

Resolution 2023-16

BEFORE THE NEW BRITAIN BOARD OF SUPERVISORS  
BUCKS COUNTY, PENNSYLVANIA

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IN RE:    CONDITIONAL USE APPLICATION                                     :  
          OF TOLL MID-ATLANTIC LP COMPANY, INC.                                     :

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ADJUDICATION

Toll Mid-Atlantic LP Company, Inc. (*“Applicant”*) filed a Conditional Use Application (*“Application”*) with the New Britain Township Board of Supervisors (*“Board”*) seeking conditional use approval so as to be able to construct a housing development known as Birch Run, consisting of forty-four (44) B5 Single-Family Attached Dwelling Units as part of an existing use J31 PCCM, (*“Project”*). The property in question is located in the C-1 Commercial . The PCCM use pursuant to §27-305.J31.a of the New Britain Township Zoning Ordinance (*“Ordinance”*) is defined as a planned development designed as a complex of architecturally compatible structures with a traffic circulation pattern connecting the uses that comprise the center, which will minimize traffic movements on external streets bordering the center, with appropriate landscaping designed to create an attractive, cohesive streetscape. The PCCM use of the Property was approved by Conditional Use Decision decided on August 6, 2018, subject, also, to dimensional relief which was granted by the New Britain Zoning Hearing Board by its decision entered on May 17, 2018. The aforementioned Conditional Use Adjudication requires that all future uses be approved by conditional use.

The Property in question and the subject of this Conditional Use Adjudication is described as follows:

1. 4.136-acre TMP 26-006-101, with an existing Wawa (*“Wawa Parcel”*);
2. 2.123-acre TMP 26-006-101-003, with an existing Creamery Tire (*“Creamery Tire Parcel”*); and
3. 8.607-acre parcel TMP 26-006-101-004, proposed to be developed as residential portion of PCCM (*“Applicant”*);

The Wawa Parcel, Creamery Tire Parcel, and Toll Parcel are collectively defined as (*“Property”*).

The Applicant now intends to develop a portion of the PCCM site as a B5 Single-Family Attached Swelling Use for the purpose of constructing forty-four (44) 3-story townhomes, along with open space, stormwater management facilities and roadways as depicted on the plans.

Pursuant to the Pennsylvania Municipalities Planning Code, Act 254, as amended, (“MPC”), the Board conducted an in-person hearing on May 1, 2023 (“Hearing”) at the New Britain Township Municipal Building located at 207 Park Avenue, Chalfont, PA for the purpose of receiving testimony on the Application. Notice of the same was sent to the Applicant and was advertised pursuant to law. Board Chair, William Jones, Board Vice Chair, Stephanie Shortall, Esquire, and Board Members, Cynthia Jones, MaryBeth McCabe, Esquire, and Gregory T. Hood were in attendance at the Hearing and took part in the Board’s deliberations. In addition, Jeffrey P. Garton, Esquire, the Board Solicitor, was in attendance, as was the Board’s stenographer. The Applicant was represented by Nate Fox, Esquire. No one from the public requested party status.

Based on the testimony and evidence represented at the Hearing, the Board, after discussion and due deliberation, makes the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

1. Applicant is Toll Mid-Atlantic LP Company, Inc., with a mailing address of 1140 Virginia Drive, Fort Washington, PA 19034.
2. Applicant filed a Conditional Use Application with the Board seeking conditional use approval for the construction of forty-four (44) 3-story townhomes, along with appropriate open space, stormwater management facilities, roadways, and the like pursuant to the PCCM provisions of the Ordinance to be constructed on an 8.607-acre parcel identified as Bucks County Tax Parcel #26-006-101-004. The overall property consists of three (3) tax parcels measuring 14.866-acres, which also includes an existing Wawa store and an existing Creamery Tire facility.
3. The Board held an in-person hearing on the 1st day of May, 2023 for the purpose of receiving Exhibits and testimony on the Application.
4. Notice of the Hearing was advertised in the Intelligencer on April 11, 2023 and again on April 18, 2023, which said proof of publication was identified as Exhibit T-1 at the public hearing.
5. No persons requested party status at the hearing.
6. The Application for Conditional Use Approval with eight (8) Exhibits was received into the record as Exhibit T-2.
7. Correspondence from Gilmore & Associates dated 4/19/23 was marked as Exhibit T-3 and was received into the record.
8. A memorandum from David Conroy, Township Director of Planning & Zoning, dated April 19, 2023 was marked as Exhibit T-4 and was received into the record.

9. A Memorandum of the recommendation received from the New Britain Township Planning Commission at their meeting held on April 21, 2023 was marked as Exhibit T-5 and was received into the record.

10. The Application referenced above included eight (8) separate Exhibits. Those Exhibits are identified in the Application and were identified as follows:

- a. Exhibit 1 - Agreement of Sale dated September 13, 2022;
- b. Exhibit 2 – Site Plans for Birch Run at New Britain; by ESE Consultants, Inc. dated February 21, 2023;
- c. Exhibit 3 - Architectural Rendering of proposed townhomes;
- d. Exhibit 4 - Environmental Impact Statement Report;
- e. Exhibit 5 - Fiscal Impact Analysis;
- f. Exhibit 6 – Traffic System Inventory & Analysis
- g. Exhibit 7 - Conditional Use Stormwater Management Narrative; and
- h. Exhibit 8 – Stormwater Management Plans Pre-Development.

11. The Applicant presented the testimony of Brian Thierrin, Senior Vice President of the Applicant, Jeff Madden, P.E., an expert in civil engineering employed by ESE Consultants, Inc., and Justin Barnett, a Registered Landscape Architect, an expert in the field of landscape architecture, also employed by ESE Consultants, Inc.

12. Applicant proposes to develop Applicant’s Parcel of the PCCM site for a forty-four (44) unit, Use B5 single family attached dwellings project, as permitted as a Conditional Use within the C-1 Zoning District when part of a PCCM.

13. Two (2) new roads are proposed to serve the townhomes.

14. The plan proposes 1.74 acres of Open Space in addition to the required buffer yards and stormwater management areas which will be maintained by an HOA.

15. Thirteen (13) guest parking spaces are proposed along Road A.

16. Approximately 4,300 sf of protected woodlands are proposed to be disturbed to allow for vehicular and pedestrian access to Wawa via Road Ba. *Exhibit B-1*.

17. Applicant requests relief from three (3) of the PCCM requirements:

a. From §27-305.J31.e.11.(e)(1) to permit two (2) community identification signs on Applicant’s Parcel at the intersection of Access Road A and Road B where the maximum permitted number of ground signs is (1) to allow each entrance to the community to have an entrance sign.

b. From §27-305.J31.h3. to allow a maximum building height of thirty-seven (37) feet where a maximum height of thirty-five (35) feet is permitted by ordinance.

c. To disturb 4,300 SF within an existing conservation easement to allow for the construction of a second access road to the community to provide for the circulation within the PCCM between commercial uses (Wawa) and the to be constructed townhouse community.

### **DISCUSSION**

A Conditional Use can only be granted or refused in accordance with the terms of the Ordinance itself. Whether an Applicant has met its burden of proof is within the discretion of the governing body. Failure to comply with any one specific requirement constitutes the basis for denying the conditional use Application. Furthermore, the activity sought as a conditional use must not be injurious to the public's health, safety, and general welfare.

In this regard, the Board of Supervisors has concluded that the Applicant has met the standards for the grant of conditional use approval as it relates to the proposed construction of the housing development consisting of forty-four (44) B5 Single-Family Attached Dwelling Units, and also the request to be permitted to have two (2) community signs and to encroach in the Conservation Easement area, but the Board of Supervisors has concluded that it does not believe that the Applicant has met its burden with respect to increasing the building height from 35 to 37 feet. The Board does not believe that the additional height of the building is reflective of the residential community located nearby and will have an adverse effect on the streetscape.

### **CONCLUSIONS OF LAW**

a. As required by the MPC and the Township Zoning Ordinance, the Hearing was properly advertised.

b. All the witnesses who testified at the Hearing were appropriately sworn in and all of the evidence presented at the Hearing was appropriately accepted into Record.

c. Toll Mid-Atlantic LP Company, Inc. filed a Conditional Use Application seeking conditional use approval so as to be able to construct a housing development known as Birch Run, consisting of forty-four (44) B5 Single-Family Attached Dwelling Units as part of an existing use J31 PCCM, along with open space, stormwater management facilities and roadways as depicted on the plans.

d. The Application is not contrary to the New Britain Township Comprehensive Plan, as long as proper landscaping and lighting are considered during land development.

e. The proposed use will not be detrimental to the best interests of the Township, the convenience of the community, or the general welfare of the public.

f. No increase in traffic congestion should be expected from this project.

g. The Township Subdivision and Land Development Ordinance shall be adhered to thereafter if the conditional use approval is granted.

h. The proposal is in conformance with all other zoning provisions of the New Britain Township Zoning Ordinance.

i. Based on the evidence presented at the Hearing, the Board concludes that Toll Mid-Atlantic LP Company, Inc. has generally shown compliance with Section 27-1403.c of the Zoning Ordinance, except for where the Board specifically identifies in this Adjudication that additional information concerning compliance must be provided during the land development review and approval process, and so long as certain conditions and limitations are placed upon the approval of this Application, except, the Board as previously noted, does not believe that the Applicant has met its burden of proof with respect to compliance with the requirements for height of the dwelling units.

**(ORDER TO FOLLOW)**

## ORDER

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2023, upon consideration of the foregoing Findings of Fact, Discussion, and Conclusions of Law, and at a publicly advertised meeting, the Board of Supervisors of New Britain Township conditionally grants Toll Mid-Atlantic LP Company, Inc., the Conditional Use requested in the Application so as to be permitted to construct forty-four (44) B5 Single-Family Attached Dwelling Units as part of an existing J31 PCCM use, on the property identified as Bucks County Tax Map Parcel 26-006-101-004 and the Board of Supervisors further grants, conditionally, the request by the Applicant to permit two (2) community identification signs on the parcel at the intersection of Access Road A and Road B; and to disturb 4300 square feet within the existing Conservation Easement to allow for the construction of a second access road to the community to provide circulation within the PCCM commercial uses and the to-be-constructed townhouse community, but the Board denies the Applicant's request to allow a building height of 37 feet. The three (3) other components of the Conditional Use approved by the Board of Supervisors by this Decision shall be subject to the following conditions:

1. The Applicant shall comply in all other respects with the New Britain Township Subdivision and Land Development Ordinance;
2. The Applicant shall comply in all other respects with the New Britain Township Zoning Ordinance;
3. The Applicant shall construct the project consistent with the Application materials, and the testimony and exhibits presented as it relates thereto;
4. Applicant shall comply with all other applicable local, state, and federal laws.
5. Applicant agrees to make the required fee-in-lieu of dedication of park and recreation land required under §715 of the Township Subdivision and Land Development Ordinance after approval of, but prior to recording of, Applicant's final subdivision and land development plan in the amount of \$3,000 per unit, for a total of \$132,000 fee-in-lieu of dedication of park and recreation land.
6. Applicant proposed a voluntary fee-in-lieu of traffic improvements to mitigate traffic impacts after approval of, but prior to recording of, Applicant's final subdivision and land development plan in the amount of \$3,000 per unit, for a total of \$132,000 voluntary contribution fee-in-lieu of traffic improvements.
7. Applicant shall revise the plan such that the decks shown on units 1 through 14 of the B5 single family attached dwelling units will not impermissibly encroach in the rear yard buffer area.

8. Applicant shall provide easements on the final, recorded land development plan to provide for the future connection to the adjacent properties from Road B as shown on the plans included with the Application, as well as the Extra Space Storage property. Said easements to include Easements to be provided to Butler Avenue businesses, including Extra Space Storage, and for any future trails as may be determined during the land development review process.

9. As requested by the Planning Commission, Applicant shall provide a seating area with benches and additional trees between units 32 and 33 on the plan.

10. Applicant shall supplement the buffer to the rear of the Applicant's Parcel adjacent to the existing homes on Airy Avenue during the land development plan approval process to the reasonable satisfaction of the Township Engineer.

11. In order to mitigate the impact of relief granted to disturb 4,300 SF within an existing conservation easement to allow for the construction of a second access road to the community to provide for the circulation within the PCCM between commercial uses (Wawa) and the to be constructed townhouse community, the Applicant shall replace any trees removed at a rate of 200-trees per acre for a total of twenty (20) trees in accordance with the woodlands replacement requirement listed in §27-2400.f.2.(a).

12. Consistent with testimony provided, Applicant shall comply in all respects with the Gilmore & Associates, Inc. review letter of April 19, 2023.

13. Consistent with testimony provided, Applicant shall comply in all respects with the Township Zoning Officer, David Conroy, review letter of April 19, 2023.

14. The midblock crossing shall be relocated on Road B to the Road A intersection and ADA-compliant curb ramps shall be provided at each crossing.

15. Any tree removal shall be reviewed and approved by the Township Engineer.

16. Each Unit shall have no more than 3 bedrooms and a minimum of 2 parking spaces provided in the garage and/or driveway.

17. Applicant shall provide in the documents establishing the homeowner's association and any declarations related to same, a restriction that the garage may not be converted to living space and must be perpetually maintained as a garage for vehicles with the understanding that the Township Solicitor shall review and approve any such documents.

18. "No Parking" signs shall be installed along Road B at locations to be approved by the Township Engineer. No parking shall be permitted in front of the cluster mailbox and the one parking space in front of the mailbox shall be relocated.

19. In addition to compliance with the Subdivision and Land Development and Zoning Ordinance of New Britain Township, Applicant shall also comply with all applicable codes, ordinances, laws, and regulations of the Township not related thereto and shall secure land development approval from the Board of Supervisors.

20. The premises shall be ADA compliant;

21. All review, legal, engineering, administrative, and other review fees shall be paid to the Township; and

22. Compliance with any and all conditions imposed by any prior Zoning Hearing Board decisions, if any, as well as any prior conditional use approvals to the extent related to the Applicant's project.

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**NEW BRITAIN TOWNSHIP  
BOARD OF SUPERVISORS**

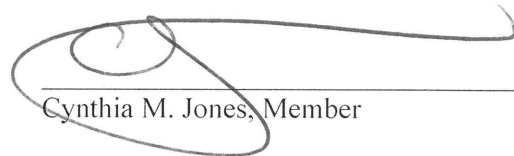
ATTEST:

  
\_\_\_\_\_  
Michael Walsh, Assistant Township Manager

  
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William B. Jones, III, Chair

  
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Stephanie Shortall, Esquire, Vice Chair

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Gregory T. Hood, Member

  
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Cynthia M. Jones, Member

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MaryBeth McCabe, Esquire, Member