parking would not be advisable.

62. DeSantis also testified that large portions of the development were not provided with guest parking in designated off-street lots. Accordingly, some dwellings do not have close, convenient and accessible guest parking nearby. However, as DeSantis stated, these areas are serviced by streets with widths of 28 feet, allowing on-street parking nearby.

63. If the Project had been designed entirely with roadways of 28 feet in width, on-site parallel parking could be provided on these streets, and such parking would be convenient and nearby for the residents and their guests.

64. DeSantis testified that on-street parking on streets measuring 28 feet wide was common and, in fact, allowed parking on both sides of a street. Given DeSantis' estimate of the density of parking in this Project, he stated that there would be rows of parking on both sides. Parking would be sporadic, but that was the typical workings for a residential street.

65. DeSantis did not consider that the configuration of the Project would allow two cars to be parked in each garage and two cars could be parked in each driveway in making his conclusion about the sufficiency of guest parking.

66. Any deficiency in guest parking represents Matrix's preference and results solely from Matrix's choice to develop the Project with dwellings, all of which have two-car garages, unnecessarily broad curb cuts and driveways, an absence of green front lawns, and narrow streets that prevent and discourage on-street parking. To the extent that the deficiency represents a hardship, such condition is self-imposed.

67. DeSantis testified that it would not be reasonable to design an age-restricted development with one-car garages. The Board did not find this testimony to be credible.

68. The Board qualified Mark Mayhew as an expert in civil engineering. The Board relied, in part, upon the testimony of Mr. Mayhew. Mr. Mayhew and his colleagues at Taylor, Wiseman & Taylor prepared the civil engineering drawings accepted by the Board as Exhibits A-15.1 through A-15.10. Mayhew also prepared an Amended Zoning Plan, included in Exhibit A-1, and a power point presentation, accepted as Exhibit A-16.1 through A-16.10.

69. Mayhew analyzed the areas designated as having steep slopes which are planned to be disturbed in the course of developing the Property for the Project in order to arrive at an opinion as to which areas were man-made and which areas are naturally occurring.

70. Mayhew studied the topography, soils, vegetation and historic photographs and excavated nine test pits in order to identify areas designated as having steep slopes that he considered to have been man-made steep slopes. Based on his analysis, Mayhew testified that much of the areas proposed to be disturbed that were steep slopes were man-made, likely having been created when the golf course was built in the 1920's and, thereafter, as a result of improvements.

71. Mayhew determined the amount of naturally occurring steep slopes amounts to be 0.11 acres or 0.1 percent of the total site area, an amount which Mayhew considered to be an insignificant disturbance.

72. Mayhew acknowledged that the Township zoning ordinances do not distinguish between naturally occurring and man-made slope.

73. Mayhew calculated that the Property has 14.4 acres of man-made steep slopes and that 10.7 acres or 74% of the man-made steep slopes will be disturbed by the proposed construction.

74. Mayhew testified that the proposed grading of areas of steep slopes is required to construct the residences, provide safe grading around residences and roadways and to provide proper stormwater management.

75. With a single exception (only one residence requires disturbance of non-man-made steep slopes), the disturbances are to man-made steep slopes.

76. Mayhew testified that all of the disturbances proposed for steep slopes can be accomplished in a safe manner and that the protections provided by the Cheltenham Township Subdivision and Land Development Ordinance and the Montgomery County Conservation District will ensure that the disturbances are completed in a safe manner.

77. Mayhew testified that the disturbances of areas designated as having steep slopes would result in no negative impact to downstream water courses, no increase in erosion of slopes, no stream siltation, and no soil failure. Mayhew concluded, therefore, that Matrix had met the requirements of Section 295-164(B)(2) to allow the Township Engineer to exempt the Project from the application of the provisions of the Steep Slope Conservation District.

78. The Township Engineer declined to exempt the Project from application of the provisions of the Steep Slope Conservation District, a determination that the Board will not disturb.

79. A substantial portion of the areas designated as having steep slopes at the Property were a result of the construction of the golf course which operated at the Property for more than 80 years. The construction that resulted in the steep slopes included the terracing and creation of the golf course itself, the construction of the clubhouse and auxiliary building and the

parking lots. The resulting steep slopes are not environmentally sensitive areas, which term is directed toward native and naturally occurring physical conditions. Nevertheless, the ordinances are designed to insure that disturbances of any steep slope on the Property be performed in such a manner as to safeguard the surrounding area and to avoid negative impact to downstream watercourses, increases in soil erosion, stream siltation and soil failures.

80. Confining the Project's development to areas which are not designated as having steep slopes would result in severe limitations on reasonable development and result in haphazard design contrary to the public interest.

81. The Project may be developed in an manner that protects the community and Property from injurious slope erosion, soil failure, stream siltation or increase in stormwater discharge and collection notwithstanding widespread disturbances of areas designated as having steep slopes. Matrix submitted an Erosion and Sediment Control Plan, which plan or an alternative must be approved by the Board of Commissioners in the land development approval process.

82. Sixty-four percent of the Property will remain as open space after the Project is completed. Thirty-six percent of the site will be developed with dwelling units, a clubhouse, and roadways.

83. Due to the construction of the golf course and its amenities, the Property, with regard to steep slopes, suffers from unique topographical conditions resulting in hardship to the Property.

84. Development of the Project will not result in disturbances to floodplains, wetlands, water courses and riparian buffers.

85. Areas designated as having steep slopes which are either naturally occurring or man-made and which are not otherwise located in the floodplain, wetlands, water bodies and watercourses and riparian buffers equal 25.69 acres.

86. While Matrix did not compute the amount of steep slopes to be disturbed, all of the areas of disturbance are accurately illustrated on the submitted plans.

87. Reasonable development of the Property cannot occur without relief from the provisions of the Steep Slope Conversation District and the minimum Net Developable Site Area requirement of the Age-Restricted Overlay District.

88. Matrix submitted with its Application a lines and grades plan, which, in Mayhew's opinion, substantially met the requirements of the Zoning Code at Section 295-168(B). Given the large size of the tract, the complexities in completing a lines and grades plan and the many requirements, Mayhew admitted that the lines and grades plans failed to illustrate certain required elements but further concluded that Matrix's submission met the intent of the Zoning Code.

89. The initially submitted lines and grades plan failed to provide topographical contours at two-foot intervals, having provided four-foot intervals. Subsequently, Mayhew provided a plan with topographical contours at two-foot intervals.

90. Mayhew testified that nothing was lost by not providing the additional contours to the lines and grading plans.

91. The submitted plans failed to illustrate elevations for the top of a foundation walls, basement floors, garage floors and first floors.

92. The information from which these elevations could be determined and/or calculated was available in other forms in the submissions to the Township Engineer.

93. The submitted plans initially failed to illustrate the erosion and sediment ("E&S") control plan.

94. While Mayhew testified that it was too early in the development of the Project to establish the elevations and the E&S control plan and that those would be provided fully in the land development approval process, Matrix and Mayhew ultimately submitted an E&S control plan.

95. Objectors' attorney Onorato voiced an objection to the introduction of an E&S plan, claiming it was an amendment to the original application as it was a required submission. The Board did not agree with objectors and allowed the introduction of the new plan.

96. Mayhew disputed the assertion that the E&S Control Plan was needed on the Lines and Grades Plan in order to determine whether development at the Property would have an adverse impact. Nevertheless, when Mayhew finally prepared and submitted an E&S Control Plan, Mayhew testified that it illustrated measures that Matrix would take to minimize erosion and sediment runoff.

97. Mayhew had originally stated that the absence in the plans of a differentiation in soil types would not hamper the Board's ability to review the Project for adverse effect because differences in soil types can be accounted for by E&S measures including the use of different types of silt fence and other measures. Mayhew represented that Matrix had committed to using "super silt fence," diversion swales and other protective measures during the construction period. The subsequent submission of an E&S Control Plan included a designation of soil types at the Property.

98. An existing terra cotta sewer pipe runs through an area identified as flood plain and riparian corridor. The pipe runs between two manholes, one of which is near a bank of the Tookany Creek. While Matrix proposes no work to this pipe in this Application, Matrix has committed to inspecting the pipe at the suggestion of the Township Engineer. In the event that the pipe fails the inspection in the opinion of the Township Engineer, Matrix has agreed to replace the existing pipe with a PVC pipe in exactly the same place as is located the existing pipe. This pipe replacement would require a variance to allow disturbances in the floodplain and stream bank and to assure restoration of both upon completion of the pipe replacement.

99. Replacing the existing pipe will require disturbing the riparian buffer for a distance of 60 to 70 feet, and the area will be restored to its natural pre-existing condition. It is not possible to replace the pipe without the identified disturbances in the floodplain and riparian buffer.

100. In Mayhew's opinion, the proposed pipe replacement is ordinary maintenance and repair that should not require zoning relief, although Mayhew conceded that new construction in the floodplain and stream bank would require variances. Nevertheless, Matrix concedes that it may require a variance in order to re-construct the sanitary sewer pipe in the floodplain.

101. Failure to grant a variance to allow replacement of the sewer pipe if the pipe should fail would result in failure of sanitary sewer drainage system in the central portion of the Project. In order to avoid use of the existing pipe or its replacement, the drainage would have to be relocated elsewhere, resulting in extensive and additional disturbances of steep slopes including excessively steep trenching to accommodate the topography.

102. The area to be developed for each single-family detached home will contain areas designated as having steep slopes. The area to be developed in connection with each building housing three single-family homes will contain areas designated as having steep slopes.

103. Mayhew calculated that the Property includes 14.4 acres of man-made steep slopes, of which 10.7 acres would be developed pursuant to the Project.

104. Mayhew testified that four units facing Ashbourne Road (South) could not be oriented to face Ashbourne Road because they featured walk-out basements, a standard product for builders. Mayhew further testified that the residences could not be re-oriented without also adding roadway.

105. There are no topographical or other unique physical features to the Property which prevent Matrix from designing and developing Ashbourne Road facing units where the rear-facing dwelling are currently proposed at Ashbourne Road (South). No adverse effect to the community would result from additional roadway to accommodate this orientation to Ashbourne Road (South) even if required.

106. The Board qualified Erik Hetzel as an expert in fiscal and community impact studies.

107. Hetzel prepared a fiscal impact statement that states the net annual fiscal impact of the Project comparing municipal revenues to costs, premised upon annual revenues and costs (excluding transfer taxes) to Cheltenham Township and the Cheltenham Township School District. Hetzel concluded that, upon completion and sale of the units in the Project, the Township would experience positive revenue (excess over costs) of \$203,467. The School District would have annual positive revenues of \$1.76 million.

108. Hetzel's analysis is premised upon age-restricted sales, presumed market values of the dwellings and estimates of earned income of anticipated residents. Hetzel's opinions are also based upon the Project being fully completed and each dwelling being sold.

109. In addition, based upon Matrix's anticipated sales prices, Hetzel stated that the Township and the School District will realize revenues generated from transfer taxes on the sale of dwelling units at the Property. Each would receive \$580,000 from the transfer taxes collected on the initial sale of all of the Project's dwelling units. Hetzel stated that the municipal entities could anticipate additional revenue from the yearly turnover of properties that could result in \$28,890 in additional transfer tax revenues, based on a 7.4% turnover of homes in the Project.

110. The Board qualified, David M. Lynch, the Township's director of Engineering, Zoning and Inspections (the Township's Code Officer) as an expert in civil engineering.

111. In reviewing the Project, Lynch developed a measuring scheme to assess the impacts to receiving water bodies of development in steep slopes. Lynch developed the scheme at the direction of the Board of Commissioners' Building and Zoning Committee for its use in reporting the Project's possible zoning and engineering impacts to the Zoning Hearing Board. Lynch determined that any disturbances to an area designated as having a steep slope would necessarily have a zoning impact. In a report to the Board utilizing this measuring technique, Lynch advised the Board that none of the impacts was *de minimis*. Lynch distinguished a zoning impact from an engineering impact, stating that there could be a zoning impact under the governing provisions and not have an engineering impact. Lynch admitted that his "grading system" was not a standard engineering practice and was developed solely to evaluate Matrix' plan of development.

112. Lynch's Level I engineering impacts included areas with slopes less than 15% and small isolated areas with slopes in excess of 15% or 25% so long as the area does not involve an area of drainage to a waterway. Level I engineering impacts are of little concern and include areas not governed by the regulations for a Steep Slope Conversation District.

113. Level 2 engineering concerns included small, isolated areas of steep slopes in a drainage way and areas of "mass" slopes of 15% to 25% and are, to Lynch, of more severe engineering concern. Disturbances in these areas require remediation to avoid erosion into the drainage areas and waterways.

114. Level 3 engineering impacts includes area within stream banks, riparian buffers, floodplains and mass steep slopes of greater than 25%. Level 3 areas represent potential for more severe impacts.

115. In accordance with his three level engineering analysis, Lynch testified that 168 homes – either single-family or clustered – have no or Level 1 engineering impact. Matrix could build these 168 homes with either no or Level 1 engineering impact. However, Lynch testified that development of these 168 homes would likely not avoid Level 2 or Level 3

impacts to areas designated as having steep slopes due to the additional construction involved beyond the homes (i.e. roadways, etc.).

116. Lynch testified that the greater the number of houses developed, the greater the potential impact on steep slopes and the greater impact, in turn, requires a greater need to mitigate construction's impact on steep slopes.

117. All of the engineering impacts can be adequately addressed by erosion and sediment control measures.

118. Development of land disturbs the natural environment. The steeper the grading of land, the higher the risk of environmental damage. The purpose of the Steep Slope Conservation District is to prevent and avoid soil erosion.

119. The Board qualified John O. Chambers as an expert in civil engineering.

120. Chambers testified that certain soil types present a higher risk of erosion and are less suited for construction, and Chambers identified those soils as they exist on a plan of the Project. Chambers further identified specific lots, at which the soil types having a higher risk of erosion were located. Chambers identified 77 of the proposed dwellings as located on severely limited soils.

121. Chambers testified that the Project will effect steep slopes, will have a negative impact on steep slopes, will have a potential negative impact on the environment when compared with no development.

122. Chambers' opinion was that the Project could be developed without significant impact on steep slopes by not building on steep slopes which could be accomplished by building fewer dwelling units.

123. Chambers opined that the Project was not consistent with the legislative intent of the Steep Slope Conservation District provisions because the Project proposed inappropriate development and excessive grading resulting in an inharmonious element in the development of the Township.

124. Chambers agreed that erosion and sediment control measures can be used to control runoff where development is proposed for steep slopes.

125. Chambers agreed with Matrix's counsel that the risks involved with development in some soil conditions where risk relates to frost action can be addressed with proper design and construction of the Project.

DISCUSSION

Applicant Matrix Ashbourne Associates, L.P. is the owner of the premises known at 1100 Ashbourne Road in Elkins Park, Pennsylvania. The Property, containing approximately

104 acres, was previously the site of the Ashbourne Country Club. Ashbourne Country Club was originally developed between 1922 and 1924 and operated, for the most part, as a private club. Matrix and related companies had substantial experience operating golf clubs and began to operate Ashbourne Country Club in or about 1995. In 1999, Matrix purchased the Property and continued to operate the club until 2005, at which time Matrix determined that the operation of the Property as a golf and country club was no longer viable.

In an earlier application at Appeal No. 3081, Matrix sought and obtained zoning relief from the Zoning Hearing Board to construct a residential development consisting of three mid-rise residential apartment and condominium buildings with 300 dwelling units and a golf course with accessory clubhouse and buildings. Matrix did not build that project, and the zoning relief has since expired.

Now Matrix proposes to develop the Property for 226 single-family residences, configured as 70 detached single-family homes and 156 single-family attached dwellings arranged in groups of three (the "Carriage Homes"). The Project will also include a community clubhouse with meeting rooms and other amenities and a swimming pool. Of the site's approximate 104 acres, Matrix proposes to keep 67 acres as open space, 37 acres of that space preserved or returned to natural conditions. The Project features a number of walkways, trails, parking areas and stormwater management facilities beneficial to the public interest.

Although the underlying zoning district is an R-1 Residence District, development of the Property is subject to a number of overlay districts including the Age-Restricted Overlay District, the Preservation Overlay District and the Steep Slopes Conservation District. Matrix seeks to develop the property utilizing the provisions available under the Age-Restricted Overlay District. Although subsequently repealed by the Cheltenham Township Board of

Commissioners, Matrix made its application at a time when those provisions were available and continues to pursue the project under the Age-Restricted Overlay provisions.

Matrix designed the Project substantially to conform with the governing zoning controls, but the Project requires special exceptions in accordance with the Age-Restricted Overlay District and variances from the Steep Slope Conservation District, the General Provisions regulating parking, the Preservation Overlay District and the Age-restricted Overlay District. The Board conducted a number of evidentiary hearings, giving almost unlimited time to both Matrix and objectors. Following the submission of briefs and consideration of the record in this matter, the Board granted Matrix most of the requested relief.

Critical to the Project is Matrix's request for special exceptions in accordance with the provisions of the Age-Restricted Overlay to permit an age-restricted, independent living, multiple dwelling development (Section 295-242(B)(1)), a clubhouse with common areas, meeting rooms, indoor and outdoor recreational facilities as well as maintenance and security facilities (Section 295-242(B)(3)), and a swimming pool for residents (Section 295-242(B)(3)). In order to be eligible for the application of the Age-Restricted Overlay, the Project must contain an area of 5 acres or greater in single ownership, be located in a residential, institutional or commercial zoning district and have the necessary frontage on a state road. Here, the Property contains 104 acres owned in single ownership, is located in an R-1 Residential district and enjoys 3,000 feet of frontage on a state road; the Property is, therefore, eligible for application of the Age-Restricted Overlay provisions. See Section 295-241.

Accordingly, since the proposed uses are permitted by special exception and since the Property is eligible for Age-Restricted Overlay treatment, the Board may grant special exceptions to the proposed uses so long as the application meets specific criteria of the

ordinances -- the Performance Standards (Section 295-244) and the Development requirements. The plans of record demonstrate that the Project meets the Performance Standards. The plans of record and the testimony of Matrix's experts establish that the Project meets the Development Requirements.

Section 295-209(A)(2) requires that the Project must not be contrary to the public interest. In Matrix's design, four homes have a rear elevation facing Ashbourne Road (South). The Board concludes that this disrupts the housing pattern in this neighborhood and, therefore, adversely affects the community. The Board concludes that the design can be altered to avoid this result. Accordingly, the Board attaches hereafter a condition that no building in the Project shall have a rear elevation facing Ashbourne Road.

The Board has made its decisions and conclusions based on the plans and representations made by Matrix and its representatives throughout the hearings. The Board's decision that the Project results in no adverse effect to the public interest rests squarely on the entire presentation at the hearings. Hereafter, the Board attaches several conditions to ensure that the Project is developed as presented. So the Board holds Matrix to its promise to provide three bus shelters, to plant 75% of new trees with a 4"-5" DBH at time of planting and that the land to be preserved and returned to a natural state is addressed simultaneously with the first stage of development. With regard to this last condition, the Board notes that the benefits to the community and to Project's residents stem from 37 acres being preserved and returned to its natural condition and not from fewer. Having provided for these and other conditions, the Board concludes that the Project is entitled to special exceptions for the principal and accessory uses.

The bulk of the requested variance relief centers around the prohibition of development in areas designated as having steep slopes, the floodplain and the riparian buffer as

protected by the Steep Slope Conservation District and the Age-Restricted Overlay. Since the Property was last developed for a golf course and golf club principal and accessory buildings, there are numerous areas throughout the Property which qualify as steep slopes and to which the regulations of the Steep Slope Conservation District apply. The Township Engineer included all of the areas designated as having steep slopes -- whether naturally occurring or the result of development -- within the Property's Steep Slope Conservation District. Matrix seeks to have the Board disregard the Township Engineer's determination in delineating the scope of the areas within the Steep Slope Conservation District.

The governing ordinance, Section 295-164(B)(2), empowers the Township Engineer to exempt man-made slopes where he determines the following:

the alteration, regrading, clearing or construction upon such slope can be accomplished without causing erosion of the slope and will not result in soil failure, stream siltation and contamination of surface waters and/or an increase in total runoff into any watercourse . . . and will not be injurious to the [public] health, safety and welfare . . .

The Township Engineer declined to do so. In addition, the Township Engineer made a careful study of the property and determined that all of the elements of the development resulted in zoning impacts and a substantial portion of the development would result in engineering impacts.

Although Matrix offered expert testimony urging a different finding with regard to the development, the Board considered credible the testimony of the Township Engineer and finds nothing persuasive in the record to discard the opinions and determinations of the Township Engineer that man-made steep slopes occurring on the Property should not be disregarded. The Board cannot conclude that development without compliance with protective ordinances will not be adverse to the public interest and specifically notes that, had the Board of Commissioners determined that development in man-made steep slopes would not have the same impact as development in naturally occurring steep slopes, it would have so distinguished such

slopes in the ordinances. Therefore, the Board denies Matrix's request for a determination contrary to that of the Township Engineer.

Alternatively, Matrix sought a variance from the prohibition of Section 295-167 to allow the construction of the Project that disturbs steep slopes. Given the pervasiveness of the steep slopes throughout the Property and the development in the circumstances of the Property, reasonable development is not possible without the disturbance of steep slopes. Disturbances are unavoidable, and the Property would suffer an unnecessary hardship without variance relief.

The Board concludes that any adverse effect inherent in steep slope disturbances can be mitigated if not avoided. The Board notes that objectors' expert testified that proper erosion and sediment controls along with proper design and appropriate construction measures can address the risks and avoid adverse effects. To the extent that proper erosion and sediment controls proposed in Matrix's plans and further designed in the land development approval process do not sufficiently protect the public interest, the Board attaches hereto several conditions as appropriate safeguards to the public interest. The Board conditions relief granted in this decision on Matrix's completion of a Geotechnical Investigation and Analysis as well as an enhanced foundation requirement designed to prevent deterioration of foundations over an extended time period.

The Board further concludes that these measures taken in concert with those implicit in the erosion and sediment control plan, the design of stormwater features, the protections provided in the land development approval process and the general conservation-friendly design result in a plan of development that requires the minimum relief necessary to accommodate reasonable development. As the topographical conditions were not of Matrix's making, Matrix is entitled to a variance from the steep slope provisions in order to construct the

Project and disturb areas designated as having steep slopes. A variance is similarly warranted from Section 295-243(B)(8)(d), a companion to Section 295-167.

The Property has a terra cotta sanitary sewer line that runs toward a manhole in Tookany Creek Parkway public area. The condition of the pipe is uncertain, and the Township Engineer suspects that the pipe will need to be replaced in the event that Matrix connects a portion of its sanitary system to this pipe. Matrix had agreed to replace the pipe with a modern plastic pipeline and to restore the floodplain and riparian buffer upon completion of the work. The pipe, however, lies in the floodplain and the Project's riparian buffer. Matrix, therefore, may require variances from Sections 295-156 (prohibiting certain construction in the floodplain), Section 295-243-242(B)(8)(a) ((excluding floodplain areas from the Net Developable Site Area (NDSA) of an age-restricted development)), and 295-243(B)(8)(e) (excluding riparian buffers from the NDSA). Developing an alternative course for the pipe represents the kind of waste that appellate court decisions do not favor. The Board concludes that a failure to grant a variance to allow the replacement of the pipe would result in an unnecessary hardship. The requested relief is the minimum relief that will afford Matrix relief, will not result in any adverse affect to the public interest and, indeed, will protect the pubic interest by mitigating a failing system through a minimally, and only temporary, invasive process.

In addition, Matrix notes that, while it has not designed its sanitary sewer system to be located in any portion of the floodplain, the final location and design of the sanitary sewer system will be part of the land development process subject to the approval of the Board of Commissioners. Matrix seeks approval to locate portions of its sanitary sewer systems in the floodplain (and to restore the floodplain upon completion of the work) if that is the result of the land development process. Since development of the Project is dependent upon this land

development approval, a failure to grant relief to allow placement of a portion of the sanitary sewer system in the floodplain where such is required by the Board of Commissioners and the application of the land development ordinances would result in an unnecessary hardship. The hardship, a product of the land development process, would not be self-created and will not result in any adverse affect to the public interest. Accordingly, a variance from Section 295-253(B)(8)(a) is warranted.

Matrix submitted a Lines and Grades Plan that was deficient in several respects when measured against the requirements of the Age-Restricted Overlay. During the course of the hearings, Matrix submitted revised plans that complied with more sections of the ordinance. Matrix admits, however, that the Lines and Grades Plan, composed of several sheets of plans, still do not meet all of the technical requirements of the ordinances because the plans do not include information about off-site structures and certain on-site measurements. Accordingly, the Board cannot agree to Matrix's request to make a determination that the submitted plans comply with the ordinance.

However, the Lines and Grades Plans do provide the Board with sufficient information in sufficient quantity and detail for the Board to analyze the Plan's content for the purpose of the application of the Age-Restricted Overlay. While not in the category of matters for which the Board may make a *de minimis* finding, the departure is, indeed, minimal. Hereafter, the Board conditions approval on the submission to the Township of a fully compliant Lines and Grade Plan. With this added protection, the Board concludes that the failure to grant a variance from the requirements for Lines and Grades Plans would result in an unnecessary hardship and will not result in any adverse affect to the public interest.

Matrix also seeks an interpretation of Section 295-241 that the provisions of the Preservation Overlay District do not apply to the Project. Section 295-241 provides, in part, that where the provisions of the Age-Restricted Overlay apply, the “provisions of the underlying zoning district shall not apply.” Here, the underlying zoning district is R-1 Residence District. Section 295-187(A) is the pertinent and controlling section of the Preservation Overlay District:

The Preservation Overlay District is defined and established to include and be an overlay upon all parcels having five or more acres or any residential site with a development proposal of eight dwellings units or more within any residential district designated on the Cheltenham Township Zoning Map. All property within the district used or intended to be developed for residential purposes shall comply with the provisions of this article.

The Preservation Overlay District regulations clearly apply to this Property and Project. However, the certain portions of the regulations are contrary to the Age-Restrict Overlay. The Preservation Overlay District controls serve different planning goals than do the Age-Restricted Overlay zoning controls. To require compliance with both the Age-Restricted Overlay District and the Preservation Overlay District would be contrary to the public interest and result in a hardship upon the Property and the Project. Accordingly, the Board concludes that it is empowered and compelled to grant a variance from Sections 295-187, 188 and 189 of the Preservation Overlay District to the extent that district rules might apply to the Project. Since Section 295-190 does not appear to be contrary, the Board declines to grant a variance from this section.

Lastly, Matrix seeks a further determination that the proposed parking spaces do not exceed the maximum number permitted under the Zoning Code’s Section 295-221(F). Section 295-221(F) limits the number of parking spaces that may be provided to 120% of the minimum parking spaces required for the Project. Section 295-245(C)(1) requires 1.5 spaces for each dwelling (339 spaces), one space for each five dwelling units (46 spaces) and one space for

each employee (1 space). The minimum number of required spaces is, therefore, 386. The maximum number of spaces is 463 (i.e. 120% of 386). Matrix proposes to provide 452 parking spaces in the 2-car driveways and 116 parking spaces in common parking fields. Clearly, Matrix's plan exceeds the maximum number of parking spaces by 105 parking spaces.

While Matrix provided expert testimony that the extra parking may be a good amenity for the Project, there is no record evidence that the Project cannot be developed within the regulations and without an excess of 105 parking spaces. Matrix's expert testimony is firmly based on the allegation that two-car garages are standard in age-restricted or similar development. The record demonstrates otherwise. The testimony also discounts or overlooks entirely the availability of two guest parking spaces in the driveways of the each residence.

Matrix's architect testified that she surveyed the surrounding community in order to design the Project to conform with certain architectural styles. She supported her testimony with photographs of a number of nearby properties and dwellings. None have 2-car garages; none of double-width driveways. Some do not have garages. The Board does not find credible Matrix's testimony that the standard for similar developments is a 2-car garage. In addition, Matrix admits that its choice of narrow roadways, measuring 24 feet in width, does not allow for parallel on-street parking. The decision to provide 2-car garages, double-width driveways and narrow internal streets produces the desire, but not the need, for additional parking in parking fields located throughout the Project. If there is a lack of parking available for the development, the lack of parking is self-inflicted.

Section 910.2(a) of the MPC clearly empowers the Board to grant variance only in a matter where the Board can make all of the following findings where relevant:

- (1) That there are unique physical circumstances or conditions, including the irregularity, narrowness, or shallowness of lot size or shape, or exceptional

topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstance or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.

(2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable reasonable use of the property.

(3) That such unnecessary hardship has not been created by the appellant.

(4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

(5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

In order to grant a variance, the Board must be empowered by authority delegated through the MPC. The requirements for a variance are, in this case, clear and bind the Board's discretion. Accordingly, upon the record in this matter, the parking deficiency, if any, is self-inflicted and the Board is without power to grant relief and must deny Matrix's request for variance.

CONCLUSIONS OF LAW

1. The proposed age-restricted development is not permitted by the Cheltenham Township Zoning Ordinance without the grant of special exceptions and variances. However, in accordance with the Pennsylvania Municipalities Planning Code and the Cheltenham Zoning Ordinance, the Cheltenham Township Zoning Hearing Board is empowered to hear and decide requests for variances where it is alleged that strict conformance with the governing ordinances would result in unnecessary hardship. Similarly, the Zoning Hearing Board is empowered to grant special exceptions where the application meets the criteria of the zoning ordinances.

2. Matrix proposes to develop an age-restricted residential development comprised of 70 single-family detached homes, 156 single-family multiple dwellings (each with three single-family attached dwellings), a community clubhouse, swimming pool and open space.

3. The community clubhouse, swimming pool and associated amenities are customarily incidental to an age-restricted community.

SPECIAL EXCEPTIONS

4. Under the circumstances of this matter, Matrix has met its burden in demonstrating that its Project, as described in its Application and supporting documentation, meets the minimum criteria necessary for the application of the Age-Restricted Multiple-Dwelling Overlay District because the Property is greater than 5 acres, the Property is located in an R-1 Residence District and the Property has frontage on a state road that exceeds 2,500 feet. Accordingly, the Project is eligible for Age-Restricted Housing Use.

5. Except as otherwise noted herein, the Project meets the Performance Standards and the Development Requirements of a qualifying age-restricted development.

6. The allowance of a special exception to permit the development of the proposed age-restricted development with the proposed accessory clubhouse, swimming pool and other amenities will not be contrary to the public interest.

7. Construction and operation of the Project will not adversely effect traffic conditions, drainage, air quality, noise levels, natural features of the land, neighborhood property values or neighborhood aesthetic characteristics.

8. Construction and operation of the Project will not adversely effect the provision of public services.

9. Matrix has met its burden in establishing that the Project has met the requirements for the application of the Age-Restricted Overlay District and the Age-Restricted Multiple Dwelling Overlay District, and Matrix is, therefore, entitled to special exceptions pursuant to § 295-242(B)(1) and 242(B)(3) to develop the Project for age-restricted residences and accessory clubhouse, swimming pool and amenities.

VARIANCES

10. Sections 295-156 and 295-243(B)(8) do not permit construction of sanitary sewer facilities in the 100 Year Floodplain Area or in areas designated as within the riparian buffer.

11. Cheltenham Township may require and Matrix has agreed to replace an existing sanitary sewer line that is located in the 100 Year Floodplain and in the riparian buffer as a condition to constructing the Project.

12. If Matrix is unable, due to the prohibitions in the Zoning Code, to replace the sanitary sewer line, the Property will be subject to an unnecessary hardship which was not created by Matrix.

13. Allowance to replace the sanitary sewer line located in the 100 Year Floodplain and in the riparian buffer and to restore the floodplain and the riparian buffer upon completion of the work is the minimum variance that will provide Matrix with relief and will not adversely affect the public interest.

14. Reasonable construction of a project appropriate for this 104 acre site cannot be completed without the disturbance of numerous areas designated as having steep slopes.

15. The governing Zoning Code regulations, Section 295-167 and, in some respects, Section 294-243(B)(8)(d), do not permit construction of the Project including proposed freestanding structures, building and retaining wall, internal accessways, driveways, parking areas, swimming pool, sanitary sewers, stormwater management facilities and other underground facilities and landscaping in areas designated as having steep slopes.

16. Many of the features prohibited by the steep slope limitations are required by other provisions of the Age-Restricted Overlay District.

17. Allowances from the steep slope limitations to accommodate the development of the Project are reasonable adjustments.

18. The requested variances from the steep slope limitations represent the minimum relief or a reasonable adjustment that will afford relief to Matrix and will result in no adverse affect to the public interest.

19. The Project is designed to restore substantial acreage to a natural state and to avoid development in the floodplain. In the event, however, that, as a result of the land development process, the Board of Commissioners approve a plan of development that place sanitary sewer facilities in the floodplain, a failure to grant a variance to allow such development in the floodplain would result in an unnecessary hardship.

20. Allowance to construct sanitary sewer facilities in the floodplain when required by an approved land development plan will afford Matrix minimum relief and will not result in any adverse effect to the public interest.

21. The submission of a Lines and Grades Plan as required pursuant to Section 295-168 does not meet all of the technical requirements of the ordinance.

22. Matrix's Lines and Grades Plan provides all of the information necessary to address the purposes of a lines and grades plan and provides a satisfactory basis for the Zoning Hearing Board to evaluate the Project with regard to public interest served by the regulations governing Lines and Grades Plans.

23. A variance to allow development of the Project without the submission of a totally compliant Lines and Grades Plan is the minimum variance that will afford Matrix relief and will not result in an adverse effect to the public interest.

24. The Property is subject to the requirements of the Preservation Overlay District, Sections 295-186-190.

25. The Preservation Overlay District is not an underlying zoning district, but is an overlay district.

26. The portions of the Preservation Overlay District applicable to the Project are, in great part, contradictory to the Age-Restricted Overlay District and the Project cannot be complete in compliance with both sets of zoning controls.

27. Imposing both set of controls would result in an unnecessary hardship to the Property.

28. A variance from Sections 295-187, 188 and 189 of the Preservation Overlay District will provide minimum relief to Matrix and will not result in an adverse affect to the public interest.

DENIALS OF REQUESTS FOR RELIEF

29. The provisions of the Steep Slope Conservation District do not distinguish between man-made and naturally occurring steep slopes in their limitation on certain uses in areas designated as having steep slopes.

30. Matrix failed to present evidence sufficient to demonstrate that the Township Engineer erred in his determination of the boundary of the Step Slope Conservation District at the Property, and, therefore, the Zoning Hearing Board has no authority to set aside the Township Engineer's determination.

31. The required number of parking spaces, premised on the number of proposed dwellings, is 385. Pursuant to Section 295-221, the maximum number of parking spaces is 463. The Project proposes parking spaces greater in number that 463. Matrix failed to demonstrate that its proposed parking spaces are not greater than the maximum permitted by the limitation of the parking regulations. In addition, Matrix has failed to demonstrate why the Project cannot be developed with 463 or fewer parking spaces and, therefore, failed to demonstrate that a failure to grant relief from the parking limitations would result in an unnecessary hardship.

32. Section 295-241 provides that, with regard to the regulations of the Age-restricted Overlay District, contrary regulations contained in the underlying zoning district shall not apply. However, the Preservation Overlay District is not an underlying zoning district and Section 295-241 does not relieve Matrix of compliance with the provisions of the Preservation Overlay District.

DECISION

WHEREFORE, this 14th day of February, 2011, the Cheltenham Township Zoning Hearing Board, by a 3-0 vote, grants to applicant(s) the following variances:

(1) a variance from the rules and regulation of the "Floodplain District" as outlined Article XXI, Section 295-156 to allow construction or replacement of the existing 8" T.C. Sanitary Sewer Line (if required) within the 100 Year Floodplain Area;

(2) a variance from rules and regulations of the "Steep Slope Conservation District" as outlined in Article XXII, Section 295-167 to allow the construction of free-standing structures, building and retaining walls, internal accessways, driveways, parking areas, swimming pools, sanitary sewers, stormwater management facilities and other underground utilities and landscaping;

(3) a variance from the rules and regulations of the "Steep Slope Conservation District" outlined in Article XXII, Section 295-168, to allow a variance to be granted for the development without first meeting the requirement to submit plans conforming to the stated Lines and Grades Plan requirements;

(4) a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.1 to permit an Age Restricted Development;

(5) a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.3 to permit a clubhouse with common areas and meeting rooms, indoor and outdoor recreational facilities and maintenance and security facilities;

(6) a special exception in accordance with the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-242.B.3 to permit a swimming pool for the residents of the Age Restricted Community only;

(7) a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.a. to allow sanitary sewer facilities, if required, within the floodplain;

(8) a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.d. to allow development within areas having a slope of 15% or greater;

(9) a variance from the rules and regulations of the "Age Restricted Overlay District" as outlined in Article XXXIII, Section 295-243.B.8.e. to allow sanitary sewer facilities, if required, within the Riparian Buffer Areas; and

(10) variances from the rules and regulations of the "Preservation Overlay District" as outlined in Article XXIV, Sections 295-187, 295-188 and 295-189 only.

The Zoning Board has, in addition, taken the following actions:

(1) denied the appeal of the determination of the Zoning Officer and/or Township Engineer regarding man-made steep slopes as provided in Article XXII, Section 295-164.B.2.;

(2) denied the request for a determination that the Lines and Grades Plans as submitted with the Application or as revised during the course of the hearings substantially conforms with the requirements set forth in Article XXII, Section 295-168;

(3) denied the request for a determination that the number of parking spaces shown on Applicant's plans are not in excess of the maximum permitted under Article XXIX, Section 295-221.F;

(4) denied the request for a variance from the rules and regulations of Article XXIX, Section 295-221.F. to allow parking spaces exceeding 120% of the minimum required parking spaces;

(5) denied the request for variances from the rules and regulations of the "Preservation Overlay District," as outlined in Article XXIV, Section 295-190; and

(6) denied the request for an interpretation that the rules and regulations of the "Preservation Overlay District," as outlined in Article XXIV, Section 295-187 *et seq.* are not applicable to this Application.

The above grants of zoning relief are subject, however, to the following conditions:

(1) At applicant's expense, the Township shall direct a third-party professional geotechnical engineer, acceptable to the Township, to conduct, based upon an adequate number of soil borings, a comprehensive Geotechnical Investigation and Analysis (the "Analysis"). The Analysis shall be performed over the entire development footprint to determine the suitability of the site's soils for the proposed development and the loads to be imposed thereon. The Analysis shall document findings and set forth whatever soil remediation and/or construction methods should be taken to prevent excessive settlement, slope failure and other adverse effects to the maximum practicable extent. The Analysis shall be subject to the review and approval of the Township Engineer. Applicant shall thereafter follow the soil remediation measures and the construction methods as directed by the Township Engineer.

(2) The bottom of the foundation footing for all structures (including building, retaining walls, etc.) within the development shall be on a level either a minimum of three (3) feet below the existing pre-development grade or on subgrade competent to support the load being imposed, whichever level is lower. No pile footings shall be permitted.

(3) Applicant shall submit Lines and Grades Plans, compliant with no standard less than the Zoning Code, as part of Applicant's submission for preliminary or final land development approval.

(4) The development may be built in stages. However, the following infrastructure improvements shall be completed with the first stage: naturalization of the property including the return of portions of the property to a

natural state, the allocation of property to public use and the other features of the development plans described by applicant's land planner.

(5) No building, including, but not limited to, lots 67, 68, 69 and 70 as illustrated on Exhibit A-1, shall have the rear elevation facing Ashbourne Road.

(6) 75% of the trees planted on the development shall be a minimum of 4" – 5" DBH at the time of planting, as illustrated on Exhibit A-3, dated July 8, 2010.

(7) Applicant shall provide bus shelters at the three bus stops on Ashbourne Road at Croyden Road, Boyer Road and Ashmead Road.

(9) Unless otherwise prohibited by the decisions of the Zoning Hearing Board or by application of lawful federal, state or local regulations, the development shall be constructed in substantial conformity with the record, including testimony and exhibits, established by the Applicant and its witnesses during the course of the hearing in this appeal.

This grant of relief is not a waiver of any provision of the Cheltenham Zoning Ordinances not specifically addressed in this decision.

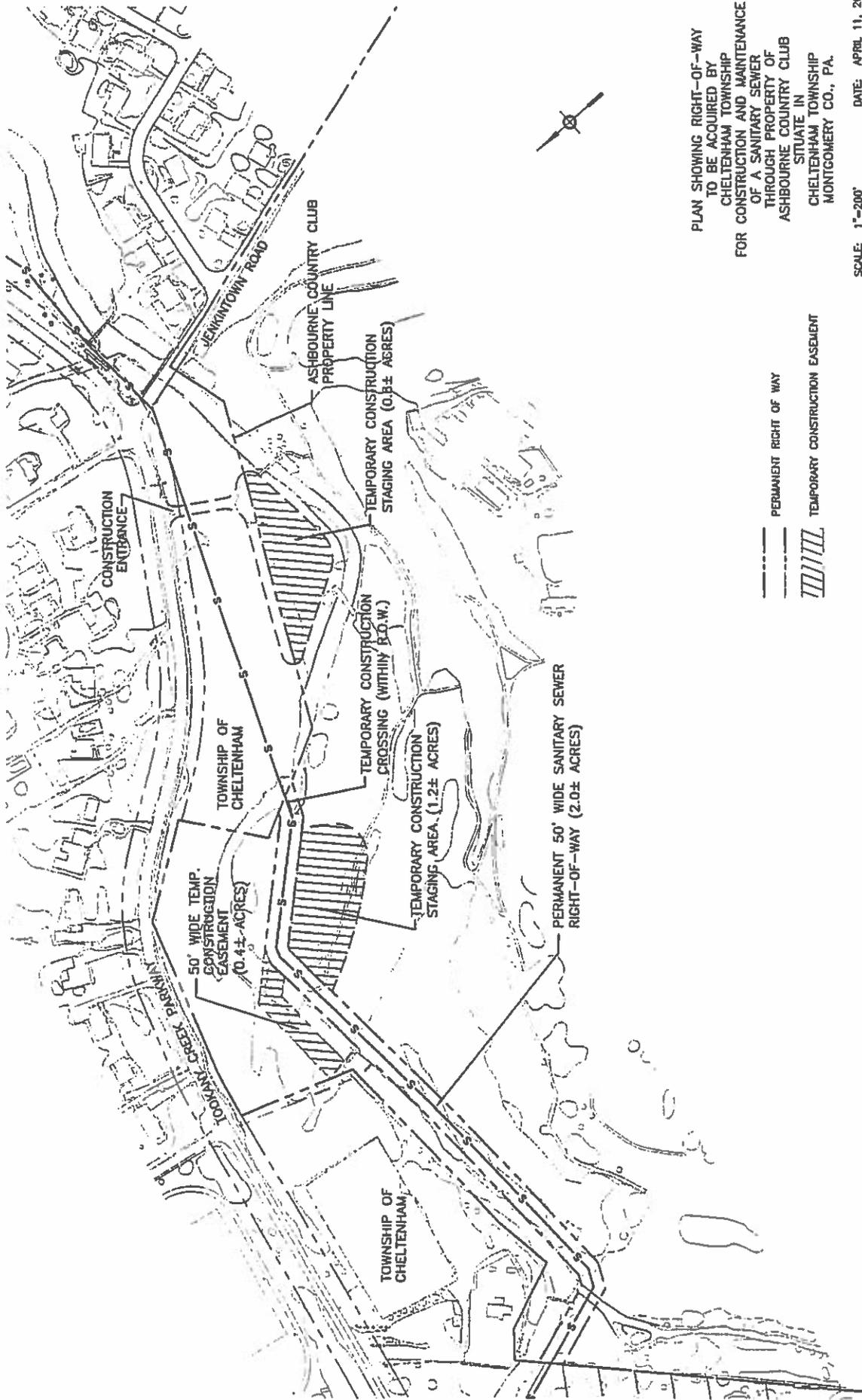
CHELTENHAM TOWNSHIP ZONING HEARING BOARD

PETER LABIAK, Chairman

ALAN S. GOLD, Vice Chairman and Secretary

AMEE FARRELL, Member

THIS DECISION IS OFFICIALLY ISSUED ON MAY 27, 2011.



PLAN SHOWING RIGHT-OF-WAY
 TO BE ACQUIRED BY
 CHELTENHAM TOWNSHIP
 FOR CONSTRUCTION AND MAINTENANCE
 OF A SANITARY SEWER
 THROUGH PROPERTY OF
 ASHBOURNE COUNTRY CLUB
 SITUATE IN
 CHELTENHAM TOWNSHIP
 MONTGOMERY CO., PA.

SCALE: 1"=200' DATE: APRIL 11, 2014



- PERMANENT RIGHT OF WAY
- TEMPORARY CONSTRUCTION EASEMENT