

**LOWER PROVIDENCE TOWNSHIP**  
**MONTGOMERY COUNTY, PENNSYLVANIA**

**RESOLUTION No. 2024 - 19**

**WHEREAS, 960 Rittenhouse Road Associates, LLC** (hereinafter referred to as “Applicant”) has submitted a request for amended conditional use approval related to property located at 960 Rittenhouse Road, Lower Providence Township, Montgomery County, Pennsylvania, further identified as Tax Map Parcel Number 43-00-12256-00-4 (the “Property”); and

**WHEREAS,** the Property is located in the Mixed Use Overlay Sector of the Industrial Park Zoning District; and

**WHEREAS,** the Lower Providence Zoning Ordinance (“Ordinance”) permits various uses by conditional use; and

**WHEREAS,** the Applicant previously received conditional use approval for the proposed warehouse via the adoption of Lower Providence Township Resolution 2023-23; and

**WHEREAS,** Applicant has submitted a request for amended conditional use approval to amend one of the conditions of approval set forth in Resolution 2023-23; and

**WHEREAS,** Township staff and the Township Engineer have reviewed the Application; and

**WHEREAS,** the Board of Supervisors of Lower Providence Township (hereinafter referred to as “Board”) is prepared to GRANT approval of Applicant’s request for amended conditional use approval, subject to certain conditions; and

**WHEREAS,** the Board is prepared to authorize the Township Manager to execute the written decision of the Township, pursuant to Section 913.2(b)(1) of the Pennsylvania

Municipalities Planning Code.

**NOW, THEREFORE, BE IT HEREBY RESOLVED**, by the Board of Supervisors of Lower Providence Township this 18<sup>th</sup> day of April, 2024, that said request for amended conditional use approval is GRANTED, subject to the following conditions:

1. **Plans:** Applicant shall submit any and all plans reasonably required by the Township to review the Project and issue all required permits.
2. **Conditions of Conditional Use Approval.** Applicant shall comply with any and all conditions of approval as documented Lower Providence Township Resolution 2023-23, except as explicitly modified herein, as follows: in the written decision of the Township, which are as follows:
  - a. Condition “2.v,” of Resolution 2023-23, and of the written decision of the Township, shall be deleted in its entirety, and shall be amended to read as follows: “Applicant shall remit a supplemental traffic impact fee of \$25,000, payable at the time of issuance of building permits related to the Project, to the Township. Such fee shall be remitted without any restrictions or conditions upon its use.”
  - b. All other conditions of approval shall remain in full force and effect, and the conditions of conditional use approval shall now read as follows:
    - i. Applicant shall comply with all objective criteria set forth in the Ordinance at §143-80.E(2)(b) and shall demonstrate such compliance to the satisfaction of the Township prior to issuance of any Certificate of Occupancy.
    - ii. The proposed development shall be consistent with the exhibits and evidence introduced at the conditional use hearing. If there is a substantial change to same, including, but not limited to, a high-cube fulfillment warehouse use, the architectural renderings, landscaping plan, access, etc., additional conditional use approval will be required.

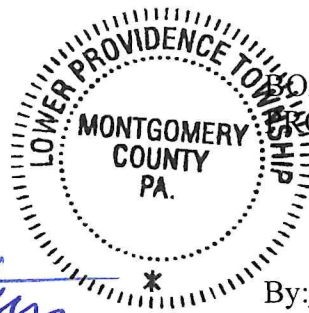
- iii. Applicant shall implement the restrictive truck movements depicted on the plans, including but not limited to a prohibition of truck traffic on Rittenhouse Road.
- iv. Applicant shall be subject to payment of a traffic impact fee based upon post development conditions 6 months after warehouse occupancy.
- v. Applicant shall remit a supplemental traffic impact fee of \$25,000, payable at the time of issuance of building permits related to the Project, to the Township. Such fee shall be remitted without any restrictions or conditions upon its use.
- vi. Applicant shall work with the Township for increased signage in the area to indicate where truck traffic should go coming in and out of the facility, and shall educate the tenant and drivers regarding the restrictions, particularly with respect to the prohibition of truck traffic on Rittenhouse Road.
- vii. The soil remediation will be undertaken by the Applicant without any involvement from the Township. Applicant will obtain any and all necessary approvals from the EPA and DEP, and copies of all such approvals shall be provided to the Township prior to construction beginning on the site.
- viii. Applicant shall ensure that soil remediation will be done in a managed process, so that stormwater will not further disturb the area during the remediation process, and Applicant will utilize proper soil sediment and erosion control measures.
- ix. Applicant will work with the Township Engineer to design appropriate stormwater improvements to support development.
- x. Applicant shall use best efforts to ensure that noise coming from the property or from trucks coming and going from the property has as little impact on the neighboring and surrounding properties as is reasonably practicable, particularly between the hours of 10:00 p.m. and 7:00 a.m.
- xi. Applicant will comply with any requirements of the sewer authority for any sanitary sewer flow.
- xii. Applicant will comply with any requirements of any agency having jurisdiction over the property or the project.
- xiii. Compliance with all conditions of approval shall be at Applicant's sole cost and expense, with no cost or expense borne by the Township.

3. Applicant shall comply with all applicable statutes, codes or ordinances during the permitting and construction of the Project.
4. The Township Manager is authorized to sign the aforementioned written decision on behalf of the Board of Supervisors.
5. This approval shall expire six (6) months from the date of this Decision.

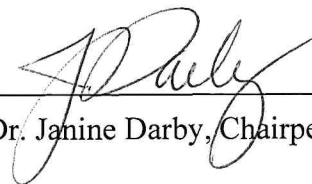
**RESOLVED** and **APPROVED** this 18<sup>th</sup> day of April, 2024.

ATTEST:

  
E.J. Mentry, Secretary



By: \_\_\_\_\_

  
Dr. Janine Darby, Chairperson

# Exhibit

“A”



## Findings of Fact

1. Applicant is 960 Rittenhouse Road Associates, LLC (“Applicant”), equitable owner of certain real property located at 960 Rittenhouse Road, Lower Providence Township, Montgomery County, further identified as Montgomery County Tax Parcel Number 43-00-12256-00-4 (“Property”).
2. The Property is approximately 5.86 acres, and is within the Mixed Use Overlay Sector (“MUO”) of the Industrial Park Zoning District (“IP”).
3. Uses permitted by conditional use in the IP District include warehouse uses, though such uses are not permitted in the MUO, Permitted uses in the IP are as set forth at §143-136.A of the Lower Providence Code of Ordinances (“Code”).
4. The Property is currently occupied by a 25,000 square foot manufacturing building.
5. Applicant previously received conditional use approval for a proposed new one-story 65,700 square foot warehouse facility together with associated parking, buffering, landscaping, utilities, stormwater management and other development-related aspects via the adoption of Lower Providence Township Resolution 2023-23 on June 1, 2023.
6. On or about March 4, 2024, Applicant submitted an application for Amended Conditional Use approval requesting that condition “2.v” of the approval, as set forth in Resolution 2023-23, be amended due to an alleged impossibility or impracticality of compliance with the original condition.
7. Condition 2.v of Resolution 2023-23 requires as follows: Applicant shall re-stripe the intersection of Trooper Road and Van Buren Avenue and make sure that there is a clear right turn lane on Van Buren Avenue onto Trooper Road.”
8. A public hearing was scheduled for March 21, 2024 with the Agreement of the Applicant. Notice of the hearing was advertised consistent with the Municipalities Planning Code. The Property was posted with notice of the March 21, 2024 hearing consistent with the Municipalities Planning Code and notice of the hearing was mailed to neighboring property owners as required by the Code.
9. The following exhibits were admitted at the March 21, 2024 hearing:
  - T-1 - Application, March 4, 2021
  - T-2 - Proof of Advertisement
  - T-3 - Proof of Posting
  - T-4 - Certificate of Notification
  - T-5 - Transcript of June 1, 2023 conditional use hearing
  - T-6 - Lower Providence Township Resolution 2023-23

10. The Applicant was represented at the conditional use hearing by Gregg Adelman, Esquire, who offered the following summary of the Application:

- A. After agreeing to the condition in question, Applicant realized that there was no existing right turn lane at the intersection of Trooper Road and Van Buren Avenue. In order to create a right turn lane, there would need to be road widening, traffic signal improvements, and things that the Applicant had not intended to agree to in the prior conditional use proceedings. N.T. 3/21/24, at 6.
- B. In lieu of the re-striping condition, Applicant proposes to remit a contribution of \$25,000, payable at the time of building permit issuance, as a supplemental traffic impact fee. N.T. 3/21/24, at 6.

11. Matthew Hammon, the Applicant's traffic engineer, testified as follows:

- A. Truck turning templates have not been completed for this intersection. The intersection is frequented by trucks currently, due to industrial uses in the area and the fact that it is the only signalized intersection. These trucks are the same size that would be going to the proposed warehouse use. N.T. 3/21/24, at 7-8.
- B. Van Buren Avenue currently has one lane in each direction. N.T. 3/21/24, at 9.
- C. Trucks have the ability to use both lanes of Trooper Road for making right turns onto Trooper Road because they can only make that turn when the light is green for Van Buren Avenue. N.T. 3/21/24, at 10.

12. Casey Moore, the Township's Traffic Engineer, testified as follows:

- A. The turning radius for this intersection is about 45 degrees, and generally, a 45-50 degree radius is large enough for tractor trailers to make a turn. Because of the two lanes on Trooper Road, a tractor trailer should be able to complete the movement from the lane on Van Buren into the southbound lanes of Trooper Road without encroaching into opposing lanes of traffic. N.T. 3/21/24, at 12.
- B. Under current traffic conditions, without this development, Trooper Road would benefit from its own left turn lane onto Van Buren Avenue. There will also be some traffic to the proposed warehouse. N.T. 3/21/24, at 13.
- C. It may be beneficial to re-stripe the stop bar for northbound Trooper Road onto Van Buren Avenue to pull the stop bar back a little bit, but that is not part of this application. N.T. 3/21/24, at 13-14.

13. The Board of Supervisors found the testimony and statements of the Applicant's witnesses and the Township's Traffic Engineer to be credible and persuasive based upon



their demeanor.

## CONCLUSIONS OF LAW

1. Applicant seeks amended conditional use approval to amend Resolution 2023-23 to remove condition 2.v, and replace it with the proffered supplemental traffic impact fee of \$25,000, as referenced in the conditional use hearing testimony. Applicant seeks no other changes to the previously granted conditional use approval.
2. Legal Authority

"A conditional use is nothing more than a special exception which falls within the jurisdiction of the municipal governing body rather than the zoning hearing board." Williams Holding Group, LLC v. Bd. of Supervisors of W. Hanover Twp., 101 A.3d 1202 (Pa.Cmwlth 2014).

Pennsylvania law is well settled with respect to the burden of proof that the Board of Supervisors must apply when addressing conditional use applications. Northampton Area School District v. E. Allen Township Bd. Of Supervisors, 824 A.2d 372 (Pa. Cmwlth. 2003). The initial burdens of production and persuasion are placed upon the applicant to demonstrate that he or she meets all of the specific objective requirements for the conditional use as set forth in the zoning ordinance. In re Land Use Appeal of Gresko, 2009 Pa. Dist. & Cnty. Dec. LEXIS 419 (citing Appeal of George Baker, Jr., 19 Pa. Commw. 163, 339 A.2d 131 (Pa. Cmwlth. 1975)). The Commonwealth Court has explained that "[a]n applicant who satisfies this prima facie burden is entitled to approval..." Williams Holding Group, LLC v. Bd. of Supervisors of W. Hanover Twp., 101 A.3d 1202 (Pa.Cmwlth. 2014). However, failure to sustain this burden of proof constitutes substantial evidence to reject or deny an application for conditional use approval. In re AMA/American Marketing Ass'n, Inc., 2016 WL 3258103 (Pa.Cmwlth. 2016).

In considering a conditional use application, a local governing body is free to reject even uncontradicted testimony if it finds it lacking in credibility, including testimony offered by an expert witness. Taliaferro v. Darby Twp. Zoning Hearing Bd., 873 A.2d 807 (Pa.Cmwlth.2005).

An applicant for special exception or conditional use must demonstrate that his proposed use meets the applicable requirements of the zoning ordinance when the application is submitted.

"An applicant is entitled to a conditional use as a matter of right, unless the governing body determines that the use does not satisfy the specific, objective criteria in the zoning ordinance for that conditional use. The applicant bears the initial burden of showing that the proposed conditional use satisfies the objective standards set forth in the zoning ordinance, and a proposed use that does so is presumptively deemed to be consistent with the health, safety and welfare of the community. Once the applicant satisfies these specific standards, the burden shifts to the objectors to prove that the impact of the proposed use is such that it would violate the other general requirements for land use that



are set forth in the zoning ordinance, i.e., that the proposed use would be injurious to the public health, safety and welfare.” EQT Production Company v. Borough of Jefferson Hills, 652 Pa. 508 (2019).

Further, a promise to comply or conditions compelling future compliance cannot cure an otherwise noncompliant application. The Commonwealth Court has rejected arguments that assurances of future compliance should be sufficient, stating “[i]f we were to adopt a rule that to obtain a special exception all that would be required is for an applicant to promise to come into compliance at some future date, it would make the approval process meaningless because once an applicant promises it would be entitled to receive the special exception.” In re Thompson, 896 A.2d 659, 680 (Pa.Cmwlth.2006) (emphasis supplied) (citations omitted).

### 3. Objective Ordinance Criteria.

The objective criteria for conditional use approval are set forth at §143-80.E(2)(b), as follows:

- “[1] That the propose use is appropriate to the tract in question and will not adversely effect the character of the surrounding land uses and general neighborhood.
- [2] That the proposed use provides for adequate access to public roads without creating hazardous conditions at intersections or areas of poor road alignment and without creating undue congestion. All applications shall be accompanied by a traffic impact analysis which meets the requirements of the Township's Subdivision and Land Development Ordinance, as last amended.
- [3] That the proposed use conforms to all applicable requirements of this article.
- [4] That the proposed use's water supply and sanitation systems are adequate and able to prevent disease, contamination and unsanitary conditions. Where applicable, a certificate of adequacy of sewage and water facilities shall be provided.
- [5] That the proposed use will result in an appropriate use of land, the conservation of the value of buildings, safety from fire, panic and other dangers, adequacy of light and air, the prevention of overcrowding of land and congestion of population and the adequacy of public and community services.”

There are no further objective criteria that are applicable to warehouse uses.

### 4. Applicant's Requests for Relief

- A. As noted above, the Board previously granted conditional use approval for the proposed use, having found the testimony of Applicant's witnesses to be credible and persuasive. The Board again found the testimony offered credible and persuasive, and has granted the Applicant's request to amend its conditional use approval, subject to the conditions contained herein.

B. Conditions of Approval. The Board of Supervisors imposes the following modified conditions of approval on the Application:

- i. Applicant shall comply with all objective criteria set forth in the Ordinance at §143-80.E(2)(b) and shall demonstrate such compliance to the satisfaction of the Township prior to issuance of any Certificate of Occupancy.
- ii. The proposed development shall be consistent with the exhibits and evidence introduced at the conditional use hearing. If there is a substantial change to same, including, but not limited to, a high-cube fulfillment warehouse use, the architectural renderings, landscaping plan, access, etc., additional conditional use approval will be required.
- iii. Applicant shall implement the restrictive truck movements depicted on the plans, including but not limited to a prohibition of truck traffic on Rittenhouse Road.
- iv. Applicant shall be subject to payment of a traffic impact fee based upon post development conditions 6 months after warehouse occupancy.
- v. Applicant shall remit a supplemental traffic impact fee of \$25,000, payable at the time of issuance of building permits related to the Project, to the Township. Such fee shall be remitted without any restrictions or conditions upon its use.
- vi. Applicant shall work with the Township for increased signage in the area to indicate where truck traffic should go coming in and out of the facility, and shall educate the tenant and drivers regarding the restrictions, particularly with respect to the prohibition of truck traffic on Rittenhouse Road.
- vii. The soil remediation will be undertaken by the Applicant without any involvement from the Township. Applicant will obtain any and all necessary approvals from the EPA and DEP, and copies of all such approvals shall be provided to the Township prior to construction beginning on the site.
- viii. Applicant shall ensure that soil remediation will be done in a managed process, so that stormwater will not further disturb the area during the remediation process, and Applicant will utilize proper soil sediment and erosion control measures.
- ix. Applicant will work with the Township Engineer to design appropriate stormwater improvements to support development.

- x. Applicant shall use best efforts to ensure that noise coming from the property or from trucks coming and going from the property has as little impact on the neighboring and surrounding properties as is reasonably practicable, particularly between the hours of 10:00 p.m. and 7:00 a.m.
- xi. Applicant will comply with any requirements of the sewer authority for any sanitary sewer flow.
- xii. Applicant will comply with any requirements of any agency having jurisdiction over the property or the project.
- xiii. Compliance with all conditions of approval shall be at Applicant's sole cost and expense, with no cost or expense borne by the Township.

5. Conclusion

For the reasons set forth above in more particular detail, the Board of Supervisors found that Applicant sustained its burden of proof for the amended conditional use application, and GRANTED the application, subject to the conditions of approval set forth herein. All other conditions of approval set forth in Resolution 2023-23 shall remain in full force and effect except as explicitly modified herein.