



KRISTIN S. CAMP  
p: 610.436.4400 Ext# 1050  
f: 610.436.8305  
e: kcamp@buckleyllp.com  
118 W. Market Street, Suite 300  
West Chester, PA 19382-2928

September 11, 2023

Township of Westtown Board of Supervisors  
Township of Westtown  
1039 Wilmington Pike  
West Chester, Pennsylvania 19382

Re: Conditional Use Application  
by Fox Clearing, LLC  
Tax Map Parcels Nos. 67-2-23, 67-2-8, 67-2-9, & 67-2-7.1

Dear Members of the Township of Westtown Board of Supervisors:

The Township Planning Commission (the “Planning Commission”) met on September 6, 2023, and, pursuant to Section 170-2009.C.(3) of the Zoning Ordinance, continued its review of the Amended Conditional Use Application (the “Application”) which Fox Clearing, LLC (“Applicant”) submitted to the Township on May 4, 2023. Applicant seeks Conditional Use Approval under Section 170-601.C(1) and Section 170-903.A of the Zoning Ordinance for the development of the subject property (the “Property”) as a Flexible Residential Development comprised of 85 single family dwellings (the “Proposed Development”). The Proposed Development is depicted on the plan set by D.L. Howell & Associates, Inc. dated April 14, 2023, last revised August 8, 2023 (the “Plan Set”).<sup>1 2</sup> The Planning Commission also reviewed Sheet No. 38 of the Plan Set entitled *Alternative Site Plan With No Lots* (the “No Lot Plan”).

The Planning Commission recommends that the Board of Supervisors should deny the Application. Alternatively, if the Board is inclined to approve the Application, the Planning Commission recommends that the Board should impose certain conditions as set forth below.

The Board should deny the Application for, *inter alia*, the following reasons:

- Pursuant to the Environmental Rights Amendment to the Pennsylvania Constitution, “[t]he people have a right to clean air, pure water, and to the preservation of the

---

<sup>1</sup> As depicted on the Plan Set, the Property is burdened with two (2) pipelines which traverse the eastern portion of the Property (the “Existing Pipelines”). Applicant proposes to construct twenty-three (23) single-family dwellings between the Existing Pipelines with no means of emergency access.

<sup>2</sup> Applicant submitted the most recent revisions to the Plan Set at the first session of the Conditional Use Hearing on August 14, 2023. Then, Applicant submitted supplementary information to the Township on August 23, 2023. Though the Township Engineer issued a Review Letter regarding the submission which Applicant made on August 14, 2023, he issued his review of the supplementary information after the Planning Commission met on September 6, 2023.

PC-1

natural, scenic, historic and esthetic values of the environment.” Based upon the information which Applicant submitted to the Planning Commission, the Planning Commission concludes that, for the other reasons set forth in this letter, the Board’s approval of the Proposed Development as presented would operate to deprive the citizens of the Township of that right. In particular, any such approval may adversely impact the right of the citizens of the Township to preservation of natural, scenic, historic and esthetic values. In particular, those impacts would include, but not necessarily be limited to, a loss of scenic views and a loss of historic resources which would need to be destroyed if the Proposed Development is constructed.

- Applicant did not present to the Planning Commission sufficient information pursuant to Section 170-2009.D.(1)(g) of the Zoning Ordinance to allow the Planning Commission to determine that the Proposed Development will not result in or substantially add to a significant traffic hazard. Accordingly, the Planning Commission is unable to conclude that the Proposed Development complies with the standards for conditional use approval set forth at Section 170-2009.D. of the Zoning Ordinance. Conversely, because of the presence and location of the Existing Pipelines as depicted on the Plan Set, the absence of any means of secondary egress from the eastern portion of the Proposed Development, and the absence of any analyses of the impacts which a pipeline break would have upon traffic flows, the Planning Commission concludes that any emergency situation associated with the Existing Pipelines may create a significant traffic hazard as residents and first responders would not be able to escape from, or get to, the eastern portion of the Property.
- Given the proximity of the improvements and proposed construction within or over top of the Existing Pipelines and the absence of any analyses of the impacts which a pipeline break would have upon residents at the Proposed Development, generally, the Planning Commission finds that there is a high degree of probability that the Proposed Development will cause a substantial threat to the community and a more harmful impact than what one would ordinarily expect from a proposed flexible development
- The versions of the Plan Set which Applicant presented prior to August 23, 2023, were inconsistent with Section 170-402.D.(3)(f) of the Zoning Ordinance. Pursuant to that Section, “[i]f the total of all area(s) of precautionary slopes on a lot exceed 25% of the total area of a lot, then no more than 50% of the precautionary slopes on that lot shall be disturbed, graded[,] or modified.” The Plan Set, as presented prior to August 23, 2023, showed lots which appeared to violate that rule. As noted, Applicant submitted revised materials to the Township on that date. As noted in Footnote No. 2, the Township Engineer did not yet review the revised materials. In that regard, the

bus stop along Shiloh Road. The bus stop shall include a concrete pad for children connected to the interior sidewalk, a crossing of Shiloh Road, and the adjacent internal roadway shall be widened to provide for on-street parking.

6. Applicant shall implement traffic calming measures along Shiloh Road and the internal roads in the Proposed Development in accordance with a plan to be submitted as part of the subdivision and land development application which Applicant shall submit and shall be subject to approval by the Board.

7. Applicant shall comply with the recommendations made by Gerald DiNunzio, Jr. in his Memoranda dated May 23, 2023 and June 23, 2023.

8. Applicant shall comply with the recommendations made by Mark Gross, Director of Public Works in his Memorandum dated June 15, 2023. Such recommendations include the following:

- (a) Restrict parking to one side of the street.
- (b) Designate the roads as snow emergency routes for snowfall in excess of four inches to facilitate plowing pipeline and emergency vehicle access.
- (c) Applicant shall revise the Plan Set to provide a 20-foot-wide deep snow removal easement at the head on position of all cul de sacs to allow for piling of plowed snow. If necessary, lots 34, 63 and 64 may need to be reconfigured to provide this easement.
- (d) No structures shall be installed in the right of way of the cul de sacs.

9. If any lot is served by a grinder pump, such grinder pumps shall be owned by the lot owners or the homeowner association and designed in accordance with Mr. Gross' and the Township sewer engineer recommendations.

10. Applicant shall design and install trails in areas generally depicted on Sheet 37 titled "Alternative Site Plan with Historic Home." The trails shall provide a future connection to proposed trails to the east and south of the Property as illustrated on the Trails and Bikeways Map adopted as part of the Comprehensive Plan. The details for the specifications of the trails shall be subject to approval by the Board as part of the land development plan approval process. If the locations of the trails cross streams or wetlands and require issuance of permits from PaDEP or U.S. Army Corps, Applicant shall be required to obtain the same. These trails shall be open to the public but maintained by the homeowner's association.

- (b) Applicant shall revise the Plan Set to provide a minimum 28-foot cartway to permit two-way traffic and on-street parking along one side of the roadway.
- (c) Applicant shall provide stopping sight distances at the intersections of Road A and Shiloh Road and Road D and Shiloh Road in accordance with PennDOT standards in 67 Pa Code §441.8(h)(ii).
- (d) Applicant shall redesign Road C as it approaches the intersection with Road A to provide a level area as required by §149-907.E.
- (e) Applicant shall redesign the block of Road A between Roads B and C and the block of Road B between Roads A and D to provide a minimum of 500 feet.
- (f) Applicant shall redesign Road A so that a sharp horizontal curvature (STA 8+98 to 15+30) is not introduced near the bottom of the steep grade (STA 2+57 to 10+33) approaching a pronounced sag vertical curve (STA 10+33 to 15+23).
- (g) Applicant shall redesign Road D so that a sharp horizontal curvature (STA 10+64 to 12+33) is not introduced near the bottom of the steep grade (STA 2+35 to 8+71) approaching a pronounced sag vertical curve (STA 8+71 to 12+07).
- (h) Applicant shall provide a clear sight triangle at the intersection of Road A and Shiloh Road as required by §170-908.A and if necessary, remove any physical obstructions, plantings, berms or grades within the clear site triangle. If necessary, Applicant shall obtain necessary easements in order to provide this clear sight.
- (i) Applicant shall relocate the driveways for lots 11, 12, 14, 21, 38, 39, 59 and 60 so they comply with §149-915.C.
- (j) Applicant shall provide funds for future traffic signal adjustments at Street Road and Shiloh Road/Westtown-Thornton Road.

3. Applicant shall comply with outstanding comments in William N. Malin's review letter dated May 26, 2023.

4. Applicant shall revise the Plan Set to provide sidewalks along both sides of internal roads per §149-916.

5. If the West Chester Area School District will not provide bus service within the internal streets in the Proposed Development, Applicant shall revise the Plan Set to provide a school

in Cedarville's most recent review letter. Applicant shall be required to recalculate the base density and bonus density after compliance with Cedarville's comments.

(c) Applicant shall revise its calculation of open space by excluding above ground areas proposing managed discharge and including only those areas associated with above ground stormwater management used to convey flow and minimize sedimentation to subsurface infiltration/stormwater management facilities that meet the following requirements:

- The subsurface infiltration/stormwater management facility shall fully manage up to the 100-year frequency storm, through infiltration or a combination of infiltration and managed discharge.
- The subsurface infiltration/stormwater management facility shall meet the loading ratio requirements set forth in the Pennsylvania Stormwater Best Management Practices Manual, Appendix C.
- The subsurface infiltration/stormwater management facility shall meet all other applicable requirements as set forth in the Westtown Township Stormwater Management Ordinance, Chapter 144, Article III, and the Pennsylvania Stormwater Best Management Practices Manual.

(d) Applicant shall design and build suitable improvements for active recreation areas and facilities for the residents of the Proposed Development pursuant to the requirements in §170-907.A(2) such that not less than 10% of the open space is active recreation space. This plan shall be submitted as part of the subdivision and land development application which Applicant shall submit and shall be subject to approval by the Board.

2. Applicant shall comply with outstanding comments in Albert Federico's review letter dated June 29, 2023 and incorporate Mr. Federico's additional suggestions made at the July 19, 2023 Planning Commission meeting which include the following:

(a) Applicant shall revise the Plan Set to offer for dedication right-of-way along Shiloh Road as appropriate to comply with §149-903A(2).

Planning Commission is unable to definitively conclude that the revised submission is consistent with Section 170-402.D.(3)(f) of the Zoning Ordinance.

- Pursuant to Section 170-907.A(5)(e) of the Zoning Ordinance, other than open storage or settling ponds which are accessory to infiltration facilities, areas used for stormwater management purposes may not be counted toward open space calculations. Applicant maintains, but the Planning Commission is unable to conclude, that certain stormwater facilities depicted on the Plan Set as being within open space areas are “open storage or settling ponds which are accessory to infiltration facilities[.]” The Planning Commission does not conclude, therefore, that Applicant’s open space calculations are accurate. Accordingly, the Planning Commission cannot conclude that the Plan Set complies with Article IX of the Zoning Ordinance or that Applicant is entitled to bonus density pursuant to Section 170-904.A.(2) of the Zoning Ordinance.
- Pursuant to Section 170-905.B(1) of the Zoning Ordinance, streets within a flexible residential development must be designed in accordance with the Subdivision and Land Development Ordinance. Pursuant to Section 149-901.F. of that ordinance, the length of any *cul-de-sac* may not exceed 1,500 feet. The Planning Commission concludes that the northern portion of Road C as depicted on the Plan Set does not comply with that regulation.

If Applicant revises the Plan Set and presents sufficient evidence to demonstrate that the Proposed Development does not unreasonably or significantly affect the protected values under the Environmental Rights Amendment and presents sufficient evidence to satisfy its burden under the foregoing Sections of the Zoning Ordinance (and, as applicable, the Subdivision and Land Development Ordinance), the Planning Commission recommends that the Board approve the Application subject to the following conditions.

1. Applicant shall comply with outstanding comments in the Cedarville Engineering Group's (“Cedarville”) review letters regarding the Proposed Development. Such comments include but are not limited to the following:

- (a) Applicant shall demonstrate that all lots within the Proposed Development meet the slope requirements of §170-402.D(3)(f) and that no more than 50% of the precautionary slopes on such lots is proposed to be disturbed, graded or modified.
- (b) The maximum number of lots permitted in the Proposed Development shall be finally determined after Applicant complies with the outstanding comments

11. The roads in the Proposed Development shall be dedicated to the Township and shall comply with all relevant specifications in the Township Code unless a waiver is granted by the Board as part of land development.

12. The Planning Commission does not support the installation of lights on the proposed roads in the Proposed Development and recommends that the Board of Supervisors waive the requirement for Applicant to install lights pursuant to §170-905.E. If the Board determines that lights are needed on the roads in the Proposed Development, the Planning Commission recommends that they be limited to areas of significant curves in the roads and entrance locations to the Proposed Development. If the Board of Supervisors requires Applicant to install street lighting along the proposed roads, the lights shall be owned and maintained by the homeowner's association created for the Proposed Development.

13. Applicant shall preserve the existing historic farmhouse located on the Property (referred to as the Stokes Farmhouse at 1013 Shiloh Road) and the historic house located at 927 Shiloh Road (referred to as the Miles House") and use such houses as residential dwellings or some adaptive reuse approved by the Township) Applicant shall consult with the Township Historic Commission on methods of preservation. Applicant shall record a conservation easement protecting the facade of the historic farmhouse as required by §170-904.A(2)(c)(1)(b).

14. Provided Applicant complies with the requirements in §170-904.A(2)(c), Applicant shall be entitled to a bonus density for the preservation of the historic farmhouse and Miles House.

15. Applicant shall revise the Plan Set to comply with the comments from Grant Everhart, Executive Director of the Goshen Fire Company as set forth in a Memorandum from Maggie Dobbs dated October 22, 2021. Specifically, Applicant shall provide fire hydrant design flows to be at least 1000 gallons per minute and obtain approval from the water company for such fire hydrants.

16. Applicant shall provide plans to the Township which verify the location of the Existing Pipelines as well as the depth at which these Existing Pipelines are installed.

17. Applicant shall prepare a safety plan for review and approval by the Public Works Director, Goshen Fire Company and the Township's Emergency Management Coordinator that outlines the safety measures and construction techniques that Applicant shall adhere to when performing any earthwork or construction in the Proposed Development. The safety plan shall at a minimum comply with all applicable requirements of the companies that own the Existing Pipelines and all relevant federal, state and County requirements and PHMSA and/or U.S. DOT pipeline safety requirements.

18. Applicant shall prepare an emergency evacuation plan that identifies an evacuation plan for the residents of the Proposed Development in the event of a Pipeline accident, leak or

explosion. The evacuation plan shall be approved by the Township's Emergency Management Coordinator.

19. Applicant shall include in the agreements of sale for any lot within the pipeline impact radius ("PIR") of the Existing Pipelines notification that the lot and dwelling are located within this PIR. The notification shall be signed by all prospective buyers verifying that the lot owner is aware of the location of the Existing Pipelines and the restrictions for development within such lot.

20. Applicant shall provide to the owners of the Existing Pipelines on the Property and the Chester County Emergency Management Services copies of the preliminary land development plans and seek input from these entities on what restrictions and safety protocols Applicant shall adhere to in the design and construction of the Proposed Development. Applicant shall provide the Township with copies of all communications with the pipeline companies and implement the companies' safety recommendations. Part of the safety plan shall include measures that Applicant and all contractors involved in the construction of the Proposed Development must adhere to when construction vehicles and heavy equipment must traverse the Existing Pipelines.

21. If during earthmoving or construction of the Proposed Development, Applicant or its contractors or any one otherwise working on the Proposed Development damages the Existing Pipelines, Applicant and its contractors shall provide immediate notification to the Township, the Township Police Department, the County Department of Emergency Services, all required emergency responders, and any other government authority or agency having responsibility for the geographic location in which the Property is situated.

22. Applicant shall include in the deeds for all lots within the PIR of the Existing Pipelines on the Property, the homeowner's declaration and in the public offering statement that is provided to prospective buyers' disclosures of the existence of the Existing Pipelines and restrictions for what can and cannot be developed or built within the Existing Pipelines' easements. The Township shall approve the disclosures and the terms to be included in the deeds, Declaration and public offering statement.

23. Prior to any earth disturbance or construction on the Property Applicant shall demarcate the area of the Existing Pipelines' easements and such markers shall be maintained throughout the course of construction. Permanent markers that are clearly visible and obvious shall be installed and maintained in perpetuity.

24. Applicant shall work with the owners of the Existing Pipelines to identify an adequate means of access to the Existing Pipelines by emergency responders after construction of the Proposed Development.



25. If the Plan Set is revised in order to comply with the restrictions and encroachment guidelines imposed by the owners of the Existing Pipelines, Applicant shall submit the revised plan to the Township and obtain all necessary approvals for such revisions.

26. The Plan Set shall be revised to add as notes the restrictions and encroachment guidelines imposed by the owners of the Existing Pipelines.

27. The proposed retaining walls depicted on the Plan Set shall be owned and maintained by the homeowners association and inspected annually by a structural engineer to ensure that they are structurally sound. The structural engineer's reports shall be provided to the Township. If the reports reveal that the retaining walls are not structurally sound, the homeowners association shall repair the same. The terms in this condition shall be included in the homeowners association declaration.

28. The Plan Set shall be revised to add a note which restricts the total impervious cover that can be constructed on each individual lot. The total square footage of impervious coverage per lot shall be determined by the Township Engineer to be necessary to mitigate stormwater runoff from the individual lots, as determined at the land development phase. Applicant shall include in the homeowner association declaration or deeds to the individual lots a note that advises the lot owners the total amount of impervious cover in square feet that may be built.

29. Applicant shall prepare an Environmental Impact Assessment to (A) analyze the impacts of the Proposed Development on the natural, scenic, historic, and esthetic values of the environment and (B) compare those impacts to those which would be expected from both a traditional (non-flexible residential development) development of the Property and a development of the Property which does not include home sites on the far (east) side of or between the Existing Pipelines.

30. Applicant shall coordinate with the Goshen Fire Company and the Township's Emergency Management Coordinator regarding the nature and scope of studies to analyze conditions which would prevail at and in the vicinity of the Property in the event of a break of or spill from one or both of the Existing Pipelines and, thereafter, shall cause such studies to be completed by independent third-party experts and submit them to the Township. Such studies shall include, but shall not necessarily be limited to, a Flame Acceleration Simulator and a Spill Simulation. Applicant shall fully comply with all recommendations set forth in such studies.

31. If the Proposed Development is built, the Planning Commission recommends that the Proposed Development be designed with individual lots that are conveyed to individual owners, as opposed to the No Lot Plan where the owner only owns the footprint of the dwelling unit.

The Planning Commission also ratified this Firm's appearance in the Conditional Use Hearing on behalf of the Planning Commission as a party to that proceeding.

If you have any questions regarding the Planning Commission's recommendation, please do not hesitate to contact me.

**BUCKLEY BRION  
McGUIRE & MORRIS, LLP**

  
\_\_\_\_\_  
Kristin S. Camp, Esquire

  
\_\_\_\_\_  
Michael S. Gill, Esquire

KSC/jak

cc: Jon Altshul, Township Manager (*via email to [jaltshul@westtown.org](mailto:jaltshul@westtown.org)*)  
Ludmila Carter, Director of Planning and Zoning (*via email to [mcarter@westtown.org](mailto:mcarter@westtown.org)*)  
Patrick M. McKenna, Esquire (*via email to [pmckenna@gawthrop.com](mailto:pmckenna@gawthrop.com)*)  
Gregg I. Adelman, Esquire (*via email to [gadelman@kaplaw.com](mailto:gadelman@kaplaw.com)*)