

September 3, 2014
Curtis Hall
7:30 p.m.

A SPECIAL MEETING of the **TOWNSHIP COMMISSIONERS** was held this evening with Board President Harvey Portner presiding for the purpose of rendering a decision on the Conditional Use Application of Swift and Choi Development, LLC, owner of a tract of land consisting of 7.986+/- acres located at 1900 Ashbourne Road, Elkins Park, zoned “M-2” Multiple Dwelling District to develop the property for 145 multiple dwelling units in a mid-rise building.

Members present were Commissioners Haywood, McKeown, Norris, Rappoport, Simon, and Sharkey.

Staff present were Kenneth Hellendall, EMS Director; John J. Norris, Chief of Police; Kevin O’Brien, Deputy Chief of Police; Joseph O’Neill, Fire Marshal; Henry Sekawungu, Director of Planning and Zoning; and Bryan T. Havir, Township Manager. Also present was Margaret Griffen, Director of the Cheltenham Art Center; Carrie Turner, Library President, and Joseph M. Bagley, Esq., Solicitor. A Public Attendance list is attached.

1. Mr. Portner opened the meeting with the Pledge of Allegiance being led by Mr. Simon.
2. Mr. Bagley announced that the Board of Commissioners had met in Executive Session prior to the meeting to deliberate on the Conditional Use Application of Swift and Choi Development, LLC.
3. Mr. Portner made a motion to grant the Conditional Use Application of Swift and Choi Development, LLC subject to the conditions read by the Solicitor.
4. The Solicitor read aloud the conditions of the Conditional Use Application (see attached) and announced that a copy of the written decision would be sent to the parties.
5. The Board of Commissioners approved the grant of the Conditional Use Application of Swift and Choi Development, LLC for the above-referenced tract of land as moved by Mr. Portner (AYES: Haywood, McKeown, Portner, Sharkey, Simon; NAYES: Norris, Rappoport).
6. Ms. Rappoport commented that she recognizes the financial pressures on the Board to approve development, especially commercial development. There are some important pieces of real estate that are very strategic to Cheltenham –environmentally, historically, and commercially. She believed there are some core considerations that need to be factored into our future development such as the Sustainability Plan; and the Township’s leadership in the region, historic niche, the Township’s character as a progressive community. As an older suburban community, Ms. Rappoport felt it important that identity lost in transit between city and suburb and that the Township does not look like every other suburb on the way. The Township has hired consultants, had Staff research and develop information and Ordinances, and revision of the Zoning Code. She did not support being piecemeal and reactive but rather being pro-active and to consider development that will best serve Cheltenham’s niche and future and recruit developers that can accomplish this, especially those with track records in prioritizing sustainable, environmentally sensitive development, that are innovative venture capitalists, and who are exceptional, not cookie cutter developers. Ms. Rappoport recognized

this could be difficult, and she noted ways this could be accomplished. She urged the Board to start discussing guidelines and giving Staff direction to accomplish this.

7. Citizens Forum – None.

There being no further business, upon motion of Mr. Sharkey, the Board of Commissioners unanimously approved adjourning the meeting at 7:40 p.m.



Bryan T. Haver
Township Manager

as per Anna Marie Felix

**BEFORE THE BOARD OF COMMISSIONERS
CHELTENHAM TOWNSHIP**

IN RE: CONDITIONAL USE APPLICATION :
OF SWIFT and CHOI DEVELOPMENT, LLC :

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

Introduction

The Board of Commissioners of Cheltenham Township held hearings on February 19, March 19, April 16, May 29, June 18 and June 30, 2014 on the Conditional Use Application of Swift and Choi Development, LLC (hereinafter, including all successors and assigns, sometimes referred to herein as “Applicant”) in regards to an approximately 7.9 acre parcel located at 1900 Ashbourne Road, Cheltenham Township, Montgomery County, Pennsylvania (“Property”).

The following exhibits were admitted into evidence:

- B-1. Letter requesting conditional use hearing, joinder, and development plan
- B-2. Proposed site development plan dated November 26, 2013
- B-3. Proposed sketch plan of detached single-family site development plan dated November 26, 2013
- B-4. Notice mailed to individual residents dated January 17, 2014
- B-5. Public Notice published in *The Times Chronicle* of February 19, 2014 hearing
- B-6. Proof of Publication of legal notice on January 26 and February 2, 2014
- B-7. List of individuals to whom Exhibit B-4 was mailed
- B-8. Municipal Request for Review directed to Montgomery County Planning Commission by Cheltenham Township dated February 7, 2014
- B-9. Excerpt of the Cheltenham Township Planning Commission Minutes for January 27, 2014
- B-10. Montgomery County Planning Commission review letter dated February 12, 2014
- B-11. Memorandum dated February 5, 2014 submitted by Earl T. Stamm

- B-12. Document entitled "Adoption of Memorandum Regarding Township Rezoning of 1900 Ashbourne Rd." submitted by Earl T. Stamm
- B-13. Correspondence submitted by Stephen Johns dated January 27, 2014
- B-14. Correspondence dated January 8, 2014 from Edward J. Hughes, Esquire to Board of Commissioners
- B-15. Posting Certification dated February 25, 2014 for the posting of three (3) signs on 1900 Ashbourne Road
- B-16. Correspondence dated March 19, 2014 submitted to the Board of Commissioners from Julie Slavet, Executive Director, Tookany/Tacony-Frankford Watershed Partnership, Inc.
- B-17. Excerpt (Figure 11) from the 2005 Cheltenham Township Comprehensive Plan
- B-18. Excerpt (Figure 14) from the 2005 Cheltenham Township Comprehensive Plan
- A-1. CV – Harold Lichtman
- A-2. Deed
- A-3. Aerial Photo of Area (PS-4)
- A-4. Photos
- A-5. Existing Land Use Plan – Comprehensive Plan
- A-6. Zoning Map
- A-7. Future Land Use Plan – Comprehensive Plan
- A-8. Conventional Development Plan
- A-9. Site Plan with Wetlands Delineation
- A-10. Building Elevation
- A-11. Preservation Overlay District Ordinance provisions
- A-12. Preservation Overlay District Plan (single family detached dwellings)
- A-13. Tax Economic Analysis
- A-14. CV – Andreas Heinrich
- A-15. Traffic Study
- A-16. CV – Thomas Cordrey

- A-17. CV – Thomas Hanna
- A-18. CV – Michael Frolove
- A-19. Conventional Development Plan 1/r February 17, 2014
- A-20. Two (2) pages referred to by witness Andrew Heinrich dated December 23, 2013
“a.m. Peak”; second page labeled “p.m. Peak Future After Development”
- A-21. CV – Eric Clase
- A-22. Frolove Real Estate Valuation Report
- A-23. Site Improvement Costs – Single Family
- A-24. Estimated Construction Costs – Single Family
- A-25. Landscape Plan and Fence Detail
- A-26. Tax Economic Analysis – Revised
- A-27. Aerial Photograph Date 4/11/2010
- A-28. Aerial Photograph Date 4/11/2010
- A-29. Ed Landau, RLA Resume
- A-30. 2002 Imagery
- N-1 Resolution of Elkins Park Neighbors Association dated January 17, 2014
- N-2 EPNA Memorandum
- N-3 The Character of the Neighborhood Photos
- N-4 Cheltenham Township Condo Sales Prices 2012-2014
- N-5 Wyngate Townhouses
- N-6 Wetlands, Woodlands, and Scenic Features Photos
- N-7 Cheltenham Township Woodlands
- N-8 Leeches Run Watershed
- N-9 Letter from the Dominican Sister of St. Catherine
- N-10 Traffic Hazards Photos
- N-11 Crash Report

- N-12 Crash Photos
- N-13 EPNA Summary Statement
- N-14 1900 Ashbourne Road Real Estate Tax Comparisons
- N-15 Tookany/Tacony-Frankford Letter
- N-16 Google Photo Plus Condominium Overlay

The Board of Commissioners was represented by Joseph M. Bagley, Esquire of Blue Bell. The Applicant, Swift and Choi Development, LLC was represented by Edward J. Hughes, Esquire of Plymouth Meeting.

The following neighbors appeared as parties to the proceeding: Karin Helstrom, individually and as Co-President of the Elkins Park Neighbors Association, 7904 Anselm Road, Elkins Park; Carol Siegel, 7905 Ronaele Drive, Elkins Park; Stephen Johns, 7809 Clyde Stone Drive, Elkins Park; Linda Gunn, 7907 Toby Leech Drive, Elkins Park; Coletta Brady, 7807 Clyde Stone Drive, Elkins Park; Adrienne Bailey, 7807 Caversham Road, Elkins Park; Linda Foggie, 7800 Caversham Road, Elkins Park; Kathleen Gallagher, 1607 Ashbourne Road, Elkins Park; Betty Hawkins, 190 Ashbourne Road, Elkins Park; Geraldine Chapman, 1990 Ashbourne Road, Elkins Park; Todd Mehrer, 1000 Dixon Road, Elkins Park; Anne Mosley, 7809 Toby Leech Drive, Elkins Park. Ms. Helstrom asked questions on behalf of the neighbors who are members of the Elkins Park Neighbors Association.

For part of the hearings, Lynnewood Gardens was represented by Mark Cappuccio, Esquire of Blue Bell. Mr. Cappuccio withdrew on behalf of Lynnewood Gardens at the May 29, 2014 hearing on the basis that if the application were approved, that certain items which are incorporated by reference in the Order be included herein.

FINDINGS OF FACT

1. The Applicant submitted its application to the Board of Commissioners on or about December 11, 2013 seeking development under the underlying M-2 Multiple Dwelling District rather than the provisions of the Preservation Overlay District and in doing so, sought a conditional use approval.

2. The notice of the conditional use application and the hearing date of February 19, 2014 at 8:30 p.m. at Curtis Hall was advertised in *The Times Chronicle* on January 26 and February 2, 2014; notice was sent to neighbors within 500 feet of the subject property with a list of neighbors to whom notice was sent submitted into the record as evidence; the Township actually sent additional mailed notices to neighbors beyond the 500 foot perimeter including notice to all members of the Elkins Park Neighbors Association; (it was one of the most expensive mailings the Township has ever made); notice of the conditional use application and the hearing date, time and place was posted at 1900 Ashbourne Road in three (3) different locations. (Exhibits B-4, B-5, B-6, B-7 and B-15)

3. The Applicant granted an extension of time until February 19, 2014 to hold the first hearing. (Exhibit B-14)

4. The Applicant granted an extension of time in order for the decision to be rendered in compliance with the Pennsylvania Municipalities Planning Code. (N.T., 6/30/14, pg. 85; Correspondence dated July 2, 2014 to Board of Commissioners; Correspondence dated August 19, 2014 to the Board of Commissioners)

5. The Application was submitted to and reviewed by the Montgomery County Planning Commission and the Cheltenham Township Planning Commission. (Exhibits B-9 and B-10)

6. The Applicant proposes to construct 146 multiple dwellings in a midrise building in accordance with certain plans submitted with the application. (Exhibit B-1) The Applicant subsequently submitted an amended plan of development which provided for 145 multiple dwellings on a midrise building. (Exhibit A-8)

7. The Applicant's property is located at 1900 Ashbourne Road and consists of approximately 8 acres. It is bounded on the west by the swim club for Lynnewood Gardens Apartment complex, on the south by the Lynnewood Gardens Apartment complex, on the east by the Elkins Park Post Office and on the north by what is known as the Faith Theological Seminary property, formerly the Widener Estate. To the northwest is the Cheltenham Hills section of Cheltenham Township which is primarily zoned R-3. (N.T., 2/19/14, pg. 32)

8. The Lynnewood Gardens property is zoned M-1 and is developed with approximately 1800 apartment units. (N.T., 2/19/14, pg. 34)

9. The 2005 Comprehensive Plan depicts the subject property to become an institutional use. (N.T., 2/19/14, pg. 33)

10. The Applicant proposes a 40% green area on the lot, with 15% building area and with 586 feet of road frontage. The definition of completely landscaped includes having plants. Accordingly, the developer is proposing the wetlands and the rain gardens to be included in the definition of green area. (Exhibit B-2; N.T., 5/29/14, pp. 62-63)

11. In the Multi-Family District, the developer is required to provide a green area of 25%, but here the Applicant is proposing to provide 40%. In the Preservation Overlay District, there is no requirement for green area. (N.T., 5/29/14, pg. 70)

12. The proposed height of the residential building is 55 feet. (Exhibit B-2)

13. The total footprint of the multi-family building is approximately 55,000 square feet, with 219 parking spaces proposed for 145 dwellings. (N.T., 2/19/14, P. 39; 3/19/14, pp. 57, 60)

14. The Architect proposed amenities for the subject property such as walkways, plazas, places to sit and possibly a gazebo. (N.T., 3/19/14, pgs. 30-31.)

15. The Post Office next door is a two-story building; the apartments to the south are two-story buildings; the single-family homes to the northwest are two stories, and Faith Theological Seminary (the former Widener Estate) is equal to the height of a four or five-story building. (N.T., 3/19/14, pp. 74-75)

16. The property slopes from the northwest to the southeast. (N.T., 3/19/14, pg. 32)

17. Mr. Lichtman, the architect and planner, confirmed that the developer has to preserve the wetlands under the rules of the State and Federal Government. (N.T. 3/19/14, p. 83)

18. A wetland is an area that is sufficiently wet to sustain a hydrophytic plant population and contains soils which exhibit hydric characteristics. Hydrophytic simply means wet plants, a variety of different kinds of sedges, brushes, shrubs, trees. (N.T., 5/29/14, pg. 13)

19. Wetlands are delineated in accordance with the wetland delineation procedure outlined in an Army Corps of Engineers publication entitled "Wetland Delineation Manual" dated 1987. (N.T., 5/29/14, pg. 14)

20. The Applicant's witness, Mr. Thomas D. Cordrey, has a PhD from Penn State University in horticulture and he has worked in the area of wetlands for more than 25 years. (N.T., 5/29/14, pg. 11; Exhibit A-16)

21. Mr. Cordrey performed a wetlands study with regard to the subject property, in which he identified wetlands on the subject site and prepared a plan delineating the wetlands. (N.T., 5/29/14, pg. 14; Exhibit A-9)

22. The wetlands begin in the southern middle portion of the property and range to the southern corner of the property. (N.T., 5/29/14, pg. 15)

23. The approximate size of the wetlands is 85/100 of an acre. (N.T., 5/29/14, pg. 15)

24. The proposed stormwater management system will consist of inlets in the parking lot which will then pipe the stormwater from those structures around the building into the rain gardens, filtration beds, etc. on the backside of the building before it is discharged into the wetlands. (N.T., 5/29/14, pg. 55)

25. It was the Applicant's civil engineer's opinion that 100% of the rain water reaching the impervious surfaces could be controlled and that it would all run into the inlets in the parking lot, into the best management practices trap areas, the best management practices devices and then into the wetlands. (N.T., 5/29/14, pg. 68)

26. The Applicant does not propose to fill, excavate or perform any other prohibited activities in the wetlands. The Applicant agrees that it will not pursue a general permit for road crossing, utility outlets, outfall structures and/or installation of a sewer line within the wetlands. (N.T., 5/29/14, pp. 18-19)

27. The Applicant proposes to cut the phragmites, the primary vegetation in the wetlands, which is considered an invasive species, treat it with a chemical herbicide and once the phragmites are completely under control or 90% under control, plant a variety of different shrubs, trees and herbaceous material which would diversify the habitat and provide a food source and a nesting area for a variety of different birds and small animals. The Applicant's wetlands expert testified that such activity is permitted in the wetlands without a general permit from DEP. (N.T., 5/29/14, pp. 20-21)

28. The Applicant's wetlands expert testified that the proposed multi-family development could be developed without adversely impacting the wetlands.

29. The proposed development will preserve natural and scenic features by: protecting and preserving the existing wetlands on the site to a greater degree than development under the

Preservation Overlay District would permit. (There is no evidence submitted of any historic sites or historic resources on the subject site.)

30. With the conditions set forth below, grant of the conditional use approval will provide an effective means of responding to site conditions for the preservation of wetlands and other natural and scenic features in a manner consistent with Township policy.

31. The only by right use permitted on the Property under the Preservation Overlay District is the development of single family detached dwellings; townhouses are not permitted because the Property contains less than 10 acres. (N.T. February 19, 2014, p. 49)

32. The requirements of the Preservation Overlay District would necessitate development of the subject site for at least eleven (11) single-family homes which would not tend to provide any reasonable level of assurance to the Township that the wetlands would be preserved and protected.

33. The Applicant's civil engineer testified that approximately \$1,239,553.09 would be proposed in site improvements on the subject property for the eleven (11) single-family homes proposal. (Exhibit A-23)

34. The engineering estimate would include provisions for erosion and sedimentation control, storm sewer facilities and curbing. (Exhibit A-23)

35. The Applicant's engineer estimates that the cost per lot of improvements required to implement the single-family dwelling proposal on the subject site is about \$113,000.00 per lot. (N.T., 5/29/14, pg. 53; Exhibit A-8)

36. The illustrative proposal of 11 single-family dwellings is based on the size of the building meeting market conditions, utilizing the setback requirements of side yard, front yard and rear yard. The civil engineer's opinion was that 11 was the correct number. (N.T., 5/29/14, pg. 59)

37. In answer to the question whether single family dwellings could disperse the stormwater running to the wetland better than a single multi-family building, the architect/planner testified that it would depend on how the plan was developed. (N.T., 3/19/14, pg. 34)

38. The future land use map of the Cheltenham Township 2005 Comprehensive Plan (the "Comprehensive Plan") shows the Property as institutional; this was changed from the previous Comprehensive Plan which showed it as a high density residential; institutional use allows residential uses such as a nursing home, dormitory and associated type use. (N.T. February 19, 2014, p. 33-34)

39. The Property is not listed on any historic resource documentation in the Township and does not, and never has, contained historic sites or resources. (N.T. February 19, 2014, p. 52)

40. The multiple dwelling building will be designed to the standards of the LEED Council for Goal Standard Building, which promotes ingenuity and innovation in the Township. (N.T. February 19, 2014, pp. 44-45, 53)

41. The multiple dwelling units will be marketed in the condominium form of ownership with a Declaration of Condominium that applies to the Property. (N.T. February 19, 2014, p. 45)

42. The Condominium Association will have professional management responsible for maintenance of the Property. (N.T. February 19, 2014, p. 46)

43. The Declaration of Condominium will include a deed restriction to the satisfaction of the Township assuring that the Preservation Overlay goals will be achieved. (N.T. February 19, 2014, p. 46)

44. The multiple dwelling project will be subject to all Township Ordinances, including review and recommendations from the Shade Tree Commission, Planning Commission and building and zoning officials. (N.T. February 19, 2014, p. 46)

45. The Conventional Development Plan (the multi-family residential building) creates more open space than is required under the Preservation Overlay District. (N.T. February 19, 2014, p. 47)

46. The Conventional Development Plan does not adversely affect the logical, efficient and economical extension of public services. (N.T. February 19, 2014, p. 62)

47. The development of the Property for multiple dwellings will not have an adverse impact on the neighborhood, which consists of a mix of multiple dwellings, a Post Office, recreational and maintenance facilities, a large open area directly across Ashbourne Road, a school administration building, and single family detached housing separated from the Property by Ashbourne Road and Spring Avenue. (N.T. February 19, 2014, p. 62)

48. With the conditions imposed, the development of the Property for multiple dwellings will not have an adverse impact on neighborhood aesthetics.

49. The development under the Multiple Dwelling District will not result in any adverse effect on individual property rights or public health, safety and welfare. (N.T. February 19, 2014, pp. 64- 65)

50. The Board accepted Andreas Heinrich as an expert in traffic engineering and transportation planning. (N.T. April 16, 2014, p. 12)

51. Mr. Heinrich testified that the proposed multi-family project would not have an adverse impact on traffic conditions and could be accommodated in a safe and efficient manner, that no left turn lanes or deceleration or acceleration lanes were warranted under PennDOT standards, and that there was no significant or material reduction in any levels of service in any of the studied intersections. (N.T. April 16, 2014, pp. 29-30)

52. The traffic study compared pre-versus post-development traffic to determine the impact of new traffic generated by the proposed multi-family development. (N.T. April 16, 2014, p. 15)

53. The traffic counts were completed in December, 2013. (N.T. April 16, 2014, p. 15)

54. Ashbourne Road provides one travel lane in each direction with a posted speed limit of 35 miles per hour; Spring Avenue is a Township Road (one lane in each direction); with a posted speed limit of 25 miles per hour controlled by a stop sign at the intersection with Ashbourne Road (N.T. April 16, 2014, p. 16)

55. Penrose Avenue is a Township road, one lane in each direction, 25 miles per hour speed limit with a stop sign at the intersection of Ashbourne Road; Cedar Lane is a Township Road, one lane in each direction, 25 miles per hour posted speed limit with a stop sign controlled at Ashbourne Road. (N.T. April 16, 2014, p. 17)

56. Washington Lane is a state highway, provides two lanes of travel in each direction with a posted speed limit of 45 miles per hour.

57. A volume capacity analysis was performed based upon the methodologies set forth in the 2010 Highway Capacity Manual published by the Federal Highway Administration and the McTrans Center for the University of Florida. (N.T. April 16, 2014, p. 22)

58. The intersection of Washington Lane, Ashbourne Road/Mellon Road is a signalized five-lighted intersection which makes it more complex than most intersections, a longer cycle length than is typically provided at signalized intersections, generally resulting in a little bit more delay than one might expect in a standard four or three way intersection. (N.T. April 16, 2014, pp. 17- 18)

59. Ashbourne Road in front of the Property carries 550 cars per hour in the morning peak and 660 cars in the afternoon peak. (N.T. April 16, 2014, p. 18)

60. The ingress and egress proposed for the subject site is one lane in and one lane out divided by a grass island. (N.T., 3/19/14, pg. 63)

61. Based upon the Trip Generation Manual published by the Institute of Traffic Engineers, the proposed multiple dwelling development would generate 900 trips per day, 450 in and 450 out and during the peak hours, 70 trips per hour mostly outbound in the morning and 82 trips per hour mostly inbound in the afternoon. (N.T. April 16, 2014, p. 19)

62. The three unsignalized intersections on Ashbourne Road function at a very high level of service with a level of service C or better at all locations. (N.T. April 16, 2014, p. 23)

63. With projected development traffic, the levels of service at the unsignalized intersections will continue to operate at level of service C or better during the two peak hours and the signalized intersection at Washington Lane at Ashbourne Road will operate as described previously with a couple of movements still operating at level of Service E, and the intersection will continue to operate at acceptable levels of service. (N.T. April 16, 2014, p. 24)

64. The level of service for turning movements in and out of the driveway to the proposed project will be at level of service B or better. (N.T. April 16, 2014, p. 27)

65. Desirable sight distance at 35 miles per hour is 440 feet to the left and 350 feet to the right; the proposed location of the access driveway indicates in excess of 500 feet can be provided in either direction. (N.T. April 16, 2014, p. 28)

66. The proposed development will not have an adverse impact on traffic patterns and will not have an adverse effect on public welfare due to changes in traffic conditions. (N.T. April 16, 2014, p. 29)

67. The Applicant will replace all trees that are removed to implement the Conventional Development Plan as required by Chapter 280, Trees. (N.T. June 30, 2014, p. 69)

68. The Applicant will provide a covenant running with the land which requires that the Property contain at least the same amount of viable trees as it does today after development of the multi-family Plan. (N.T. June 30, 2014, p. 70)

69. Development of the proposed multi-family project would not have an adverse impact on property values in the vicinity (N.T. May 29, 2014, p. 83), would not have an adverse impact on health, safety and welfare (N.T. May 29, 2014, p. 85) and would not have an adverse impact on neighborhood aesthetic characteristics (N.T. May 29, 2014, p. 84)

70. The proposed multi-family project meets legislative intent because it encourages innovation, promotes flexibility and economy and ingenuity in residential development of large tracts. (N.T. May 29, 2014, p. 84)

71. The plan submitted satisfies the off-street parking requirement of 1.5 spaces per unit. (N.T., 5/29/14, pg. 58)

72. Correspondence from the Tookany/Tacony-Frankford Watershed Partnership, Inc. directed to the Board of Commissioners dated March 19, 2014 was introduced into the record. The correspondence states that it is “critical that the development plan gives the wetlands top billing in determining the site’s carrying capacity as the site layout and extent of impervious coverage are determined”. The Tookany/Tacony-Frankford correspondence preceded the testimony of Mr. Thomas Cordrey who testified regarding the enhancement of the wetlands as proposed by the Applicant and the removal of an invasive species of plant in the wetlands. Mr. Cordrey also testified about buffering of the wetlands and how the stormwater runoff from buildings, paving and lawns will be managed before discharge. (N.T., 5/29/14, pg. 55; N.T., 6/19/14, pp. 21-22; Exhibit B-16)

73. Michael J. Frolove was qualified as an expert in real estate evaluations and appraisals. (N.T., 5/29/14, pp. 73, 75)

74. Mr. Frolove investigated whether development under the Preservation Overlay District would result in an unreasonable economic hardship to the Applicant. Mr. Frolove concluded that a single-family development on the subject site was not economically feasible. He concluded that the cost of developing 11 single-family homes far exceeds what the estimated market value would be. (N.T., 5/29/14, pp. 78-79; Exhibit A-22)

75. Mr. Frolove estimated that the cost of construction of a single-family home would be \$414,958.00 while the likely market value would be \$325,000.00. (N.T., 5/29/14, pp. 79-81)

76. The estimate of \$414,000.00 in costs are hard costs only, not including soft costs such as real estate commissions, advertising, profit, or transfer tax obligation. (N.T., 5/29/14, pp. 81-82)

77. Mr. Frolove testified that the median sales price for a condominium in the 19027 Zip Code is \$230,000.00. The witness then took the \$230,000.00 median sales price and multiplied it by 145 units reaching a gross sales price of \$33,350,000.00 exclusive of soft costs. (N.T., 5/29/14, pp. 82-83)

78. Mr. Frolove testified that development of the property with single-family dwellings under the Preservation Overlay District would create an unreasonable economic hardship on the Applicant because the cost of the project would exceed the market value of the project. (N.T., 5/29/14, pg. 84)

79. Mr. Frolove bases his use of the figure of \$125 per square foot for new construction for the proposed 11 single-family dwellings on the figures coming from GLP Architects, the architect for the project, as well as his experience in performing thousands of appraisals. (N.T., 5/29/14, pp. 90-92)

80. Mr. Lichtman testified that the cost to construct an average 2000 square foot single-family dwelling was \$125 per square foot. (N.T., 6/18/14, pp. 21-22; Exhibit A-24)

81. Development of the Property under the Preservation Overlay District with single family dwellings would create an unreasonable economic hardship on the Applicant. (N.T. May 29, 2014, p. 84)

82. Mr. Lichtman provided tax economic analyses to clients over a hundred times in the past 30-some years. (N.T., 6/18/14, pp. 23-24)

83. Mr. Lichtman performed a tax analysis for the two (2) proposals, with the Township tax benefit for 11 single-family homes being \$16,186.11 while the Township taxes paid based on 145 multiple-family dwellings would be \$151,000.00. (N.T., 6/18/14, pp. 24-25, 28-29; Exhibit A-24)

84. The Montgomery County Planning Commission study entitled "Characteristics of the Population in New and Existing Housing Units" dated January 2012 was the basis for Mr. Lichtman projecting that there would be a total of less than nine (9) students in the proposed condominium. (N.T., 6/18/14, pp. 26, 29)

85. Based upon real estate transfer tax on the sale price of over \$33 million, it was projected that the Township would experience revenues of almost \$168,000.00. (N.T., 6/18/14, pg. 31)

86. Although Ms. Linda Foggie testified about traffic accidents near, and on, her property, she also testified that her property, 7800 Caversham Road, is "maybe 300 yards" from the closest portion of 1900 Ashbourne Road. (N.T., 6/19/14, pp. 40, 45)

CONCLUSIONS OF LAW

1. Authorization to develop the Tract pursuant to the requirements of the underlying Residential District (conventional development) rather than the Preservation Overlay District may be granted by the Board of Commissioners as a conditional use (Zoning Ordinance Section 295-191).

2. A conditional use is a special exception which falls within the jurisdiction of the municipal legislative body (here, the Board) rather than the Zoning Hearing Board.

3. The decision to permit a use by conditional use or special exception reflects the legislative judgment that the degree of impact necessarily flowing from the use does not materially affect the public interests and will not justify the denial of the use, and that the degree of impact normally flowing from the conditional use is permissible.

4. The Conventional Development Plan will preserve and enhance the natural and scenic features of the Property to a greater degree than development under the Preservation Overlay District would require.

5. The entire Property is intended for development and the Applicant will restrict further subdivision or development by recorded covenant or agreement running in perpetuity.

6. The Applicant has achieved the Preservation Overlay District goals and will assure continued achievement by deed restriction and by conveyance of the common area of the condominium project to the Condominium Association which will be responsible for the maintenance of the common areas, including trees and wetlands.

7. The Applicant has established that the requirements of the Preservation Overlay District result in unreasonable economic hardship.

8. To defeat a conditional use on grounds of traffic conditions, there must be a high probability that the proposed use will generate traffic patterns not normally generated by that type of use, and that such abnormal traffic will pose a substantial threat to the health and safety of the community.

9. Conventional development of the Property is consistent with the Comprehensive Plan.

10. Concerns regarding the logical, efficient and economical extension or provision of public services are insufficiently based upon evidence to justify the denial of the application.

11. The Applicant has established its entitlement to the grant of conditional use approval pursuant to Section 295-191 of the Zoning Ordinance to allow the development of the Property pursuant to the provisions of the M-2 Multiple Dwelling District.

12. The Applicant has met its burden in demonstrating that the multi-family project described in its Application and testimony and supporting documentations meets the criteria necessary for the conventional development of the Property under the Multi-Family Dwelling District, rather than the Preservation Overlay District.

13. The Protestants have not established that the proposed Multiple Dwelling project would have an adverse impact on the neighborhood or community to an extent greater than that normally associated with the development of multi-family dwellings as permitted under the underlying M-2 Multiple Dwelling District.

DECISION

AND NOW, this 3rd day of September, 2014, the conditional use application of Swift and Choi Development, LLC ("Applicant") submitted December 11, 2013 is hereby **GRANTED** with the following conditions:

1. All use and development permitted by this Decision shall conform to the exhibits and testimony presented by the Applicant, unless inconsistent with any specific conditions imposed by this Board, in which case such specific conditions shall take precedence.

2. The proposed multiple dwelling-building shall be no more than three (3) floors, including the ground floor.

3. The Applicant shall submit additional and alternative means of wetlands preservation design in its Land Development Plans.

4. The Applicant shall comply with all Federal and Commonwealth of Pennsylvania statutes and regulations for the protection of wetlands.

5. The Applicant shall implement into its Land Development Plans the design of best management practices in order to protect the viability of the wetlands.

6. The Applicant, and its successors and assigns, shall establish and perpetually maintain an escrow fund of no less than \$20,000.00 to rehabilitate and preserve the wetlands, with an escrow agreement between the Applicant, and its successors and assigns and the Township, prepared and entered into during the land development process. The minimum amount of the fund shall increase annually based upon the Consumer Price Index published by the Department of Labor for all Urban Wage Earners and Clerical Workers – All items U.S. City Average (1982-1984 = 100). The escrow agreement shall provide, among other things, that in the event that the Applicant, or its successors and assigns, fail to preserve the wetlands at 1900 Ashbourne Road, upon sixty (60) days' written notice by the Township, without cure by the Applicant, the funds shall be released by the escrow agent to the Township in order to rehabilitate and preserve the wetlands. The escrow fund shall be replenished, if exhausted, by the Applicant or its successors or assigns, as applicable.

7. The Applicant's Land Development Plans shall include: the landscape plan and fence detail shown on Exhibit A-25; the milling and paving of the Lynnewood Gardens' driveway between Ashbourne Road and Mather Way with two (2) inches of macadam (or more if deemed necessary due to potholes); and the installation of the landscape buffer and fence between the Property and Lynnewood Gardens as shown on Exhibit A-25; and pedestrian and vehicular emergency access to the Property over the Lynnewood Gardens' driveway, controlled by means of either bollards or a chain.

8. The Applicant shall preserve and enhance the woodlands by replacing any tree that is removed during the construction of the project by a tree in accordance with the provisions of the Township Ordinance, Chapter 280, and such commitment shall be set forth in the Condominium Declaration or in a stand-alone Declaration approved to the satisfaction of the Township Solicitor.

9. The Applicant shall purchase adequate sanitary sewage capacity for each dwelling unit and obtain the approval of the Commonwealth, Department of Environmental Protection and Cheltenham Township in regards to adequate sewage capacity.

10. The Applicant shall reconsider and reevaluate the architectural design and appearance of the multi-story building and in doing so, utilize brick, stone (natural or man-made), stucco, wood or other approved materials on at least 75% of all building façades. Building façades which face residentially-zoned property or properties with a predominantly residential character shall be designed to complement those uses.

**BOARD OF COMMISSIONERS
OF CHELTENHAM TOWNSHIP**

By: Harvey Portner
Harvey Portner, President

Secretary: [Signature]

Date: 9-3-14