

IN THE MATTER OF

BOARD OF SUPERVISORS

INCH'S PROPERTIES, LLC

CARROLL TOWNSHIP

OBJECTOR/PARTY PAUL WALSH

YORK COUNTY, PENNSYLVANIA

**CONDITIONAL USE APPLICATION
FOR A MULTI-FAMILY DWELLING
UNIT DEVELOPMENT**

WRITTEN DECISION

EXHIBITS

- B-1 Cover letter from Jonathan D. Andrews, Esq. and Application for a Conditional Use to construct a Multi-Family Dwelling Unit Development – Dated August 23, 2022.
- B-2 Conditional Use Application Narrative (64 pgs.)
- B-3 Cover Letter of Jonathan D. Andrews, Esq. for Revised Plan – Dated October 18, 2022.
- B-3-A Revised Conditional Use Plan (1 pg.)
- B-3-B Lighting Plan (1 pg.)
- B-3-C Landscaping Plan (1 pg.)
- B-3-D Summary of Revised Plan (2 pgs.)
- B-4 Certificate of Service of Public Notice of the November 1, 2022 Conditional Use hearing published in The Sentinel (See Ex. 1 attached to B-4) and The Dillsburg Banner (See Ex. 2 attached to B-4) Written Notice of same to individuals identified in Ex. 3 attached to B-4, and same Written Notice posted on the Carroll Township Website, the Carroll Township Municipal Building and to the subject property (See Ex. 4 attached to B-4)
- B-5 Minutes from the October 27, 2022 Carroll Township Planning Commission meeting
- T-1 Comments from Phillip W. Brath, P.E. Carroll Township Engineer concerning review of Applicant's Conditional Use application dated September 20, 2022.

- T-2 Comments from Philip W. Brath, P.E. Carroll Township Engineer concerning review of Applicant’s Revised Conditional Use Plan dated October 26, 2022.
- A-1 Cover letter from Jonathan D. Andrews, Esq. and Application for a Conditional Use to construct a Mixed Use Development dated August 23, 2022.
- A-2 Conditional Use Application Narrative for the Mixed Use Development (64 pgs.)
- A-3 Purchase and Sale Agreement for the subject property between The Giant Company, LLC and Inch’s Properties, LLC dated May 20, 2022.
- A-4 Aerial Image of the subject property.
- A-5 Letter dated October 18, 2022 from Jonathan D. Andrews, Esq. and Revised Application materials for a Conditional Use to construct a Mixed Use Development
- A-6 Revised Conditional Use Plan (1 pg.)
- A-7 Conceptual Building Floor Plan & Elevation (3 pgs.)
- A-8 Revised Landscaping Plan (1 pg.)
- A-9 Revised Lighting Plan (1 pg.)
- A-10 Comments from Phillip W. Brath, P.E. Carroll Township Engineer concerning review of Applicant’s Conditional Use application dated September 20, 2022.
- A-11 Comments from Philip W. Brath, P.E. Carroll Township Engineer concerning review of Applicant’s Revised Conditional Use Plan dated October 26, 2022.
- A-12 Proposed conditions of approval dated November 1, 2022.

FINDINGS OF FACT

1. Applicant, Inch’s Properties, LLC is the owner of approximately 39 acres that consists of two (2) separate parcels located at the following addresses; (1) 15 Ore Bank Road (Parcel Identification Number 20-000-PC-0048.00-00000) and (2) Ore Bank Road (Parcel Identification Number 20-000-PC-0055-U0-00000) generally located northeast of the intersection of Ore Bank Road and West Siddonsburg Road (hereinafter “property”).

2. Applicant’s property is located in the Mixed-Use 1 (“MU-1”) Zoning District of Carroll Township which is regulated by Section 450-206 of the Carroll Township Zoning Code (hereinafter “Zoning Code”).

3. Applicant requested relief in the form of a Conditional Use Approval in accordance with Section 450-705 of the Zoning Code.

4. Applicant is requesting relief from the one (1) year deadline in accordance with Section 450-705.F of the Zoning Code.

5. The proposed mixed use development will generally include residential structures, commercial buildings, parking areas and other appurtenant site improvements including common open space areas, stormwater management facilities, screening and landscaping treatments and other elements.

6. Applicant submitted a conditional use application in August 2022 that proposed 208 apartment units contained within seven (7) buildings, two (2) accessory storage structures and 629 parking spaces on the property grounds.

7. Applicant submitted a revised conditional use application and plan that reduced the apartment units to 148 that will be contained within five (5) building, one (1) accessory storage structure and 444 parking spaces on the property.

8. The mixed use development also proposes 33 single family detached dwelling lots and commercial businesses which are permitted in the MU-1 zone and not subject to the conditional use application process.

9. Public Notice of the time and place of the hearing in this matter was published in the Dillsburg Banner, a newspaper of general circulation in Carroll Township, on October 13, 2022 and October 20, 2022. Notice of the time and place of the hearing was posted on the Carroll Township website, at the Carroll Township Municipal Building, and on the subject property on September 15, 2022.

10. No objections as to the method and timing of Notice and advertising were raised.

11. No objections as to any of the exhibits (B-1 through B-5, T-1 and T-2, and A-1 through A12)¹ were raised.

12. On November 1, 2022 at approximately 6:30 p.m., a hearing was conducted on the matter at the Carroll Township Municipal Building.

13. The Applicant has standing as the equitable owner of the property.

14. Testimony at the hearing was taken from Joe Eisenhauer, Director of Acquisitions and Development and representative for Applicant, Justin Kuhn P.E., of Integrated Consulting, Craig Mellott P.E., of Traffic Planning & Design, Inc., Paul Walsh, and Everett Shoaff, as well as Phillip Brath Township Engineer and Brandon Slatt, Township Manager and Zoning Officer.

15. Paul Walsh resides at 4 Ruffian Circle, Dillsburg, PA 17019 and was determined by the Board to have sufficient interest so as to be recognized as a party to this matter.

16. The property is mostly a tilled field that has been used recently as part of an agricultural operation.

¹¹ Ex B-1 and A-1 are the same exhibit as are B-2 and A-2; B-3 and A-5, T-1 and A-10, and T-2 and A-11, and any reference to one includes the other same exhibits, i.e., a reference to B-1 includes A-1 as well.

17. The property is a corner lot with W. Siddonsburg Road located to the southeast, Ore Bank Road located to the southwest and west, and Route 15 located to the northwest of the property.

18. The property is in an area that has been zoned for, and developed with, a mix of housing with various density levels as well a mix of businesses.

19. Sixty percent (60 %) of the perimeter of the property adjoins three public streets; W. Siddonsburg Road, Ore Bank Road and Route 15, with the remaining perimeter adjoining developed or developable lots.

20. Land adjoining to the northeast of the property is zoned as part of the Township's Residential Suburban-2 Zone (RS-2) and mostly is developed with single family detached dwellings.

21. Land adjoining to the southeast is zoned as part of the Township's Residential Suburban-3 Zone (RS-1).

22. Land adjacent to the southwest and west of the property is zoned as part of the Township's MU-1 Zone and is developed as part of the Ore Bank Road right-of way.

23. Land adjacent to the west and north is zoned as part of the Township's Commercial Zone (C) and is developed as part of the rights-of-way of either Ore Bank Road or Route 15; with land across both of these roads developed with more intensive, highway commercial oriented businesses, including those with drive through facilities.

24. The 148 apartment units will be distributed between five (5) apartment buildings; four (4) buildings will have 30 units and one (1) building will have 28 units.

25. Each apartment building will be three (3) stories and approximately 45 feet in height.

26. The property will have the necessary 444 parking spaces (3 per unit) required by the Zoning Code.

27. The Apartment Lot size will be approximately 21.98 acres with 7.8 acres proposed as impervious lot coverage and 10.6 acres of open space dispersed throughout the lot.

28. The apartment units will be connected to, and served public water and public sewer services.

29. The proposal includes approximately 37,000 square feet of outdoor leisure area and 8,377 square feet of indoor leisure area which equates to approximately 306.6 square feet per apartment unit.

30. The proposal includes a walking trail extending along existing adjoining single family detached dwelling lots, through the proposed open space area identified along Route 15 and

between the proposed commercial lot and proposed single family detached dwelling lots identified on the revised conditional use plan.

31. Applicant witnesses adopted the Application Narrative, Ex. A-2, and revised application materials, Ex. A-5 as their testimony, in addition to their testimony presented at the November 1, 2022 conditional use hearing.

CONCLUSIONS OF LAW

1. The Carroll Township Board of Supervisors has jurisdiction to hear the above-captioned Application for Conditional Use pursuant to Section 450-705 of the Carroll Township Zoning Ordinance (Ordinance).

2. Proper Notice of the hearing was given to the public and to all interested parties.

3. Exhibits B-1 through B-5, T-1 and T-2, and A-1 through A-12 were properly admitted into evidence.

4. Applicant met its burden in establishing the requirements of a conditional use to construct a 148-apartment unit development with the conditions required by the Carroll Township Zoning Ordinance and this Board in accordance with the attached discussion and decision.

5. Applicant met its burden of proof in establishing just cause for an extension from one (1) year to three (3) years to secure the necessary permits and complete the authorized work for the townhouse development.

DISCUSSION

Applicant Inch's Properties, LLC applied for conditional use relief in order to construct a 148 apartment unit development on the property located on the east corner of the intersection of Ore Bank Road and Route 15/Gettysburg Pike and extending south to W. Siddonsburg Road, Dillsburg, Carroll Township, Pennsylvania, and in conjunction therewith, Applicant requested an extension to three (3) years to secure the necessary permits and complete the authorized work. This property is located in the Mixed Use-1 Zoning District (MU1) of Carroll Township.²

Section 450-705A of the Carroll Township Zoning Code requires certain general filing requirements for all Conditional Use Applications as follows:

Conditional uses.

A. Filing of conditional use. All applications for conditional uses shall be submitted to the Zoning Officer. All applications shall be made on the form supplied by the Township and shall contain information requested on such form. All applications shall also contain the following information:

²Applicant is proposing single family detached dwellings and a mixture of businesses on the property which are permitted by right in the MU-1 zone.

(1) Name and address of the applicant and, if different, the name and address of the landowner. If the applicant is not the landowner of record, information demonstrating that the applicant has the legal right to make the application shall accompany the application.

(2) Existing and proposed features in accordance with Chapter 435, Subdivision and Land Development, requirements.

(3) Dimensions and shape of the lot to be developed, and the location and dimensions.

(4) The height of any proposed buildings or structures.

(5) Existing and proposed uses of all existing and proposed structures and land uses.

(6) Existing and proposed off-street parking and loading spaces.

(7) Scaled, legible and accurate drawings with sufficient detail to demonstrate compliance with all applicable provisions of this chapter.

(8) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this chapter.

(9) A listing of all special exceptions and/or variances which the applicant is requesting in connection with the proposed use.

Applicant complied with the above requirements by submitting all the necessary information with its application.

A zoning ordinance classifies uses in a given zoning district as “permitted uses as of right” or “prohibited uses.” At its discretion, the municipality may classify certain uses as permitted by special exception, or as conditional uses. 53 P.S. §10603(c)(1) [special exception], (2) [conditional use]. In classifying a use as a special exception or conditional use, the municipal governing board makes a legislative decision that the use is a permissible and legitimate use of property within a given zoning district and not adverse to the public interest *per se*. *Bailey v. Upper Southampton Twp.*, 690 A.2d 1324 (Pa. Cmwlth. 1997); *Perkasie v. Moulton Builders, Inc.*, 850 A.2d 778 (Pa. Cmwlth. 2004).

A zoning ordinance classifying uses as conditional uses properly must set forth in the zoning ordinance the standards for such uses. These standards may be objective or subjective in character. An applicant for a conditional use is required to demonstrate compliance with the objective criteria of the zoning ordinance. *Bray v. Zoning Bd. of Adjustment*, 410 A.2d 909 (Pa. Cmwlth. 1980).

Objective criteria include: (1) the kind of use (i.e., the threshold definition of what is authorized as a conditional use); (2) specific requirements or standards applicable to a particular conditional use (e.g., special setbacks); and (3) specific requirements generally applicable to such a use (e.g., parking requirements). *Bray*, 410 A.2d at 911.

Once the applicant has provided such information, and the information demonstrates compliance with the objective requirements of the zoning ordinance, the applicant is entitled to approval because the use is presumed to be consistent with the public health, safety and welfare. *Perkasie v. Moulton Builders, Inc.*, 850 A.2d 778 (Pa. Cmwlth. 2004); *Bailey v. Upper Southampton Twp.*, 690 A.2d 1324 (Pa. Cmwlth. 1997).

The governing body may disapprove the application only if parties that object to the proposal demonstrate with sufficiently particularized evidence, (speculative or generalized evidence is not sufficient to deny an application) (i) that it does not meet the objective criteria of the zoning ordinance or (ii) that there is a high degree of probability that the use would have effects greater than those normally generated by that type of use and those effects will pose a substantial threat to the health and safety of the community. See, e.g. *Marquise Inv., Inc. v. City of Pittsburgh*, 11 A.3d 607 (Pa. Cmwlth. 2010); *Brickstone*, 789 A.2d at 333, 341-342.

Multi-family dwellings are authorized in the MU-1 Zone as a conditional use pursuant to Section 450.206B of the Zoning Ordinance via Section 450-212 Table of Land Uses by Districts. The following section of the Zoning Ordinance identifies the requirements for the proposed use. Applicant has submitted sufficient evidence to satisfy its burden of proving compliance with the below requirements which is provided after each section of the Ordinance.

§ 450-350. Multiple-family dwellings or multiple townhouses (single-family attached dwellings) on a single lot.

A multiple-family dwelling or multiple townhouses (single-family attached dwellings) on a single lot are permitted as provided in Article 2 herein and subject to the following criteria:

A. Minimum lot area: two acres.

Applicant submitted a revised conditional use plan into evidence that depicted the area of the subject property as 21.98 acres which is sufficient to satisfy this requirement.

B. All units must be connected to public sewer and public water systems.

Applicant submitted sufficient evidence to satisfy this requirement in that all dwelling units will be connected to Dillsburg Area Authority's public sewer system and public water system.

C. Minimum required setbacks. All structures and dumpsters shall be set back at least 50 feet from every property line. Off-street parking and loading shall be set back at least 25 feet from every property line. Interior building setbacks shall be as follows:

Applicant submitted plans into evidence that depicted all buildings setback distances of at least 50 feet from all Apartment Lot lines. Additionally, all off-street parking areas are designed to be set back distances at least 25 feet from all Apartment Lot lines.

(1) Front to front, rear to rear, or front to rear, approximately parallel buildings shall have at least 0.6 times the average length of the buildings between faces of the building or 70 feet whichever is greater. If the front or rear faces are obliquely aligned, the

above distance may be decreased by as much as 10 feet at one end if increased by similar or greater distance at the other end;

Applicant submitted a Conditional Use Plan into evidence that showed, the fronts of the 28-unit Apartment Building and two 30-unit Apartment Buildings are approximately parallel to another Apartment Building. The average length of the 28-unit and 30-unit Apartment Buildings is approximately 177.67 feet. Sixty (60%) percent of the average length of these Apartment Buildings is approximately 106.6 feet. The required and proposed separation distance between the fronts of these approximately parallel Apartment Buildings is at least 106.6 feet. There are no other approximately parallel Apartment Buildings proposed.

(2) Buildings shall front a road, parking area, courtyard, or other building front, not the side or rear of another building, unless said buildings are separated by a minimum of 100 feet;

Applicant submitted a Conditional Use Plan into evidence that depicts the fronts of all Apartment Buildings designed to be along parking lots. No Apartment Building is designed with its front onto the side or rear of any other Apartment Building. Given the foregoing, the Application complies with this requirement. (See Ex. B-3)

(3) A minimum yard space of 30 feet is required between end walls and 80 feet from rear face to rear face of buildings, and 60 feet from rear to side.

As depicted on the Plans, the end walls of all Apartment Buildings are required and designed to be set back distances at least 30 feet from the end walls of all other Apartment Buildings. Also, the rear walls of all Apartment Buildings are required and designed to be set back distances at least: (i) 80 feet from the rear walls of all other Apartment Buildings; and (ii) 60 from the end (i.e., side) walls of all other Apartment Buildings. Given the foregoing, the Application complies with this requirement. (See Ex. B-3)

D. Buildings shall be setback a minimum of 25 feet from any parking lot, aisle, or access drive.

Applicant submitted a revised Conditional Use Plan into evidence that shows all apartment buildings set back distances at least 25 feet from all parking lots, aisles and access drives in compliance with this requirement. (See Ex. B-3)

E. All buildings must be set back a minimum of 100 feet from any single-family residential use, and there shall be a thirty-foot landscape buffer along the perimeter where a contiguous single-family residential use exists, constructed and maintained in accordance with this chapter and Chapter 435, Subdivision and Land Development.

As depicted on the revised Conditional Use Plan, all apartment buildings are set back distances at least 100 feet from any single-family residential use on an adjacent lot in compliance with this requirement. (See Ex. B-3)

F. Buildings shall be designed so as to avoid unvaried patterns of construction or repetitive spaces between the buildings. Variations in the setback or alignment of buildings

erected on the same frontage or attached to other buildings shall be deemed desirable, parallel arrangements of buildings should be avoided and desirable variations in such things as the facade, width, color, exterior materials, construction and rooflines of apartment buildings or townhouses shall be deemed desirable.

As depicted on the plans submitted into evidence, the apartment buildings' facades are designed to incorporate variations in alignment or spacing between buildings or public street rights-of way. Additionally, as depicted on the conceptual building elevation and floor plan, the apartment buildings' facades are designed to include other architectural and facade enhancements, adding variety, including widths, projections, recesses, openings, colors, exterior materials or rooflines. Given the foregoing, the Application complies with this requirement. (See Ex. A-6 and A-7)

G. The area to the front of the building shall be landscaped with a mixture of shrubs and hedges with a minimum of four such elements provided for each ground floor unit. Two shade trees per first floor unit shall be planted along the perimeter of the building.

Applicant submitted a revised Landscape Plan into evidence that showed the areas in front of the buildings landscaped with a mixture of shrubs and hedges with at least four of such elements provided for each ground floor unit, except for permitted driveways, sidewalks and other permitted features. Additionally, two shade trees per first floor unit are proposed to be planted along the perimeter of each building. (See Ex. A-8 and testimony from Justin Kuhn, P.E.)

H. Maximum building height may be increased up to an additional 10 feet provided the required front setback is increased in an amount equal to 1/2 the increase in height, and provided the structure is not more than three stories.

As depicted on the revised Conditional Use Plan and Building Elevation and Floor Plan, the apartment buildings are designed to include three stories at an overall height of approximately 45 feet. Further, the approximately 45-foot tall apartment buildings are 10 feet higher than the 35 foot limitation set forth in Section 450-206.D(1) of the Zoning Ordinance. Therefore, the apartment buildings are required and designed to comply with the 55-foot front building setback distances (i.e., $(45' - 35') / 2 + 50'$ front building setback). Given the foregoing, the Application complies with this requirement.

I. At least 40% of the development site shall be devoted to common open space. Such required open space shall be in addition to any dedicated parklands and/or fees in lieu thereof. One-half of the open space shall be landscaped as a landscape buffer (this shall be in addition to any other required landscaping) and shall be spread throughout the development. For the purposes of this section, the yard area between ground floor units and the parking lot, and a 20 feet long by the width of the ground floor unit shall not be considered open space. The location, design, ownership and maintenance of such common open space shall be subject to the requirements of this chapter, and Chapter 435, Subdivision and Land Development.

As depicted on the plans submitted into evidence and the testimony of Justin Kuhn, P.E., approximately 48% of the Apartment Lot is proposed as common open space. At least one-half

(50%) of the required common open space is designed to be landscaped as part of the required landscape buffer. The required common open space is designed so as to be spread throughout the Apartment Lot. No yard area between any ground floor apartment units and the nearest parking lot, and no area within 20 feet of any ground floor apartment unit is designed as part of the required common open space. Applicant agrees to comply with all applicable common open space requirements of the Carroll Township Subdivision and Land Development Ordinance (“SLDO”) as part of the subsequent subdivision/land development approval process. (See Ex. B-3 and Testimony J. Kuhn)

J. Not applicable.

K. Multiple-family dwelling requirements shall include:

K(1) A multiple-family dwelling shall contain a maximum of 50 dwelling units.

As depicted on the plans submitted into evidence, including the Building Elevation and Floor Plan, all proposed apartment buildings are designed to include less than 50 apartment units. As depicted on the revised conditional use plan, the Apartment Lot is proposed to include a 28-unit apartment building and 30-unit apartment buildings. (See Ex. B-3 and A-7)

K(2) A multiple-family dwelling shall not be less than 60 feet or more than 240 feet in length.

As depicted on plans submitted into evidence, including the Building Elevation and Floor Plan, apartment buildings are designed with dimensions no less than 60 feet and no greater than 240 feet. The dimensions of the 28-unit and 30-unit apartment buildings are approximately 68.75 feet (depth) and 177.67 feet (length). (See Ex. B-3 and A-7)

K(3) Forty percent of building exterior shall be varied or staggered for setbacks or alignment.

As depicted on plans submitted into evidence, including the Building Elevation and Floor Plan, the Apartment Buildings' facades are designed to incorporate variations in alignment or spacing between buildings or public street rights-of-way, as well as other architectural and facade enhancements adding variety including widths, projections or recesses. At least 40% of each Apartment Building's facade is required and designed to include variations. (See Ex. B-3 and A-7)

K(4) Each dwelling unit shall be provided a minimum of 96 cubic feet of storage area in an enclosed room which shall be capable of being locked. All such facilities shall be located in an area which has direct access to a street or driveway.

As depicted on the plans submitted into evidence, an enclosed, lockable accessory storage building is designed and proposed to have direct access to streets and access drives via the parking lot aisles along which they are located. As depicted on the revised Conditional Use Plan, one accessory storage building totaling approximately 14,400 cubic feet is proposed to serve the residents of the 148 apartment units (appx. 97.3 CF per apartment unit). This total exceeds the required cubic feet of storage space that is required for 148 apartment units.

K(5) Each dwelling unit shall have a private or shared space created through architectural elements or landscaping and fencing at least 200 square feet in area. The space may include balconies, patios and porches and include shared spaces internal or external to the structure, specifically designated for leisure activity by the dwelling unit(s) and its guests.

Applicant submitted plans into evidence, including a Building Elevation and Floor Plan, depicting the apartment buildings and the Apartment Lot designed to include private and shared indoor and outdoor spaces for leisure activities of the residents and invited guests. The spaces within the apartment buildings are designed to include private porches or patios ranging between approximately 40.5 square feet and 63 square feet as part of each apartment unit, a shared community room (appx. 568 SF) and a fitness center (appx. 1,049 SF) on the ground floor of the 28-unit Apartment Building.

As depicted on the Conditional Use Plan, 148 apartment units are proposed in five (5), 30-unit Apartment Buildings and one (1), 28-unit Apartment Building. At least 29,600 square feet of leisure space is required for these apartment units (148 x 200 SF). As indicated in the plans submitted into evidence and the testimony of Justin Kuhn, P.E., there is proposed 37,000 square feet of outdoor leisure area and 8,377 square feet of indoor leisure area which equates to approximately 306.6 square feet per apartment unit which satisfies the requirements stated above. The indoor leisure area is proposed as private patio/porch areas and the shared community room and fitness center. The outdoor leisure area is designed to include landscape plantings and other passive recreation related treatments. When all indoor and outdoor leisure areas are combined, a total of approximately 48,114.

L. Sidewalks shall connect pedestrian destinations, such as building fronts, mailbox pedestals, and adjacent developments.

Applicant submitted sufficient evidence to show sidewalks and pedestrian pathways designed to provide pedestrian connections to destinations including the fronts of the apartment buildings, common open space areas, parking areas, commercial buildings and adjacent lots or developments. (See Ex. B-3 and Testimony from J. Kuhn, P.E.)

M. Not applicable.

N. Not applicable.

Based on the foregoing, Applicant has met its burden of proving all the specific requirements for a multi-family dwelling use.

The Applicant must also establish compliance with all requirements of the Mixed Use 1 Zone which are as follows:

§ 450-206. Mixed-Use 1 Zone (MU-1).

A. Purpose. The purpose of the Mixed-Use 1 (MU-1) Zone is intended to provide for the development of compatible residential and commercial uses in areas where such uses already exist and where the development of such uses is feasible and appropriate. Development within this Zone will require the use of public water and public sewer.

B. Permitted uses. See Table of Land Uses by District for Permitted, Special Exception and Conditional Uses1 (subject to the requirements listed in Articles 3 and 4 of this chapter).

The Applicant submitted an application to construct a 148 apartment unit development in the MU-1 zone. This type of development constitutes a multi-family dwelling use which is permitted by conditional use in the MU-1 zone.

C. Agricultural setback requirements. On any separate nonfarm parcel, no shrub shall be planted, and no accessory residential structures or fences shall be placed within 10 feet of any land used for agricultural purposes. Similarly, no tree shall be planted within 30 feet of any land within any agricultural zone. Nothing in this section shall be construed to relieve the applicant from meeting the landscaping requirements contained in this chapter.

Applicant submitted plans into evidence establishing that no shrub is proposed to be planted, and no accessory residential structure or fence is designed to be located within 10 feet of any land principally used for agricultural purposes. Also, no tree is proposed to be planted within 30 feet of any land within any agricultural zone. (See Ex. B-3 and A-8)

D. Maximum permitted height.

- (1) Principal structure: 35 feet.**
- (2) Accessory buildings and structures: 25 feet.**
- (3) For height exemptions, see § 450-411.**

Applicant submitted sufficient evidence establishing that all apartment buildings are permitted and designed to have three (3) stories and an approximate height of approximately 45 feet. (See analysis of Section 450-350.H) The accessory storage building is designed with a height not to exceed 25 feet. No height exemption is required. The application complies with the applicable height requirement. (See Ex. B-3 and testimony from J. Kuhn, P.E.)

E. Required utilities. All uses permitted within the Mixed-Use 1 (MU-1) Zone shall be served by public water and public sewer.

Applicant submitted sufficient evidence that all apartment units are proposed and designed to be connected to Dillsburg Area Authority's public sewer system and public water system. (See testimony J. Kuhn, P.E.)

F. Not applicable.

G. Not applicable.

H. Landscaping and screening. A minimum fifteen-foot-wide landscape buffer shall be provided along all property lines, including the street frontage. Such landscape buffer can be waived for that portion of the site occupied by a joint parking lot and/ or loading area shared by adjoining uses. Any portion of the site not used for buildings, structures, parking compounds, loading areas, outdoor storage areas and walkways shall be

maintained with a vegetative ground cover and other ornamental plantings. A visual landscape screen must be provided along any adjoining lands within the RS-1, RS-2, RS-3, RA, and AC Zones, or where adjoining an existing residential use. Landscaping and screening requirements are set forth in Article 4 of this chapter.

Applicant submitted Landscape Plans depicting buffer strips with widths of at least 15 feet along the applicable Apartment Lot lines. All portions of the site (i.e., Development) which are not designed to be covered by buildings, structures, parking compounds, and walkways and other permitted elements are designed to include, and proposed to be maintained with, vegetative ground cover and other ornamental plantings. All required landscaping and screening is designed to comply with applicable landscaping and screening requirements of Article 4 of the Zoning Ordinance. Since the Apartment Lot adjoins (i.e., touches) only four lots that are zoned as part of the RS-2 Zone, a visual landscape screen is required and designed along these portions of the Apartment Lot's perimeter. No other portion of the Apartment Lot's perimeter adjoins any other lot that is zoned as part of the Residential Suburban-I Zone ("RS-I Zone"), RS-2 Zone, RS-3 Zone, Residential Agricultural Zone ("RA Zone") or Agricultural-Conservation Zone ("AC Zone"), nor any lot developed with an existing residential use. Based on the foregoing, the application complies with this requirement. (See Ex. B-3, A-8 and testimony from J. Kuhn, P.E.)

I. Waste products. All trash dumpsters shall be located within a side or rear yard, set back at least 50 feet from any adjoining lands within the residential or residential-agricultural zones . . . All trash dumpsters shall comply with the screening requirements of Article 4 of this chapter.

Although no dumpster is proposed as part of the application, dumpsters are required and intended to be set back distances at least 50 feet from all Apartment Lot lines. Applicant confirmed that it will comply with this requirement.

J. Minimum dimensional requirements.

Table of Dimensional Requirements - Mixed-Use 1 Zone								
Building Type	Minimum Lot Size	Maximum Permitted Density Without Dis	Minimum Lot Width		Maximum Lot Coverage Without Dis	Required Setbacks ²		
			At Building Line (feet)	At Street Right * of-Way (feet)		Front Setback (feet)	Each Side Setback (feet)	Rear Setback (feet)
Accessory buildings and structures	N/A	N/A	N/A	N/A	Included above	Not permitted	10	10

NOTES:

- 1 Density calculated on total gross acreage of tract, including land intended for public, civic and open space use. Maximum and base densities apply without and with the use of development Incentives, respectively.
- 2 Subject to modification as per Article 3
- 3 Ten feet on each side, except that each accessory structure (excluding fences) Shall be set back a distance at least equal to its height from each side and rear lot line
- 4 Buildings (including residential and nonresidential buildings) along major thoroughfares must be set back at least 50 feet from the right-of-way line of such thoroughfare. Major thoroughfares shall be any arterial, major collector, or minor collector Access Drive As specified in the Northern York Regional Comprehensive Plan or other ordinances of the Township.

The application proposes construction of apartments. The Zoning Ordinance does not list any dimensional standards for multi-family dwellings in the MU-1 Zone.

Applicant submitted sufficient evidence establishing that the accessory storage building is designed to be set back distances at least (i) 55 feet from the Apartment Lot's front lines; and (ii) 10 feet from all other Apartment Lot lines.³ Based on the foregoing, the application complies with the applicable dimensional standards for accessory buildings. (See Ex. B-3 and testimony from J. Kuhn, P.E.)

Based upon the foregoing, Applicant has submitted sufficient documentary and testimonial evidence to satisfy its burden of proving the requirements applicable to uses in the Mixed Use-1 Zone.

The Applicant has the burden to prove compliance with applicable requirements specified in Specific Criteria of Article 3 of the Zoning Ordinance which are as follows:

§ 450-354. Open space or common open space land use and design standards. Open space or common open space, particularly perimeter buffer yards, containing existing attractive or unique natural features, such as streams, creeks, ponds, woodlands, specimen trees and other areas of mature vegetation worthy of preservation, may be left unimproved and in a natural state. As a general principle, the preservation of undeveloped open space in its natural state or as existing farms is encouraged. A developer may make certain improvements, such as the cutting of trails for walking or jogging, and the provision of picnic areas. Protected open space land in all subdivisions shall meet the following standards:

A. Applicant established that none of the required common open space is designed to include any of the uses prohibited in this section.

³ Pursuant to Sections 450-350.C and 450-350.H, the minimum required front setback for the 45 foot tall apartment buildings is 55 feet.

B. Open space design standards.

- (1) An open space or common open space plan shall be provided consistent with this section with each proposed development proposing open space or common open space.**

Applicant submitted plans into evidence that established that the common open space complies with the applicable provisions of the Zoning Ordinance.

- (2) The required open space land shall consist of both primary conservation areas (PCAs), all of which must be included, and secondary conservation areas (SCAs).**

Not applicable.

- (3) Open space lands shall remain undivided. In no case shall less than 25% of the land comprising the adjusted tract area be available for the common use and passive enjoyment of the subdivision residents.**

Applicant submitted plans into evidence that depicted all common open space designed to be located on the Apartment Lot. The revised Conditional Use Plan shows approximately 48% (10.6 acres) of the 21.98 acre Apartment Lot is proposed as common open space. The proposed common open space is designed and intended to be available for the common use and passive enjoyment of the residents of the Apartment Lot. The application complies with this requirement.

- (4) Buffers for adjacent public parkland. Where the proposed development adjoins public parkland, a natural open space buffer at least 150 feet deep shall be provided within the development along its common boundary with the parkland, within which no new structures shall be constructed, nor shall any clearing of trees or understory growth be permitted (except as may be necessary for trail construction). Where this buffer is unwooded, the Board of Supervisors will require vegetative screening to be planted, or that it be managed to encourage natural forest succession through "no-mow" policies and the periodic removal of invasive alien plant and tree species.**

Not applicable.

- (5) Greens, commons and squares shall have a minimum area of 0.25 acres and a maximum area of 0.75 acres. A village green shall preferably be surrounded by roads or, at a minimum, abut a road on at least one side for a length equal to 25% of its circumference.**

Not applicable.

- (6) A method of delineating private lots from common open space areas shall be § 450-354 § 450-354 :2 provided. Such method may include shrubbery, trees, markers or other methods acceptable to the municipality.**

Not applicable.

(7) Not more than 33% of open space shall be used for stormwater management, conforming with this section.

Applicant submitted plans into evidence depicting no more than 33 % of the common open space is designed to be used for stormwater management facilities. (See Ex. B-3)

C. Other requirements.

(1) No portion of any building lot may be used for meeting the minimum required open space land, except as permitted within estate lots. However, active agricultural land with farm buildings, excluding areas used for residences, may be used to meet the minimum required open space land.

Applicant submitted plans into evidence that showed the common open space was permitted and designed as part of the apartments on the Apartment Lot and therefore satisfies this requirement.

(2) Common open space shall be substantially free of structures, but may contain such improvements as approved in the development plan that are appropriate to recreational and other open space uses of the land, and shall not include playgrounds, athletic fields or other open space areas of any schools or religious institution to be included within the proposed development.

Applicant submitted plans into evidence that depicted the common open space designed to be substantially free of non-recreational structures, except for structures that are appropriate for recreational and other open space uses. Further, the common open space is designed so as to not include any playground, athletic field or other open space area of any school or religious institution. Based on the foregoing, the application complies with this requirement.

(3) Pedestrian and maintenance access, excluding those lands used for agriculture or horticulture purposes in accordance with 450-201B and 450-202B herein, shall be provided to open space land in accordance with the following requirements; (a) each neighborhood shall provide one centrally located access point per 15 lots, a minimum of 25 feet in width; and (b) access to open space land used for agriculture may be appropriately restricted for public safety and to prevent interference with agricultural operations.

Applicant submitted sufficient evidence establishing that the width of the common open space is at least 25 feet.

D. Not applicable.

E. Ownership and maintenance of open space land and common facilities.

(1) Development restrictions. All open space land shall be permanently restricted from future subdivision and development. Under no

circumstances shall any development be permitted in the open space at any time, except for those uses listed in § 450-354A.

Applicant complied with this requirement by agreeing to permanently restrict the common open space areas from future subdivision and development and any use except for those expressly permitted uses listed in Section 450-354.A of the Zoning Ordinance. (See Ex. B-2)

(2) Ownership options. The following methods may be used, either individually or in combination, to own open space areas and associated common facilities. Common facilities shall not be transferred to another entity except for transfer § 450-354 § 450-354 :3 to another method of ownership permitted under this section, and then only when there is no change in the common facilities or in the open space ratio of the overall development. Ownership methods shall conform to the following:

(a) Fee-simple dedication to Carroll Township. Carroll Township may, but shall not be required to, accept any portion of the common facilities, provided that:

[1] There is no cost of acquisition to Carroll Township; and

[2] Carroll Township agrees to and has access to maintain such facilities.

Not applicable

(b) Condominium associations. Common facilities may be controlled through the use of condominium agreements. Such agreements shall be in accordance with relevant state law. All open land and common facilities shall be held as common element.

Not applicable

(c) Homeowners' associations. Common facilities may be held in common ownership by a homeowners' association, subject to all of the provisions for homeowners' associations set forth in state regulations and statutes. In addition, the following regulations shall be met:

[1] The applicant shall provide Carroll Township a description of the organization of the proposed association, including its bylaws, and all documents governing ownership, maintenance, and use restrictions for common facilities;

[2] The proposed association shall be established by the owner or applicant and shall be operating (with financial subsidization by the owner or applicant, if necessary) before the sale of any dwelling units in the development;

[3] Membership in the association shall be automatic (mandatory) for all purchasers of dwelling units therein and their successors in title; and

[4] The association shall be responsible for maintenance and insurance of common facilities.

[a] The bylaws shall confer legal authority on the association to place a lien on the real property of any member who falls delinquent in his dues. Such dues shall be paid with the accrued interest before the lien may be lifted;

[b] Written notice of any proposed transfer of common facilities by the association or the assumption of maintenance for common facilities must be given to all members of the association and to Carroll Township no less than 30 days prior to such event; and

[c] The association shall have adequate staff to administer, § 450-354 § 450-354 :4

The Applicant has submitted sufficient evidence establishing compliance with this requirement as the common open space areas are proposed to be owned and maintained by a homeowners' association described above. Applicant has agreed to submit the required supporting documentation and information set forth in Section 450-354.E as part of the subdivision/land development plan approval process.

(3) Maintenance.

(a) Unless otherwise agreed to by the Board of Supervisors, the cost and responsibility of maintaining common facilities and open space land shall be borne by the property owner, condominium association, homeowners' § 450-354 § 450-354 :5 association, or conservation organization.

(b) The applicant shall, at the time of preliminary plan submission, provide a plan for maintenance of open space lands and operation of common facilities in accordance with the following requirements.

[1] The plan shall define ownership.

[2] The plan shall establish necessary regular and periodic operation and maintenance responsibilities for the various kinds of open space (i.e., lawns, playing fields, meadow, pasture, cropland, woodlands, etc.).

[3] The plan shall estimate staffing needs, insurance requirements, and associated costs, and define the means for funding the maintenance of the open space land and operation of any common facilities on an ongoing basis. Such funding plan shall include the means for funding long-term capital improvements as well as regular yearly operating and maintenance costs.

[4] The applicant shall be required to escrow sufficient funds for the estimated maintenance costs of common facilities for a one year period.

[5] Any changes to the maintenance plan shall be approved by the Board of Supervisors.

[6] The plan shall, when including stormwater management facilities as an integrated part of the open space area, include any applicable Township or DEP requirements for proper maintenance and operation of stormwater management facilities.

(c) In the event that the organization established to maintain the open space lands and the common facilities, or any successor organization thereto, fails to maintain all or any portion thereof in reasonable order and condition, Carroll Township may assume responsibility for maintenance, in which case any escrow funds may be forfeited and any permits may be revoked or suspended.

(d) Carroll Township may enter the premises and take corrective action, including extended maintenance. The costs of such corrective action may be charged to the property owner, condominium association, homeowner's association, conservation organization, or individual property owners who make up a condominium or homeowners' association and may include administrative costs and penalties. Such costs shall become a lien on said properties.

Applicant has complied with the above requirements in **354.E.3 Maintenance** as it has agreed as part of the subsequent preliminary subdivision/land development plan approval process, to submit a plan for the maintenance of the common open space lands and operation of common facilities in accordance with Section 450-354.E(3) of the Zoning Ordinance.

Based on the foregoing, Applicant has met its burden of proving compliance with all applicable specific criteria required by the Zoning Code.

The Applicant has the burden to prove compliance with applicable requirements specified in Article 4 of the Zoning Ordinance that apply to all land use applications filed with the Township. These criteria are as follows:

§ 450-402. Access drive requirements.

A. Access drives shall conform to the Subdivision and Land Development Ordinance access drive requirements, as amended, currently § 435-41 of Chapter 435, Subdivision and Land Development. All means of access to a property shall be classified as either a street, access drive, shared driveway or driveway. Access drives shall be required to provide access from a street to a parking facility via the parking facilities aisles or to any nonresidential use except agriculture. Access drives shall be stubbed to adjoining property lines and encumbered with a cross access easement agreement in order to provide access to adjoining property and minimize the number of intersections along existing streets. Similarly, when an access drive has been stubbed to a property, the access drive shall be extended into the property for access.

Applicant submitted plans into evidence that depicted the Apartment Lot to be designed to be connected to the proposed street and W. Siddonsburg Road via access drives. The access drives are designed to provide access from these streets to the parking lots via aisles. The access drives are designed in compliance with the applicable provisions of Section 435-41 of the SLDO. Only one new access drive is designed to connect to W. Siddonsburg Road, an existing public street. Due to existing or proposed conditions or requirements, it is not feasible to connect to, or stub the proposed access drive to connect to, existing lots adjoining the Apartment Lot. (See Ex. B-3 and testimony from C. Mellott, P.E.)

B. Prohibited uses of access drives. Access drives are for the sole purpose of accommodating the passenger vehicles of persons associated with the use which requires them. Access drives shall not be used for the following:

- (1) The sale, display or storage of automobiles or other merchandise.**
- (2) Performing services (including services to vehicles).**
- (3) To provide access to a driveway for a single-family detached use.**
- (4) To provide direct access to parking spaces other than parallel parking.**

Applicant submitted sufficient evidence showing that the access drives are proposed to be used for accommodating the passenger vehicles of persons associated with the apartments and not for the following prohibited uses: (i) the sale, display or storage of automobiles or other merchandise; (ii) performing services (including services to vehicles); or (iii) providing access to a driveway for a single-family detached use. (See Ex. B-3 and testimony from J. Kuhn, P.E. and C. Mellott, P.E.)

§ 450-403. Accessory uses and structures.

A. Decks.

- (1) The deck shall not be located any closer to the street or access right-of-way than the front of the principle building (as determined by the Zoning Officer). Decks shall observe a ten-foot rear and side yard setback and not encroach within any easements.**
- (2) Concrete pads, pavers, and unattached decks constructed to sit on the ground without foundations and are flush with the surrounding grade shall be placed a minimum of three feet from a property line and not be located within any easements.**

Not applicable.

B. Fences and Walls.

Not applicable.

C. Lighting. Outdoor lighting shall be required for safety and personal security for uses that operate during hours of darkness where there is public assembly and/or traverse; including, but not limited to, multiple-family dwelling, commercial, industrial,

public recreational, and institutional uses and shall comply with the following: § 450-403 § 450-403 :2

(1) Intensity of illumination shall be based on intensities and uniformity ratios in accordance with the current recommended practices of the "Illuminating Engineering Society of North America (IESNA) Lighting Handbook," latest edition.

Applicant confirmed it would comply with the above requirement.

(2) Not applicable

(3) All lighting fixtures shall be arranged to prevent objectionable glare on adjoining property or roadways and the night sky from stray light from poorly aimed, placed, applied or shielded light sources.

(a) All outdoor lighting, whether or not required by this chapter, on private, residential, commercial, industrial, municipal, recreational or institutional property, shall be aimed, located, designed, fitted and maintained so as not to present a hazard to drivers or pedestrians by impairing their ability to safely traverse (disabling glare), and so as not to create a nuisance by projecting or reflecting objectionable light onto a neighboring use or property (light trespass and nuisance glare).

(b) All lighting shall be directed downward and inward towards the site and all lenses or bulbs shall be fully recessed or shielded with no light emitted above 90°.

Applicant submitted plans into evidence, including a revised Lighting Plan, establishing that all outdoor lighting fixtures are designed to be arranged to prevent objectionable glare on adjoining property or roadways and the night sky. All outdoor lighting fixtures are designed to be aimed, located, designed, fitted and maintained so as not to present a hazard to drivers or pedestrians by impairing their ability to safely traverse (disabling glare). All outdoor lighting fixtures are designed to be aimed, located, designed, fitted and maintained so as not to create a nuisance by projecting or reflecting objectionable light onto a neighboring use or property (light trespass and nuisance glare). All outdoor lighting fixtures are designed to be directed downward and inward towards the site, and all lenses or bulbs are proposed to be fully recessed or shielded with no light emitted above 90 degrees. (See Ex. B-3, A-9 and testimony from J. Kuhn, P.E.)

(c)&(d) Not applicable.

(e) The maximum illumination off-site shall be one footcandle at grade level, except at driveways or access drives connecting to a street where the illumination shall not exceed five footcandles.

[1] The amount of illumination projected onto a residential use from another property shall not exceed 0.1 vertical footcandle measured line-of-sight from any point on the adjacent residential property. § 450-403 § 450-403 :3

Applicant submitted sufficient evidence that all outdoor lighting fixtures are designed so that illumination levels do not exceed one footcandle as measured at grade level along the Property lines. All outdoor light fixtures are designed so as not to project illumination onto an adjacent residential lot exceeding 0.1 vertical footcandle as measured line-of-sight from any point on such adjacent residential lot. (See Ex. A-9 and testimony from J.. Kuhn, P.E.)

(f) Vegetation screens shall not be employed to serve as the primary means for controlling glare. Rather, glare control shall be achieved primarily through the use of such means as full cutoff fixtures, shields and baffles, and appropriate application of mounting height, wattage, aiming angle, fixture placement, etc.

Applicant submitted sufficient evidence establishing that the outdoor lighting fixtures are designed so as to control glare via full cutoff fixtures, shields and baffles, or appropriate application of mounting height, wattage, aiming angle, fixture placement. (See Ex. A-9 and testimony from J. Kuhn, P.E.)

(g) Dusk-to-dawn lighting that has a color temperature of more than 3,600 Kelvins is not permitted in residential or rural zones and permitted in industrial, commercial and mixed-use zones only as part of an overall lighting plan demonstrating compliance with IESNA standards for facility lighting.

Applicant submitted a revised Lighting Plan that shows all dusk-to-dawn outdoor lighting fixture designed in compliance with all applicable IESNA standards. (See Ex. A-9)

(4) Not applicable

(5) Damaged, destroyed or inoperable fixtures shall be replaced with the same, or substantially the same (as determined by the Zoning Officer), lighting fixture components in a timely manner, not to exceed 60 consecutive calendar days.

Applicant confirmed that it would comply with the above requirement if, and when the need arises.

(6) Lighting (including streetlights owned by private entities) shall be maintained in good working order in a manner consistent with the originally approved lighting plan.

Applicant agreed to properly maintain the outdoor lighting fixtures in compliance with this requirement.

(7) This requirement shall be complied with throughout the duration of this use pursuant to the Zoning Code.

(8) Not applicable.

(9) Controls shall be provided on all nonresidential lighting that shall automatically extinguish all outdoor lighting when sufficient daylight is available using a control device or system such as a photoelectric switch, astronomic time switch or equivalent

functions from a programmable lighting controller, building automation system or lighting energy management system.

(a) Automatic lighting controls are not required for lighting under canopies, lighting for tunnels, parking garages, garage entrances, steps, walkways, building entrances and similar conditions.

(b) Automatic lighting reduction shall be considered in the lighting design. Total outdoor lighting lumens shall be reduced by at least 30% or extinguished, where practicable and permitted under IESNA standards, as activity levels decline.

Applicant submitted sufficient evidence, including a revised Lighting Plan and testimony from Justin Kuhn, P.E., that establishes compliance with the requirements stated above in (9).

§ 450-403.

I. Accessory buildings and structures. If less than or equal to 200 square feet, the accessory building or structure must be setback from all property lines, except the front, a minimum of 10 feet. Buildings and structures greater than 200 square feet must meet the required principal setback for the zone.

Applicant submitted plans into evidence showing that the accessory storage building is designed in excess of 200 square feet in area and set back (i) at least 55 feet from the Apartment Lot's front lot lines; and (ii) at least 50 feet from all other Apartment Lot lines. Based on the foregoing, the application complies with this requirement. (See Ex. B-2 and B-3)

§ 450-405. Corner lots.

A. Obstruction of vision at street intersections. At all street intersections, no obstructions to vision between 30 inches and 72 inches in height above curb level shall be erected or maintained on any lot within the clear sight triangle as defined within Chapter 435, Subdivision and Land Development, or as shown on the approved subdivision or land development plan.

Applicant submitted plans into evidence and testimony from its' engineer, that showed there was no unauthorized visual obstructions within the parameters stated above. (See Ex. B-2 and B-3 and testimony from C. Mellott, P.E.)

B. Setbacks on corner lots. On a corner lot, front yards are required on all street frontages and the other yards shall be deemed to be rear yards.

Applicant submitted sufficient evidence showing that 50 foot front yards are provided along the portions of the Apartment Lot adjoining the rights-of-way of the proposed street, Ore Bank Road, W. Siddonsburg Road and Route 15, and the other yards are rear yards. Based on the foregoing, the application complies with this requirement. (See Ex. B-2 and B-3)

§ 450-407. Driveway requirements.

Not applicable.

§ 450-412. Landscaping requirements.

Landscaping of all proposed developments and of all projects for which a zoning permit is required is required and shall conform to the landscaping requirements of § 435-52 of Chapter 435, Subdivision and Land Development. Furthermore, the following requirements apply:

A. Not applicable.

B. A minimum of thirty-foot landscape buffer is required along front lot lines for all uses within the Commercial, Industrial, and Mixed-Use 1 and Mixed-Use 2 Zones.

Applicant submitted sufficient evidence that the landscape buffer strips along the Apartment Lot's front lines adjoining the rights-of-way of the proposed street, W. Siddonsburg Road, Ore Bank Road and Route 15 will have widths exceeding 30 feet. (See Ex. B-2 and B-3)

C. Parking lots (including contiguous access drives) shall be surrounded by a minimum of a fifteen-foot landscape buffer in addition to any required interior landscaping. Said landscape buffer shall be superseded by required building front landscaping and may be combined with any perimeter lot landscape buffers or screens, provided the parking lot and said landscape buffer or screen is contiguous.

Applicant submitted a revised Conditional Use Plan and revised Landscape Plan into evidence depicting landscape buffer strips with depths of at least 15 feet designed around the parking lots. (See Ex. B-2, B-3 and A-8)

D. Not applicable.

E. Not applicable.

F. A minimum of a twenty-foot landscape buffer is required along all side and rear lot lines (unless a larger landscape buffer is required elsewhere in this chapter) within the Commercial, Industrial, Mixed-Use 1, and Mixed-Use 2 Zones.

Applicant submitted a Landscape Plan showing landscaped buffer strips with widths at least 20 feet designed along the Apartment Lot's other lot lines. (See Ex. B-2, B-3 and A-8)

G. Not applicable.

H. Landscaping must be maintained in accordance with the approved landscape plan.

Applicant agreed to properly maintain the landscaping in accordance with this requirement.

I. Parking lots, buildings, and overhead utilities shall not encroach into landscape screens and buffers. Access drives, driveways, and aisles shall not be located longitudinally within a landscape screen or buffer; however, they may traverse landscape screens and buffers when providing access between adjoining properties, or when providing access to the property from a street. Sidewalk shall not be located longitudinally within a landscape screen or buffer.

Applicant submitted sufficient evidence that there are no unauthorized encroachments into required landscaped buffer strips or screening. (See Ex. B-2, B-3 and A-8 and testimony J.. Kuhn, P.E.)

§ 450-414. Minimum habitable floor area.

The minimum livable floor area of a dwelling unit, or any building or structure hereafter erected or used for living purposes, shall be 700 square feet. In case of apartment houses and conversion apartments, the minimum livable floor area shall be not less than 400 square feet per apartment.

Applicant submitted sufficient evidence that the habitable floor area of the apartment units range from approximately 763 square feet to 1,457 square feet. (See Ex. A-7 and testimony from J. Eisenhower)

§ 450-416. Parking requirements.

A. Off-street parking requirements. Off-street parking shall be required in accordance with the provisions of this section prior to the occupancy of any building or use. These facilities shall be designed and constructed in accordance with Chapter 435, Subdivision and Land Development, and provided whenever:

- (1) A building is constructed or a new use is established;**
- (2) The use of an existing building is changed to a use requiring more parking facilities;**
- (3) An existing building or use is altered or enlarged so as to increase the amount of parking space required; and**
- (4) A nonresidential parking lot is proposed greater than 5,000 square feet in size.**

Applicant submitted plans into evidence proposing the development of the Apartment Lot by constructing a series of new apartment buildings with apartment units, a new use. The parking facilities are designed to be constructed in accordance with the applicable provisions of the SLDO. (See Ex. B-2 and B-3 and testimony from J. Kuhn, P.E.)

B. Site plan approval.

(1) Each application for a building or zoning permit (for a use for which parking spaces are required) shall include a legible, accurate, scaled site plan showing the proposed layout of the lot. The drawing shall clearly indicate all of the design elements required by this chapter; and

(2) No permit shall be issued for any use for which parking spaces are required unless the site plan has been approved or necessary variances have been obtained.

The Applicant agrees to submit the required site plan in accordance with Section 450-416.B of the Zoning Ordinance as part of the subsequent building or zoning permit approval process.

Applicant submitted a site plan with its application that depicted the parking facilities designed in accordance with the applicable provisions of the Zoning Ordinance.

C. Areas computed as parking spaces. Areas which may be computed as open or enclosed off-street parking spaces include any private garage, carport, or other area available for parking, other than a street or driveway. However, a driveway within a required front yard for a one-family or two-family residence may count as one parking space other than a corner lot as provided in this chapter.

Applicant submitted sufficient evidence establishing that required off-street parking spaces for the apartment units are designed to be located in common parking lots. (See Ex. B-2 and B-3 and testimony from J. Kuhn, P.E.)

D. Size of spaces. Minimum parking stall width shall be 10 feet, minimum length shall be 20 feet. Handicap accessible spaces shall meet ADA requirements.

Applicant submitted sufficient evidence that all parking spaces are designed with widths at least 10 feet and depths at least 20 feet. All handicap accessible parking spaces are designed to comply with all applicable ADA parking requirements. (See Ex. B-2 and B-3 and testimony from J. Kuhn, P.E.)

E. Schedule of required parking spaces. The following lists required numbers of parking spaces by use type. Any use involving a combination of several uses shall provide the total number of spaces required for each individual use. For uses that do not have a specific number of required off-street parking spaces referenced within the following schedule, the Zoning Officer shall use that standard which best approximates the needed number of required off-street parking spaces.

Parking Schedule	
Use Description	Minimum of One Parking Space for Each
Multi-family dwelling	1/3 dwelling unit, (ie. 3 spaces per dwelling unit). Such parking spaces can take the form of private driveways or garages and/or common parking lots, both of which must be within 150 feet of the unit served.

Applicant submitted a revised Conditional Use Plan proposing 148 apartment units as part of the Development. Therefore, 444 off-street parking spaces (148 DUS x 3 spaces) are required and designed to be located in common parking lots within 150 feet of the units. (See Ex. B-3 and testimony from J. Eisenhauer and J. Kuhn, P.E.)

F. Interior Landscaping. At least 10% of the area of a parking facility containing more than 20 cars either initially or cumulatively shall be devoted to interior landscaping and conform to the standards set forth in 435-52 of Chapter 435, SLDO.

Applicant submitted plans into evidence, including a revised Conditional Use Plan that showed approximately 10% (23,000 square feet) of the total area of the parking lots is designed to be devoted to interior landscaping. This interior landscaping is required and designed to comply with the applicable provisions of Section 435-52 of the Zoning Ordinance. Given the foregoing, the Application complies with this requirement.

G. Access. Unobstructed access to and from a street shall be provided. Such access shall meet the requirements of § 435-41, Access drives, in Chapter 435, Subdivision and Land Development. No entrance or exit for any off-street parking area serving a commercial or industrial use shall be located within 100 feet of any street intersection, or in instances where 100 feet is not achievable due to a lot that existed prior to adoption of this chapter lacking sufficient width, the access drive shall be located as far from the right-of-way as possible while maintaining a three-foot separation between the access drives and property lines.

Applicant submitted plans into evidence that showed the off-street parking spaces designed to include unobstructed access to and from the access drives via aisles. The access drives are designed to include unobstructed access to and from the proposed street and W. Siddonsburg Road. The proposed Development is not a commercial or industrial use. Based on the foregoing, the application complies with this requirement. (See Ex. B-2, B-3)

H. Drainage and surfacing. All open parking areas shall be properly drained and all such areas shall be paved (bituminous or concrete) in accordance with Chapter 435, Subdivision and Land Development, except for parking spaces accessory to a one family or two-family dwelling.

Applicant submitted sufficient evidence that all common off-street parking areas are designed so as to be drained and paved in accordance with the applicable provisions of the SLDO. (See Ex. B-3 and testimony from J. Kuhn, P.E.)

I. Not applicable.

J. Not applicable.

K. Not applicable.

L. Location and ownership. Required accessory parking spaces, open or enclosed, shall be provided upon the same lot as the use to which they are accessory or elsewhere, provided all spaces therein are located within 200 feet walking distance of such lot. In all cases such parking spaces shall conform to all the regulations of the district in which the parking spaces are located; and in no event shall such parking spaces be located in any residential district unless the use to which the spaces are accessory are permitted in such residential districts or upon approval by the Zoning Officer and Planning Commission.

Such spaces shall be in the same ownership as the use to which they are accessory and shall be subject to deed restriction, approved by the Zoning Officer and Planning Commission binding the owner and his heirs and assigns to maintain the required number of spaces available either:

- (1) Throughout the existence of such use to which they are accessory; or**
- (2) Until such spaces are provided elsewhere.**

Applicant submitted sufficient evidence showing that all required parking is designed to be located on the same Apartment Lot as the apartment buildings. All required parking is designed in accordance with the applicable locational and distance requirements for apartments in the MU-I Zone. If the Application is approved, the Applicant agrees that all required parking spaces are to remain under the same ownership as the use to which they are accessory. (See Ex. B-2 and testimony from J. Eisenhauer and J. Kuhn, P.E.)

M. Not applicable.

N. Prohibited uses of a parking lot. Automobile parking lots are for the sole purposes of accommodating the passenger vehicles of persons associated with the use which requires them. Parking lots shall not be used for the following:

- (1) The sale, display or storage of automobiles or other merchandise;**
- (2) Performing services (including services to vehicles);**
- (3) Required off-street parking space shall not be used for loading and unloading purposes, except during hours when business operations are suspended; and**
- (4) Except in specifically designated areas, the parking of trucks in excess of 9,000 pounds GVW, or "recreational vehicles" as defined herein. This regulation shall be conspicuously posted at each entrance to parking lots for commercial or mixed uses with more than 100 spaces.**

Applicant submitted sufficient evidence that all of the common parking areas are designed and intended to be solely for the purposes of accommodating the passenger vehicles of persons associated with the use that requires them. None of the prohibited uses set forth in Section 450-416.N of the Zoning Ordinance are proposed as part of the Application. (See Ex. B-2, B-3 and testimony from J. Eisenhauer and J. Kuhn, P.E.)

§ 450-424. Slope of ground along property lines.

A. In areas zoned AC, RA, RS-1, RS-2, RS-3, and for uses adjoining these zones or a residential use, the following slope restrictions apply.

B. Where the slope of the ground within 10 feet of a property line (except a right-of-way line) exists as less than 15%, the existing slope of the ground shall not be altered within 10 feet of an existing property line (except a right-of-way line) to create a slope of more than 15%. If the slope of the ground within 10 feet of a property line exists as more

than 15%, the existing slope of the ground shall not be altered within 10 feet of the property line (except a right-of-way line). In all cases slopes shall be as determined by a qualified professional subject to approval by the Township Engineer. The construction of grass-lined drainage swales in accordance with Chapter 428, Stormwater Management, shall be exempt from this requirement. To the extent that other Township ordinances have more restrictive slope requirements, the more restrictive requirements shall apply.

Applicant submitted plans into evidence that depicted the eastern portion of the Apartment Lot that is zoned as part of the MU-I Zone adjoins four lots that are zoned as part of the RS-2 Zone, two of which are developed with an existing residential use. IDP, a qualified professional engineer, has determined all slopes on the Apartment Lot within 10 feet of the adjoining land zoned as part of the RS-2 Zone. No slope within 10 feet of the adjoining land zoned as part of the RS-2 Zone is proposed to be altered so as to be more than 15%. Based on the foregoing, the Application complies with this requirement.

§ 450-428. Vehicular access.

Every lot hereafter created shall be adjacent to and gain direct access from:

- A. A public street;**
- B. A street intended to be dedicated to the Township; or**
- C. A private street improved to the standards of a public street as established by the Chapter 435, Subdivision and Land Development.**

Applicant submitted sufficient evidence establishing that vehicular access to the Development on the Property is located adjacent to, and is designed to gain direct access from the proposed street that is to be offered for dedication to the Township, as well as W. Siddonsburg Road, an existing public street. (See Ex. B-2, B-3 and testimony from J. Kuhn, P.E. and C. Mellott, P.E.)

Based upon the foregoing, Applicant has submitted sufficient documentary and testimonial evidence to satisfy its burden of proving the applicable requirements specified in Article 4 of the Zoning Ordinance that apply to all land use applications filed with the Township.

Township Engineer, Phillip W. Brath, P.E., of Gibson Thomas Engineering Co., Inc. prepared two (2) separate written submissions with comments after reviewing Applicant's conditional use application, narrative and several plans, including alteration, modification and additions to same. (See Ex. A-10 dated September 20, 2022 and Ex. A-11 dated October 26, 2022). Applicant provided testimony addressing the comments raised by the Township Engineer at the November 1, 2022 conditional use hearing. (See testimony of J Whalen, J. Kuhn, P.E., and C. Mellott, P.E.)

§ 450-705. Conditional uses.

F. Time limitation.

(1) If a conditional use is granted, the necessary permit shall be secured and the authorized action begun within one year after the date when the conditional use is finally granted.

(2) Should the appellant or applicant fail to obtain the necessary permits within said one-year period, or having obtained the permit should s/he fail to commence work there under within such one-year period, it shall be conclusively presumed that the appellant or applicant has waived, withdrawn, or abandoned his/her application, and all approvals and permit granted to him/ her shall be deemed automatically rescinded by the Board of Supervisors.

(3) The Board of Supervisors as a part of the original application before the Board, may approve extended deadlines from those listed above for just cause.

As part of its conditional use application for a multi-family dwelling use consisting of 148 apartment units distributed between five (5) buildings, Applicant has requested an extension of the one-year deadline stated in (1) above to a three (3) year time frame. Applicant provided testimony that the time constraints to obtain the necessary subdivision/land development plan approvals, agency approvals from the Pennsylvania Department of Transportation and the Department of Environmental Protection, the permitting process and possible construction delays will exceed one year. Accordingly, Applicant has requested the extension of the deadline to three years. The Applicant has submitted sufficient evidence of just cause to extend the deadline relative to the requirements of Section 450-705F from one (1) year to three (3) years.

Accordingly, the Board finds that Applicant has met all the requirements for a conditional use provided for in the Carroll Township Zoning Ordinance.

In accordance with the above, the Carroll Township Board of Supervisors issues the attached decision:

DECISION:

And Now, this 12th day of December 2022, in consideration of Applicant's request, after public hearing, and in reliance of Applicant's representations, the testimony and the exhibits and plans presented, the Applicant's request for conditional use relief relative to the establishment of a multi-family dwelling use and an extension of the one (1) year deadline to meet the requirements of Section 450-705F of the Carroll Township Zoning Code to three (3) years is hereby granted with the following conditions which were acceptable to the Applicant:

**Inch's Properties, LLC
Conditional Use Application – Route 15, Ore Bank Road and Siddonsburg Road
Proposed Conditions
November 1, 2022**

1. Subdivision and Land Development submissions shall meet all applicable ordinances.
2. Prior to any separate sale of any individual home, apartment or commercial lot, a homeowner's association shall be established for the maintenance of common elements such as stormwater management basins and facilities, common open space, access drives, and other common elements, as authorized under the Pennsylvania Uniform Planned Community Act, 68 Pa.C.S.A. § 5101 et seq.
3. The land development plan for the proposed development shall identify, and, if necessary, reserve as future right-of-way an area along Developer's side of Ore Bank Road, a left turn lane from Ore Bank Road into the proposed development. The specific design of such left turn lane shall be determined by mutual agreement between the Township and Developer and shall not interfere with the design and layout depicted on the conditional use plan. Developer shall install said left turn lane unless right-of-way required from other property owners cannot be obtained by the Township. Developer shall not be responsible for obtaining any right-of-way from other property owners for installation of the left turn lane.
4. For the intersection of Ore Bank Road and Siddonsburg Road and for access points off of Ore Bank Road and Siddonsburg Road, Developer shall install the turning lane improvements that are recommended in a traffic impact study that is approved by PennDOT. In the alternative, if a roundabout is approved by PennDOT to be installed in place of this current intersection, Developer shall make a pro rata contribution towards the cost of the roundabout in the amount of 20% of the cost of constructing such roundabout. In addition, if such roundabout is approved by PennDOT for construction, Developer shall provide to the Township, at no cost to the Township, right-of-way that is required for such roundabout, provided that such right of way does not result in the loss of approved units or otherwise preclude implementation of the design of the project and any required zoning relief is obtained.
5. The land development plan for the project shall propose sidewalks and crossings that provide for pedestrian connection to the Dillsburg Shopping Center property.
6. During the review of the land development plan, the Applicant shall evaluate, and propose to install if desired by the Township, speed tables or other traffic calming measures so as to deter use of proposed roads, access drives or parking areas by cut-through traffic.
7. The internal road serving the single-family homes shall remain undedicated and remain the property of the homeowner's association. The road shall be built to Township standards so that if the Township finds it in the best interest of the Township to accept the road in the future, it may do so.
8. The conditions of approval are inclusive of the statements and declarations made by the applicant and applicant's team during the conditional use hearing.

9. The berms shall be constructed, and screening installed along Siddonsburg Road and the existing residential homes, prior to occupancy of any multi-family structure.

10. In addition to the payment of a fee in lieu of dedicating recreation land, the development shall incorporate a tot lot with play equipment located in one of the areas designated as potential future parking on the Revised Conditional Use Plan. Such tot lot shall be identified on the land development plan that is submitted for the project.

11. To address the unfunded burden on emergency services, the Applicant has offered a lump sum contribution to the Township for emergency services (fire, police, etc.) in the amount of \$10,000.00. The Township accepts the offer which shall be provided prior to recording a land development plan for the proposed development.

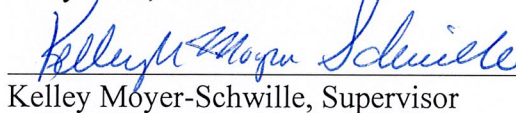
CARROLL TOWNSHIP BOARD OF SUPERVISORS



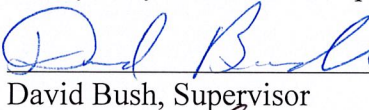
Tim Kelly, Chairman



Kelly Wall, Vice-Chair



Kelley Moyer-Schwille, Supervisor



David Bush, Supervisor



Brent Sailhamer, Supervisor

(Written Decision of Findings issued this 12th day of December 2022)