TOWNSHIP OF LOWER MERION

BUILDING AND PLANNING COMMITTEE

Wednesday, January 15, 2025
7:00 PM (Approximately)

Chairperson: Joshua Grimes
Vice Chairperson: Sean Whalen, Jeremiah Woodring

PRELIMINARY AGENDA

1. **AUTHORIZATION TO RELEASE FUNDS HELD IN ESCROW**

2. **PRELIMINARY LOT LINE CHANGE - 1425 & 1445 Mount Pleasant Road, Villanova, Ward 6, LD# 3926LLC**

3. **RESOLUTION - CONDITIONAL USE APPLICATION – 230 Rock Hill Road, Bala Cynwyd, Ward 3, LD# 3922C**

4. **APPROVAL OF CERTIFICATES OF APPROPRIATENESS**

5. **APPROVAL OF HISTORICAL COMMISSION APPLICATIONS**

AGENDA ITEM INFORMATION

ITEM: AUTHORIZATION TO RELEASE FUNDS HELD IN ESCROW

Consider for recommendation to the Board of Commissioners approval to release funds held in escrow as Improvement Guarantees in accordance with §135-7 of the Township Code for the following:

601, 609, 615 and 620 Righters Ferry Road (LOWM 248.33)
Escrow Release No. 3 (FINAL)
Amount $ 9,000.00

PUBLIC COMMENT

ATTACHMENTS:

Description	Type
Escrow Release Letters	Backup Material

TOWNSHIP OF LOWER MERION
MONTGOMERY COUNTY

TOWNSHIP ENGINEER

75 E. Lancaster Avenue
Ardmore, PA 19003 2376
Telephone: (610) 645-6200
www.lowermerion.org

LOWM 248.33 January 06, 2025

Christopher Leswing, Director of Building and Planning
Township of Lower Merion
75 East Lancaster Avenue
Ardmore, PA 19003

Re: 601, 609, 615 and 620 Righters Ferry Road
Escrow Release No. 3 (FINAL)

Dear Mr. Leswing:

We have received a request for release to escrow for the above referenced permit. Based on our field investigations and discussions with township staff, we recommend release as follows:

	Item	Total Amount	Amount This Release	Total Released	Amount to Remain
	A. Site Preparation				
1.	Clearing & Grubbing	$2,000.00	$0.00	$2,000.00	$0.00
2.	Building Demolition/Dust Control	10,000.00	0.00	10,000.00	0.00
3.	Utility Removal/Seal	5,000.00	0.00	5,000.00	0.00
4.	Pavement/Curb Removal	10,000.00	0.00	10,000.00	0.00
	Subtotal A	**$27,000.00**	**$0.00**	**$27,000.00**	**$0.00**
	B. Erosion & Sediment Control				
5.	Construction Entrance	$1,100.00	$0.00	$1,100.00	$0.00
6.	Silt Fence	7,600.00	0.00	7,600.00	0.00
7.	Inlet Protection	4,000.00	0.00	4,000.00	0.00
8.	Final Stabilization & Grading	10,000.00	0.00	10,000.00	0.00
	Subtotal B	**$22,700.00**	**$0.00**	**$22,700.00**	**$0.00**
	C. Stormwater Management				
9.	8" HDPE Pipe	$10,000.00	$0.00	$10,000.00	$0.00
10.	18” CAP	71,000.00	0.00	71,000.00	0.00
11.	Type C Inlets	20,000.00	0.00	20,000.00	0.00
12.	Type M Inlets	14,000.00	0.00	14,000.00	0.00
13.	Manholes	3,000.00	0.00	3,000.00	0.00
14.	Raingarden	20,000.00	0.00	20,000.00	0.00
15.	Vegetated Swale	10,000.00	0.00	10,000.00	0.00
16.	Connection to Existing Storm Sewer	2,000.00	0.00	2,000.00	0.00
	Subtotal C	**$150,000.00**	**$0.00**	**$150,000.00**	**$0.00**

	Item	Total Amount	Amount This Release	Total Released	Amount to Remain
	D. Miscellaneous				
17.	Concrete Curb	$113,400.00	$0.00	$113,400.00	$0.00
18.	Crosswalk	18,000.00	0.00	18,000.00	0.00
19.	Bollards	2,200.00	0.00	2,200.00	0.00
20.	Bike Rack	7,500.00	0.00	7,500.00	0.00
21.	Walking Path/Trail	195,000.00	0.00	195,000.00	0.00
22.	Fire Hydrant	5,000.00	0.00	5,000.00	0.00
23.	Traffic Control Signs/Wayfinding Signs	2,500.00	0.00	2,500.00	0.00
24.	Pavement Marking	2,500.00	0.00	2,500.00	0.00
25.	Maintenance/Protection of Traffic	5,000.00	0.00	5,000.00	0.00
26.	As-Built Plan	2,500.00	2,500.00	2,500.00	0.00
	Subtotal D	**$353,600.00**	**$2,500.00**	**$353,600.00**	**$0.00**
	E. Landscaping				
27.	Deciduous Trees	$113,750.00	$0.00	$113,750.00	$0.00
28.	Evergreen Trees	18,900.00	0.00	18,900.00	0.00
29.	Deciduous Shrubs	15,360.00	0.00	15,360.00	0.00
30.	Evergreen Shrubs	15,360.00	0.00	15,360.00	0.00
31.	Site Lighting	135,000.00	0.00	135,000.00	0.00
	Subtotal E	**$298,370.00**	**$0.00**	**$298,370.00**	**$0.00**
	SUBTOTAL (A - E)	**$851,670.00**	**$2,500.00**	**$851,670.00**	**$0.00**
	Engineering & Contingencies	85,167.00	1,000.00	85,167.00	0.00
	TOTAL	**$936,837.00**	**$3,500.00**	**$936,837.00**	**$0.00**
	Plus 10%	93,684.00	1,000.00	93,684.00	0.00
	110% Cost of Improvements per Section 509 of the Municipal Code	**$1,030,521.00**	**$4,500.00**	**$1,030,521.00**	**$0.00**
	Retainage		4,500.00	(4,500.00)	0.00
	Total		**$9,000.00**	**$1,021,521.00**	**$0.00**
	Release to Developer		**$9,000.00**		
	Balance of Funds in Escrow Account				**$0.00**

We recommend a release of escrow in the amount of $9,000.00. As there is currently a balance of $9,000.00, following this release of $9,000.00, the balance remaining in the account will be $0.00 and the account can be closed.

The Declaration of Completion is attached and must be signed and dated by the Township Manager following authorization of the Board of Commissioners.

Please advise if we may be of further assistance in this matter.

Sincerely,

Joseph A. Mastronardo, P.E.
PENNONI ASSOCIATES
Township Engineer

cc: Brandon A. Ford, Assistant Township Manager
Colleen Hall, Senior Planner
Bridgehead, LP

AGENDA ITEM INFORMATION

ITEM: PRELIMINARY LOT LINE CHANGE - 1425 & 1445 Mount Pleasant Road, Villanova, Ward 6, LD# 3926LLC

Consider for recommendation to the Board of Commissioners approval of a Preliminary Lot Line Change. The Plan shows the transfer of 10,297 sq. ft. from Lot #2 (1425 Mount Pleasant Rd.) to Lot #1 (1445 Mount Pleasant Rd.). This will move the existing L-shaped masonry & framed garage from 1425 Mt. Pleasant Road onto 1445 Mt. Pleasant Road, and the existing 1-story pool house will be entirely located on 1425 Mt. Pleasant Road. No development or construction is proposed.

Expiration Date: 6/2/2024.....Zoning: LDR1

THE PLANNING COMMISSION'S RECOMMENDATIONS WILL BE INCLUDED ON THE FINAL AGENDA.

PUBLIC COMMENT

ATTACHMENTS:

	Description	Type
🗋	TE Review	Backup Material
🗋	County Review	Backup Material

TOWNSHIP OF LOWER MERION
MONTGOMERY COUNTY

TOWNSHIP ENGINEER

75 E. Lancaster Avenue
Ardmore, PA 19003 2376
Telephone: (610) 645-6200
www.lowermerion.org

LOWM 256.54 January 6, 2025

Christopher Leswing, Director of Building and Planning
Township of Lower Merion
75 East Lancaster Avenue
Ardmore, PA 19003

Re: 1425, 1445 Mount Pleasant Road
Preliminary Lot Line Change

Dear Mr. Leswing:

In accordance with your request for the referenced submission, we have reviewed a set of three (3) plans dated 11-06-24, last revised 12-27-24, prepared by Chester Valley Engineers, Inc. The plans show the alteration of a common lot line between two existing parcels. No development on either parcel is proposed in connection with this application. We offer the following comments for your consideration.

A. MAJOR ENGINEERING ISSUES

- **Lot Line Configuration—**Proposed lot lines for a subdivision are required to be at right angles to the right-of-way line. The lot line between the two existing parcels currently intersects the right-of-way at a skewed angle. A waiver is required for the proposed side lot line, which does not intersect the right-of-way at a right angle.

With the resolution of the preceding major engineering issue and the remaining comments in this letter incorporated, we recommend that the Preliminary Lot Line Change Plan be approved.

B. ORDINANCE REQUIREMENTS

1. Section 135-3.11—A Final Record Plan must be prepared. All signature blocks and certifications shall be included. The Conditions of Approval shall be included in the Record Plan set.

2. Section 135-3.10— Concrete monuments/property markers are to be installed at the right-of-way at the intersection of each property line and at all changes in direction where feasible as determined by the Township Engineer.

3. Section 135-4.4.B(2)—A lot may not be created which is excessively irregular unless reasonable dictated by the topography of the land, other natural feature, or the existing configuration of an adjacent lot.

4. Section 135-4.4.B(3)—The side lines of a lot shall be at right angles or radial to the right-of-way lines.

5. Section 135-4.9.F(3)—Sidewalks shall be provided along all existing and proposed public and private streets. A waiver of this code section has been requested.

C. ENGINEERING COMMENTS

1. The on-lot septic systems and connections shall be shown on the plan. The property cannot be subdivided in a manner that segregates the on-lot disposal system serving an existing building on an adjacent property. Any modifications to the on-lot sewage disposal systems will require separate permits and approval from the Montgomery County Health Department.

2. Access between the properties is shared. The limits of the proposed 10-foot access easement shall align with the driveways, unless the proposed alignment along the property line is clarified.

3. Lot lines to be extinguished shall be shown as dashed on the plan.

4. The limits of the enclosure for the pool shall be shown on the plan and must be located entirely on the subject property. The pool, equipment, and enclosure must comply with the 2018 International Swimming Pool and Spa Code.

A copy of the revised plan shall be submitted with any changes highlighted. A letter shall also be provided with the revised plan indicating how each requested revision has been addressed in the re-submission.

Please advise if we may be of further assistance in this matter.

Sincerely,

Joseph A. Mastronardo, PE
PENNONI ASSOCIATES
Township Engineer

cc: Colleen Hall, Senior Planner
Angela Forney, Planning Technician
Chester Valley Engineers, Inc.

MONTGOMERY COUNTY
BOARD OF COMMISSIONERS
JAMILA H. WINDER, CHAIR
NEIL K. MAKHIJA, VICE CHAIR
THOMAS DIBELLO, COMMISSIONER

MONTGOMERY COUNTY
PLANNING COMMISSION
MONTGOMERY COUNTY COURTHOUSE • PO BOX 311
NORRISTOWN, PA 19404-0311
610-278-3722 • FAX: 610-278-3941
WWW.MONTGOMERYCOUNTYPA.GOV

SCOTT FRANCE, AICP
EXECUTIVE DIRECTOR

November 20, 2024

Mr. Christopher Leswing, Director of Building & Planning
Building & Planning Department
Township of Lower Merion
75 East Lancaster Avenue
Ardmore, PA 19003

Re: MCPC #24-0242-001
Plan Name: 1425 & 1445 Mt Pleasant Road
(2 lots comprising 5.78 acres)
Situate: Mount Pleasant Road (E); south of Prospect Hill Road
Lower Merion Township

Dear Mr. Leswing:

We have reviewed the above-referenced subdivision plan in accordance with Section 502 of Act 247, "The Pennsylvania Municipalities Planning Code," as you requested on November 11, 2024. We forward this letter as a report of our review and recommendations.

BACKGROUND

The applicant proposes to transfer 10,382 square feet of land from 1425 Mount Pleasant Road (Lot #2) to 1445 Mount Pleasant Road (Lot #1). In addition, an existing pool house located on the property line between the two properties is shown to be removed. The property is located in the township's LDR1 Low Density Residential zoning district.

COMPREHENSIVE PLAN COMPLIANCE

The Land Use Element of the 2016 Lower Merion Township Comprehensive Plan identifies these properties as Low & Medium Density Residential. In addition, this area of the township is identified as a Suburban Residential Area in the Future Land Use Plan of the Montgomery County Comprehensive Plan, *Montco 2040: A Shared Vision*. Suburban Residential Areas are residential areas which depend on automobiles for transportation and often have extensive landscaping on individual properties.

RECOMMENDATION

The Montgomery County Planning Commission (MCPC) generally supports the applicant's proposal. However, in the course of our review we have identified the following issues that the applicant and Lower Merion Township may wish to consider prior to final plan approval. Our review comments are as follows:

REVIEW COMMENTS

SUBDIVISION AND LAND DEVELOPMENT ORDINANCE COMMENTS

Section 135-4.9.F.(1) of the township's subdivision and land development ordinance states that "sidewalks shall be provided along all existing and proposed public and private streets." Although there are no sidewalks currently on properties immediately adjacent to the site, §135-4.9.F.(3) of the township's subdivision and land development ordinance provides standards for when deferral of sidewalk installation, or the construction of alternative off-road pedestrian pathways, may be appropriate.

EXISTING SITE IMPROVEMENTS

It appears that part of the intent of the proposed lot line change is to have all site improvements associated with each property located fully on that property. For example, a pool house that appears to be associated with the pool on Lot #2 but is partially located on Lot #1 is shown to be removed. However, a pedestrian walkway to the pool house and a driveway between the two lots is shown to now be located partially on Lot #1 and partially on Lot #2. If these existing improvements that are partially located on both properties are proposed to remain, an access easement may be needed.

CONCLUSION

We wish to reiterate that MCPC generally supports the proposed lot line change; however, we believe that our suggested revisions will better achieve Lower Merion Township's planning objectives for residential development.

Please note that the review comments and recommendations contained in this report are advisory to the municipality and final disposition for the approval of any proposal will be made by the municipality.

Should the governing body approve a final plat of this proposal, the applicant must present the plan to our office for seal and signature prior to recording with the Recorder of Deeds office. A paper copy bearing the municipal seal and signature of approval must be supplied for our files.

Please print the assigned MCPC number (#24-0242-001) on any plans submitted for final recording.

Sincerely,

Marley B Bice

Marley Bice, AICP, Community Planning Assistant Manager
610-278-3740 – marley.bice@montgomerycountypa.gov

c: Neal Camens, P.E., Applicant's Representative
Gilbert P. High, Jr., Esq., Twp. Solicitor
Ernie B. McNeely, Twp. Manager
Jody Kelley, Twp. Secretary
Joseph Mastronardo, P.E., Twp. Engineer
Charlie Doyle, Twp. Asst. Dir. of Planning
Colleen Hall, Twp. Senior Planner
Greg Prichard, Twp. Historic Preservation Planner
Holly Colello, Twp. Planner
Sarah Carley, Twp. Planner
Hope Viviani, Twp. Planning Technician

Attachment A: Reduced Copy of Applicant's Proposed Site Plan
Attachment B: Aerial Image of Site

AGENDA ITEM INFORMATION

ITEM: RESOLUTION - CONDITIONAL USE APPLICATION – 230 Rock Hill Road, Bala Cynwyd, Ward 3, LD# 3922C

Consider for recommendation to the Board of Commissioners adoption of a resolution approving a Conditional Use application. The Applicant is seeking conditional use approval to operate a Federal Firearms Licensee (FFL) business at 230 Rock Hill Road, Bala Cynwyd, pursuant to Zoning Code §155-5.1 Table 5.3 Permitted Uses and §155-10.14 Federal firearms licensee.

Expiration Date – 2/28/2025.....Zoning – RHR

Applicant Representative: Peter Kraybill, Esq.
Owner: Shot Tec, LLC

The Hearing Officer's recommendation is attached.

PUBLIC COMMENT

ATTACHMENTS:

Description	Type
Hearing Officer Decision	Backup Material
Resolution	Resolution
Staff Report	Issue Briefing

Before the Conditional Use Hearing Officer
Lower Merion Township, Montgomery County
Pennsylvania

Application CU #3922

RECOMMENDATIONS FOR FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This conditional use application was filed by Shot Tec, LLC seeking conditional use approval to operate as a Federal Firearms Licensee business at 230 Rock Hill Road, Bala Cynwyd, pursuant to Code §155-5.1, Table 5.3 Permitted Uses and §10.14, Federal Firearms License. A Conditional Use Hearing was conducted on November 19, 2024, before the Conditional Use Hearing Officer.[1]

I. FINDINGS OF FACT

A. The Parties and Property

1. The Applicant is Shot Tec, LLC ("Shot Tec" or "Applicant"), c/o Mr. Grant Schmidt, 230 Rock Hill Road, Bala Cynwyd, PA 19004.

2. Shot Tec is represented by Peter J. Kraybill, Esq., a principal of the law firm Gibbel, Kraybill & Hess, LLP, 7 E. Lancaster Ave., Suite 210, Ardmore, PA 19003.

3. Shot Tec is a domestic limited liability company established under the laws of the Commonwealth of Pennsylvania on January 30, 2019.

4. Grant Schmidt ("Schmidt") is the sole owner/member of Shot Tec.

5. Shot Tec is the tenant and lessee of 230 Rock Hill Road, Bala Cynwyd, PA 19004 ("Property").

6. Rock Hill Road Associates, LP is the owner and lessor of 230 Rock Hill Road,

[1] The Conditional Use Hearing Officer is authorized to conduct the hearing pursuant to Code §155-11.1.F(9)(c).

7. Rock Hill Road Associates, LP consented to the conditional use application for the Property filed by its tenant Shot Tec. See, Letter dated 7/24/24, Ex. A-6.

8. This application concerns conditional use approval of Federal Firearms Licensee ("FFL") use of 230 Rock Hill Road, Bala Cynwyd, further identified as Parcel ID 2 No. 40-00-51936-03-5, condo 3. *See*, Ex. A-3, Site Plan; and Ex. A-4, Montgomery County GIS parcel map.

9. The Property is located in the Rock Hill Road District of Lower Merion Township pursuant to Lower Merion Township Zoning Code ("Code") § 155-6.3.

10. The Property is one of four lots collectively containing 3.43-acres held in a condominium form of ownership ("business condominium complex"). Each individual lot is owned by Rock Hill Road Associates, LP. The four lots have been improved with detached commercial structures and leased to tenants as follows:

> 216 Rock Hill Road, a .26-acre lot improved with a commercial building leased by Rock Hill Road Pizza for restaurant use;
>
> 230 Rock Hill Road, a .58-acre lot improved with a commercial building leased by Shot Tec for commercial/retail use;
>
> 236 Rock Hill Road, a .72-acre lot improved with a commercial building leased by United Construction Management & Solutions for commercial use;
>
> 260 Rock Hill Road, a 1.87-acre lot improved with a commercial building leased by CVS Pharmacy for commercial/retail use, located on a 1.87-acre lot.

11. The business condominium complex has continuously paved sections that adjoin the south side of Rock Hil Road and terminate to the east with a CVS Pharmacy on the corner of Rock Hill Road and Belmont Avenue. The business condominium complex utilizes shared driveway and parking facilities, with ingress/egress to the Property is via the same driveway that

serves as the western ingress/egress for the CVS Pharmacy. At least ten (10) parking spaces are available for the Applicant's use, as depicted on the Site Plan, Ex. A-3.

12. Nearby business uses include a tobacco shop, a pizza shop, a construction management company, an autobody shop, and a CVS pharmacy. *See*, Ex. A-2, Supplement to Conditional Use Application at p. 3.

13. Adjacent property zoning includes RHR on both sides and LDR4 to the rear. *See*, Ex. A-3, Site Plan, and Ex. A-4, Montgomery County GIS parcel map.

14. The Property is currently improved with a one-story commercial building with a footprint of 2,121 sq. ft. Surface parking areas surround the building, and ten (10) parking spaces are provided to the Shot Tec retail store. Shared driveways provide ingress and egress onto Rock Hill Road.

15. The Applicant currently uses the Property as a retail store and security training facility educating individuals on the safe handling and operation of firearms using laser guns only. The use does not involve the actual firing of any firearms. The retail store sells body armor, hearing protection, firearm cleaning supplies, educational materials, and other items but does not sell firearms or other federally regulated items at this time. *See*, Supplement to Application for Conditional Use, Ex. A-2 at p. 2-3.

B. *Proposed Use*

16. Shot Tec proposes to operate as a Federal Firearms Licensee on the Property ("Proposed Use"), allowing it to sell firearms and ammunition among other items lawfully sold by an FFL. Shot Tec would continue to offer security training. *See*, Supplement to Application for Conditional Use, Ex. A-2 at p. 3.

17. "Federal Firearms Licensee, FFL" is defined as "a person of at least 21 years of age or a legal entity, duly licensed by the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), engaged in the business of manufacturing, selling or dealing, shipping receiving, or importing federally regulated firearms, ammunition, or destructive devices." Lower Merion Township Zoning Code §155-2.1.

C. *Application for Conditional Use Approval*

18. Shot Tec filed a conditional use application dated September 27, 2024, seeking conditional use approval to operate as a Federal Firearms Licensee at 230 Rock Hill Road, Bala Cynwyd, pursuant to Code §155-5.1, Table 5.3 Permitted Uses and §155-10.14, Federal Firearms Licensee. The conditional use application includes the following exhibits:

Ex. A Surveyor Site Plan Drawing dated 9/12/24;

Ex. B Montgomery County GIS Parcel Map;

Ex. C Redacted Lease Agreement for 230 Rock Hill Road;

Ex. D 230 Owner's Consent to Conditional Use Application;

Ex. E Montgomery County Court of Common Pleas Memorandum &Order dated 5/28/24;

Ex. F US Bureau of Alcohol, Tobacco, Firearms and Explosives Gun Free School Zone Notice (2006).

19. The Applicant provided a ten (10) page Supplement to Application for Conditional Use that provides a narrative description of the current uses and proposed use:

> The Applicant currently uses the Property as a retail store and a security training facility. The security training facility educates individuals on the safe handling and operation of firearms using laser guns only; the use does not involve actual firing of any firearms. The retail store sells items such as body armor, hearing protection, firearm cleaning supplies, education materials, and other items, but does not sell firearms or other federally regulated items at this time.

(…)

> The Applicant proposes to operate as a Federal Firearms Licensee (FFL) on the Property, which will allow the Applicant to sell firearms and ammunition among other items lawfully sold by the FFL.

Ex. A-2 at p. 3.

20. Charles Doyle, the Assistant Director of Planning, reviewed the conditional use application and wrote a memo to the Planning Commission for its meeting date on 11/4/24, ("Staff Report"), Ex. T-3. The Staff Report contains sections describing the Proposal, Municipal Regulatory Background, Federal Firearms Regulation, Conditional Use Submission Materials, Property Description & History, Meeting Schedule & Process, Zoning, Conditional Use & Zoning Code Requirements, and Action. The Staff Report asks the Planning Commission for a recommendation on the requested conditional use.

21. The Lower Merion Township Planning Commission reviewed Shot Tec's conditional use application on 11/4/24 and recommended "the Applicant be granted approval to proceed" with the following notes:

a. The majority of the Planning Commission abstained from voting. Three (3) voted in favor and four (4) abstained.

b. The Planning Commission recommends that the Conditional Use Hearing Officer investigate implications should the Commonwealth Court overturn the current ruling on this case.

Ex. T-4, Planning Commission Summary.

D. *Conditional Use Hearing*

22. A conditional use hearing was conducted on November 19, 2024.

23. Charles Doyle, the Assistant Director of Planning was present and entered exhibits marked T-1 to T-4 into the record:

T-1 Affidavit of Publication;

T-2 Conditional Use Hearing Agenda dated 11/19/24;

T-3 Staff Report to the Planning Commission dated 11/4/24;

T-4 November 4, 2024, Planning Commission Summary.

24. Doyle testified that the Applicant appears to have complied with the general criteria for conditional use approval found in Code §155-11.1.F(9)(f)[1] to [6]. In addition, the site plan submitted by the Applicant satisfies Code §155-11.1.F.(7) Lastly, Doyle explained that FFL is appropriate for RHR even though it abuts residential districts because it's situated in a commercial strip with large, physical barriers—steep grade changes--separating it from the LDR4 residential district and Belmont Hills to the north. RHR's form is unique, with significant elevation changes in all directions. (N.T. pp. 10-12).

25. The Applicant entered the following exhibits into the record:

A-1 Conditional Use Application;

A-2 Supplement to Conditional Use Application;

A-3 Surveyor Site Plan Drawing dated 9/12/24;

A-4 Montgomery County GIS Parcel Map;

A-5 Redacted Lease Agreement for 230 Rock Hill Road;

A-6 230 Rock Hill Road Owner's Consent to Conditional Use Application;

A-7 Montgomery County Court of Common Pleas Order dated 5/28/24;

A-8 US Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") Gun Free School Zone Notice (2006).

26. Attorney Kraybill stated the Applicant presented to the Bala Cynwyd Civic Association on 11/12/24 and clarified "basic zoning and gun law questions, and also how an FFL, federal firearms licensee operates." (N.T. pp. 13-14). He further stated the Application is "made under protest" while the Applicant's litigation challenge is continuing in court regarding:

a. the zoning code's categorical exclusion of FFLs from the Township absent conditional use approval; and

b. the constitutionality of not allowing FFLs as of right within a fair and proportionally appropriate amount of land in the Township.

(N.T. p. 14). That said, the Applicant is seeking to be an FFL within the zoning district by conditional use approval. Attorney Kraybill stated the proposed use is complementary and fits the character of the area where other business, commercial, restaurant and retail establishments are located. The Applicant is already doing business at this location with services and as a training center and selling goods of a general retail store nature, but not operating as an FFL at the location until zoning approval is obtained for that use. (N.T. p.15).

27. Grant Schmidt, ("Schmidt"), the sole owner/member of Shot Tec testified the Supplement to Application for Conditional Use is true and correct. Ex. A-2. (N.T. p. 22). He intends to apply for two types of FFL licenses. Type 01 is dealer in firearms other than destructive devices. Type 07, [manufacturer of firearms other than destructive devices] because in the past Shot Tec:

> had a Type 07 because we were curious about the idea of prototyping a design in use with our simulation trainer that was in no way, shape, or form functional as a firearm, but the federal government could perhaps (…) consider it to be a firearm requiring a serial number" and a AFMER form, "for which we would have to be a Type 07.

(N.T. p. 26). "The meat and potatoes is just being able to facilitate the (…) federal form 4473 as well as the state police form SP4-113" for background checks and registration to facilitate the lawful transfer of firearms. (N.T. pp. 24-26).

28. Shot Tec's mission is to provide quality education and training with advanced simulation technology in one specific room, an advanced simulator. "It is not a gun range. It does not involve any live fire ammunition" in the classroom. (N.T. p. 27). Shot Tec also teaches people how to shoot and defend themselves using advanced

simulation technology. The use of force is also covered, meaning how to defend oneself legally, practically and tactically with conflict avoidance and de-escalation, and how to stay alive. (N.T. p. 28).

29. The retail side of Shot Tec's current business is helping clients, who are "majority female," find holsters and accessories that are right for them. Also, to help them find safes that work with their lifestyle. (N.T. p. 28-29). Once an FFL is acquired the retail business will include sales and person-to-person transfers of firearms. (N.T. p. 29). Inventory will be kept "in a room where there [are] safes where things get locked up and it's alarmed." (N.T. p. 34). The storage room contains approximately 5% of the retail square footage or 50-sq. ft. (N.T. pp. 35-36).

30. Shot Tec's retail business is boutique style. There "have never been wall-to-wall guns" at the 246 Bala Avenue location during the past two years. When a customer walks in "there are no real firearms within view." The state prohibits people being able to see firearms through the window, but the Township code prohibits blocking windows. "So, people have to be able to look through the window and we can't have any firearms there." (N.T. p. 37).

31. Schmidt explained that concierge service is the best way to meet customers' needs. Shot Tec consults with customers and asks about their goals, then they can order online and have the firearm shipped to Shot Tec and do the paperwork necessary for pick up. Alternatively, customers can order firearms through Shot Tec. (N.T. p. 37). Shot Tec works to identify customer's "wants and needs" and then "puts something together that suits them most specifically." (N.T. p. 39). One common question is about eyesight and prescriptions to find the accessories better suited to the

customer's vision. (N.T. p. 38). Shot Tec cannot compete with retailers like Cabelas "where there's rows upon rows of stuff." (N.T. p. 39).

32. Upon advice of counsel, Schmidt declined to answer how far away the nearest school grounds are and whether it's measured in linear feet. (N.T. p. 42-43). The Hearing Officer asked the Township to provide the information. Zoning Officer Scott Houchins testified the Property is within one thousand feet of Belmont Elementary School as the crow flies, but it's not possible to walk it in a straight line there because of the grade change. (N.T. p. 44-45).

33. The Hearing Officer asked how is Shot Tec's proposed use as an FFL consistent with the spirit, purpose, and intent of the RHR? (N.T. p. 45). Schmidt answered that Shot Tec is already operational as a firearms related business. This application is "just for the ability to pick up the phone and call in a background check." (N.T. p. 46). Attorney Kraybill added that [the Property] is surrounded by commercial establishments such as a pizza place and a pharmacy. Schmidt stated the proposed use is "very consistent" with mixed uses in the neighborhood. (N.T. p. 47-48).

34. The Hearing Officer asked how the proposed use is suitable for a property within the RHR given the surrounding residential districts? (N.T. p. 49). Attorney Kraybill stated that the change of operations that would commence when an FFL is actually issued, will be immaterial to the surrounding neighbors. The same use that is being made rights now would be nominally different after the FFL is actually received, in comparison to what is existing. (N.T. p. 49). Schmidt added that "the majority of FFLs are located in residences. They're grandfathered but your neighbor could be an FFL, you'd never know. They're very much like a notary." (N.T. pp. 49-50).

35. A member of the public, Marcus Baron, asked the Applicant how the distance to the school was measured. Attorney Kraybill said "we're declining to answer that." (N.T. p. 51). The Hearing Officer asked the Zoning Officer to answer the question. Houchins replied the distance was measured with aerial software. (N.T. p. 52).

36. Baron asked whether the trailhead for the Cynwyd Trail, essentially a public park, has a steep elevation compared to the Property. (N.T. p. 52). The Applicant's attorney directed him not to answer. The Hearing Officer asked the Township to answer Baron's question. Doyle stated the Property is not adjacent to the trailhead. Parking for the trailhead is two lots away and the trail is across Belmont Ave, as shown on maps in the Staff Report, Ex. T-3 at pp 3-4. (N.T. pp. 53-55).

37. Baron stated a point of clarification that "while the direct line of the distance from the shop to the Belmont Hills Elementary School is under 1,000-ft and to drive there is over 1,000-ft, Mr. Schmidt is not in the delivery business. A shot round from a gun would travel a straight line less than 1,000-ft." (N.T. pp. 55-56).

38. Thurston Moon, a resident of 4051 Marshal Road, but not a resident of Lower Merin Township, identified himself as a customer of Shot Tec. He asked Schmidt about Shot Tec's professionalism and system to make sure customers do not accidentally discharge firearms brought with them to the shop. (N.T. p. 56). Schmidt explained that he encourages customers to visit the shop by appointment and he teaches defense, including behavioral profiling. "We follow the recommendations of the Natural Shooting Board Foundation, as well as ATF best practices, and we consult with FFL consultants on best practices." (N.T. p. 58). He has developed a practice called tennis ball pinning:

> One of the things that I developed is what we call tennis ball pinning. So, when people come in, we have them pick up two tennis balls, one in each hand, and we ask them if they have any firearms on them. (…) So with the tennis ball thing we're telling them to hold the tennis balls and that tells the brain to do something, whereas if we said, you know, don't touch the bag their brain might think about the bag [holding a gun they brought with them] So it's a fun way of making sure that everyone that's coming in is safe (…)

(N.T. pp. 58-60). Having customers hold tennis balls prevents them from touching their firearms while in the shop. (N.T. p. 59). Moon stated that when he went to Shot Tec's other location with his firearm and holster, Schmidt and his staff did not allow him to touch his loaded weapon while he was in the shop. (N.T. pp. 60-61). Schmidt testified that he encourages customers who enter the shop with a bag or holster to take it off their body in one piece rather than drawing the firearm. "So that the trigger guard is completely covered during that transition from body to safe and from safe to body." (N.T. 62-63)

39. Schmidt explained that 20% of the adult population in Pennsylvania has a carry permit, and the rate has increased by 200 or 300 percent. The rate is "massively increasing" and "we have rapid demand for education and training." (N.T. pp. 61-62).

40. Lastly, Schmidt admitted that "concerns about accidental discharge are real." (N.T. p. 64). Shot Tec's education reduces the likelihood of such an incident. The existence of an FFL "does not increase or decrease the likelihood of an unintentional discharge." (N.T. p. 64). "The more accessible we make FFL services, the more lawful transfers will happen." (N.T. p. 66). Large retailers like Walmart do not provide training, to Schmidt's knowledge. In contrast, Shot Tec's "primary function is to provide education and training" through a "simulator, a consequence-free learning environment, and we also happen to be an FFL." (N.T. pp. 66-67).

41. Paula Lynn, a resident of 19 Rock Hill Road, stated there's another seven-story apartment building being built on Rock Hill Road. "It's becoming more and more residential as we speak." The street is "going to be much straighter and larger too," not as "crooked as it is now." (N.T. pp. 67-68).

42. Matthew Lorusso ("Lorusso,") a former resident of Lower Merion Township for 35 years and current resident of Manayunk spoke next. Lorusso is a retired medic from the United States Army. He was a former captain at Veterans Emergency Services at the intersection of Old Belmont and Belmont. He was a firefighter in Lower Merion Township for 22 years. He graduated from Harriton High School. Lorusso identified himself as a "survivor of the school shooting that occurred at Lower Merion High School in 1994." (N.T. p. 69).

43. Lorusso stated the elevation differential between the Property's location and the school is 156 feet according to a topographic map he consulted. (N.T. p. 69). He was a firearms instructor in the military and knows that elevation plays a significant factor. He asked Schmidt if there's a direct line of sight to the school. Schmidt answered "zero" and if a bullet was found on school property it would be highly unlikely to have come from Shot Tec. (N.T. pp. 70-71).

44. Lorusso asked Schmidt whether the trailhead is safe. Schmidt answered that a woman was recently sexually assaulted there, and a body was recovered some time ago. Certain instances that have happened in the community are increasing the demand for Shot Tec's services. (N.T. p. 72). Schmidt works as armed security on the side and is starting to work as an EMT. He testified he would never do anything to make the community less safe. "I stand post outside of a minority community center, a social work center, and houses of worship. So, every effort that I undertake, (...) makes the community more safe, both in my professional capacity at Shot Tec and professional capacity outside of Shot Tec." (N.T. p. 73).

45. Moon stated that he has trained over 600 lifeguards in southeast Pennsylvania since 2010. He is "acutely aware that if there were to be a gun violence issue in the area, there's a high likelihood that the first responder might be a lifeguard I trained." (N.T. p. 77). "I take very seriously my responsibility to keep my family safe and I am deeply appreciative to have been able to go to an establishment like Shot Tec (…). (N.T. p. 78). He has purchased one firearm from Shot Tec and a second weapon from another retailer. "I feel very uncomfortable with the majority of gun culture in this region of our nation. (…) Being able to do business at a place like Shot Tec is comforting. It's reassuring and relaxing." (N.T. p. 80). Shot Tec's atmosphere is not political like other firearms retailers, according to Moon. "When I go to Shot Tec, I feel (…) welcome as an African-American and member of the LGBTQ community. (…) This business is a gem in the community and needs to be upheld." (N.T. pp. 82-83).

46. Baron stated that he has been a resident of Lower Merion since 2002, and a member of the Homeowner's Association Board of Directors at the Greenhouse Condominium for six years, including one term as president. Baron has been a member of the Lower Merion Township Community Watch. He recently completed the Lower Merion Police Department's Citizens Academy. (N.T. pp. 83-84). "And I can attest as board president that this gun business is simply just not welcome in out neighborhood." (N.T. p. 83). Although Baron believes that people who own property have the right to do what they want with their property,

> the problem here is the welfare and quality of life of the surrounding community. (…) I simply do not believe it will be in the best interests of the residents of the Rock Hill district, as well as College Park and Belmont Hills. I want to again emphasize the proximity to the school and to the trailhead are issues. (…) I'm going to ask you to deny this permit.

(N.T. p. 84).

47. Lorusso stated that he was pushed into a life of service by the Lower Merion Police Department and ambulance who came to our aid the day of the shooting at Lower Merion High School in 1984. He and the other children were frightened by what had occurred [at the daycare center on the premises of the high school]. Today, Lorusso and his friends "own weapons for the right reasons, because we want to protect people." He feels that Schmidt is being unfairly targeted because people don't realize that it's not just bad people that want guns, it is the police officers and former army members like himself who want to buy weapons different from what has been issued to them. "This is not going to be some sort of hodgepodge of criminals coming to get their guns. This is an attempt to be a law-abiding gun store (…)" (N.T. pp. 85-86).

E. *Legal Authority for Use*

48. The Lower Merion Township Board of Commissioners enacted Ordinance No. 4181 on February 26, 2020, amending the Township of Lower Merion's zoning code and creating the Rock Hill Road District.[2]

49. The Rock Hill Road District (RHR) is codified through §155-6.3 of the Zoning Ordinance.

50. The general purpose of the RHR set forth in Code §155-6.3.A.1(a-l):

> A. Purpose and applicability
>
> (1) General purpose. The Rock Hill Road District (RHR) is established to encourage the redevelopment of the existing under-utilized industrial corridor into an economically dynamic, attractive gateway to Lower Merion Township. The RHR is designed to promote the health, safety and welfare of the citizens of Lower Merion Township by using pedestrian-oriented design; promoting mixed-use redevelopment that is attractive and appropriate to the area; protecting existing natural features; and improving traffic flow and pedestrian and vehicular safety. These general goals and objectives include the following specific purposes:

[2] The Rock Hill Road District replaced the Rock Hill Road Overlay District.

(a) Enable the development of a mix of commercial, institutional and residential uses. Welcome residents, visitors and workers to the Township, providing an attractive destination and link between the residential areas near the corridor and the Schuylkill Expressway, Schuylkill River and Manayunk Neighborhood of Philadelphia;
(b) Encourage location-efficient, pedestrian-oriented design and development consistent with high standards of architecture and design;
(c) Support new development that includes a diverse mix of pedestrian-compatible, higher-density residential and nonresidential uses, expand economic development opportunities and minimize distances between destinations by requiring linked pedestrianways and pedestrian-oriented access;
(d) Provide incentives for the creation of mixed-use structures in keeping with the character and scale of the corridor, while using development design guidelines to promote compatibility of uses and stimulate pedestrian activity;
(e) Maintain a scale, balance and variety of residential, nonresidential and recreational uses;
(f) Promote the livability and identity of the corridor as a neighborhood by providing for dwellings, offices and other workplaces, recreational amenities and neighborhood-scale retail in close proximity to each other;
(g) Enhance the visual character and physical comfort of the district by minimizing pedestrian and vehicular conflicts and encouraging the ability of pedestrians to walk or cyclists to bike to uses within the corridor and beyond;
(h) Promote the smooth and safe flow of vehicular traffic through the corridor while reducing cut-through traffic in the neighboring residential districts;
(i) Protect existing natural features, including Gully Run Creek, a direct tributary to the Schuylkill River which runs through the corridor;
(j) Encourage subsurface parking in non-floodplain areas, and shared parking;
(k) Promote the increase and attractiveness of landscaped areas; and
(l) Connect RHR to the Township's park system and developing waterfront open spaces, including pedestrian trails along the Schuylkill River.

51. "Use restrictions shall be according to Article **V**, Uses (..)", Code §155-6.3.E.

52. The RHR permits Federal Firearms Licensee uses by conditional use approval, pursuant to Article V, Uses. Table 5.3 Regulations.

53. Federal Firearms Licensee uses are permitted in four districts by conditional use approval: Town Center (TC2), Light Industrial (LI), City Avenue District, Regional Center Area (CAD-RCA), and Rock Hill Road (RHR).

54. Federal Firearms Licensee is defined as "a person of at least 21 years of age or a legal entity, duly licensed by the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), engaged in the business of manufacturing, selling or dealing, shipping receiving, or importing federally regulated firearms, ammunition, or destructive devices." Lower Merion Township Zoning Code §155-2.1.

55. The Board of Commissioners enacted Ordinance No. 4267 on April 19, 2023, amending Code Chapter 155, Zoning, and creating supplemental use regulations for Federal Firearms Licensee uses.

56. Supplemental use regulations and standards specific to Federal Firearm Licensees are found in Code § 155-10.14, Federal Firearm Licensee (FFL):

> A. Statement of legislative findings and intent. FFLs present unique zoning challenges for a multitude of reasons, including but not limited to the dichotomy of firearms being both constitutionally and statutorily protected while also being classified by Pennsylvania's penal code as dangerous weapons (e.g., 18 Pa.C.S.A. § 913). Firearms, ammunitions, and explosive devices, which are all the products or wares of FFLs, are also the target of thefts and straw purchases, and used as the instrumentality of crimes. Consequently, the business of manufacturing, selling or dealing, shipping, receiving, or importing firearms, ammunition, and/or destructive devices is always incompatible with the residential use of properties and surrounding residential areas, as well as pedestrian-oriented retail districts, as identified in the Township's Comprehensive Plan. This type of business, however, may be compatible with other zoning districts if certain standards are met which will harmonize this particular use with

the uses permitted within those other districts. In creating these standards, the Board of Commissioners looked to:

1. Current federal and state regulations related to firearms, ammunitions, and explosive devices;
2. Industry-specific recommended best practices for FFLs; and
3. Standards applied at the federal, state, and local levels, including but not limited to zoning regulations, to other uses, such as pharmaceutical providers and banks, which are analogous to FFLs because they involve the transacting of other similarly challenging commodities.

B. Prohibited as a home occupation. No FFL shall operate as a home occupation.

C. Conditional use standards.

1. No FFL shall be permitted to operate in or on the grounds of, or within 1,000 feet of the grounds of, a public, parochial or private school, unless the FFL can demonstrate compliance with 18 U.S.C. § 922(q), as amended.
2. An FFL shall produce and keep on file with the Township a current copy of the applicable license or licenses issued by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as any other required state, county, municipal, or administrative licenses or registrations, including but not limited to any required by the Pennsylvania State Police.
3. An FFL shall identify any fictious name under which the FFL will operate, the street and mailing address for the business, and the business's reasonable hours of operation.
4. For any doors and windows which are directly accessible from any public space, such as a street, alley or sidewalk, or from any common area, such as a lobby or shared hallway, an FFL shall install and maintain smash-resistant doors and windows.
5. An FFL shall install and maintain a general alarm system which provides glass protection, interior motion sensors, door and access panel contact monitoring, and a panic button.
6. An FFL shall install and maintain an internal video surveillance system.
7. An FFL shall provide and maintain an operational safety plan demonstrating compliance with all applicable laws and regulations prohibiting the sale of firearms, ammunition, or destructive devices to certain individuals, including but not limited to those restrictions contained in 18 U.S.C. § 922(b), as amended.
8. An FFL shall provide and maintain an operational safety plan demonstrating compliance with all applicable laws and regulations prohibiting the selling, transferring, or otherwise disposing of a firearm without conducting a

National Instant Criminal Background Check System (NICS) background check for every transfer of a firearm to a nonlicensee unless the transferee qualifies for one of the exceptions listed in 18 U.S.C. § 922(t), as amended.

9. An FFL shall provide and maintain an operational safety plan demonstrating compliance with all applicable laws and regulations prohibiting the selling, transferring, or otherwise disposing of a firearm to a person who is not the actual buyer or transferee of the subject firearm; is otherwise prohibited by law from receiving or possessing firearms or ammunition; and/or is not a lawful resident of Pennsylvania.
10. An FFL shall provide and maintain an operational safety plan to ensure that all required firearms transaction records required by federal and state law are completed for every transfer of a firearm to a nonlicensee.
11. An FFL shall provide and maintain an operational safety plan to ensure that each missing, lost, or stolen firearm from the FFL's inventory or collection is reported to the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives within 48 hours of discovery of the loss or theft.
12. An FFL shall provide and maintain an operational safety plan to ensure compliance with all applicable laws and regulations related to record retention, including but not limited to 27 CFR 478.129, as amended.

57. The Applicant and other plaintiffs appealed the FFL ordinance regulations to the Montgomery County Court of Common Pleas, including the supplemental performance criteria, conditional use standards, imposed by §155-10.14.C(3) in Firearm Owners Against Crime, Institute for Legal, Legislative, and Institutional Action, et al. v. Lower Merion Township, docket number 2023-15859. The legal action was commenced by filing a motion for permanent injunction and an action for declaratory judgment and injunctive relief. *See*, Ex. A-7.

58. The sole issue decided by the Court was "whether Ordinance 4267, §155-10.14.C, Federal Firearms Licensee, as it relates to Shot Tec's conditional lease at 230 Rock Hill Road, was preempted under state law," the Uniform Firearms Preemption Act, 18 Pa. C.S.A. § 6120. Ex. A-7 at p. 3.

59. The Pennsylvania Uniform Firearms Preemption Act states:

> No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer, or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.

18 Pa. C.S.A. § 6120.

60. The Court of Common Pleas issued a Memorandum and Order dated May 28, 2024 ("Court Order,") which partially granted Plaintiff's motion and permanently enjoined Lower Merion Township from enforcing Ordinance No. 4267 criteria (4) through (12) and the phrase "and the business's reasonable hours of operation" in criteria (3). *See,* Ex. A-7.

61. The Court Order permits the Township to enforce criteria, number (1), (2), and the remaining language in (3), and limit FFLs to the four (4) zoning districts enumerated in the Ordinance. Ex. A-7, pp. 6-7.

62. As a result of the Court Order, Lower Merion Township may enforce the following conditional use standards of 155-10.14.C:

> 1. No FFL shall be permitted to operate in or on the grounds of, or within 1,000 feet of the grounds of, a public, parochial or private school, unless the FFL can demonstrate compliance with 18 U.S.C. § 922(q), as amended.
>
> 2. An FFL shall produce and keep on file with the Township a current copy of the applicable license or licenses issued by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as any other required state, county, municipal, or administrative licenses or registrations, including but not limited to any required by the Pennsylvania State Police.
>
> ~~3.~~ An FFL shall identify any fictious name under which the FFL will operate, the street and mailing address for the business, ~~and the business's reasonable hours of operation.~~

Ex. A-7, pp. 6-7.

63. The Municipalities Planning Code confers authority to municipalities to grant conditional use relief pursuant to the express standards and criteria of their applicable code:

> Zoning ordinances may contain provisions for conditional uses to be allowed or denied by the governing body after recommendations by the planning agency and hearing, pursuant to express standards and criteria set forth in the zoning ordinance. (…) In allowing a conditional use, the governing body may attach such reasonable conditions and safeguards, other than those related to off-site transportation or road improvements, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance.

Pennsylvania Municipalities Planning Code (Act 247 of 1968) §603(C)(2).

F. *Compliance with Use Regulations*

64. The Rock Hill Road district is a special district regulated by Code § 155-6.3, RHR Rock Hill Road District.

65. Use restrictions and standards shall be according to Article V, Uses, pursuant to Code § 155-6.3.E.

66. An FFL is permitted in RHR by conditional use approval, pursuant to Article V, Uses, Table 5.3., therefore the Applicant has presented evidence that the application complies with Code § 155-6.3.E.

67. The proposed use contemplates no changes to the driveways, access, curb cuts, sidewalks, signage, façade, landscaping, slope or other exterior items site modifications, with reference to Code § 155-6.3.F, G, H, I and K. *See*, Supplement to Application for Conditional Use, Ex. A-2 at p. 8.

68. Access and parking shall be according to Article VIII, Parking Standards, pursuant to Code § 155-6.3.F.

69. Table 8.1.1, Minimum Parking Requirements in Special Districts states retail (local) less than 30,000 square feet required minimum parking spaces 4/1,000 square feet in the RHR.

70. The Applicant has submitted evidence that the commercial building contains 2,121 square feet and 8.484 parking spaces are required for retail use under the ordinance. See, Ex. A-3, Site Plan; Ex. A-2 Supplement to Application for Conditional Use, Ex. A-2 at p. 8.

71. The Applicant exceeds the minimum parking requirement by providing ten (10) parking spaces, in compliance with Table 8.1.1 Minimum Parking Requirements in Special Districts.

72. The Applicant's Supplement to Application for Conditional use states:

> Applicant's existing customer traffic, customer parking and employee parking have created no concerns in its existing operations as a retail store and training facility, and the proposed FFL use is not expected to materially change traffic and parking needs. Applicant's current use involves three (3) employees who park on site during the longest shift and there would be no increase in the number of employees.

Ex. A-2 at p. 8.

73. The Applicant has submitted evidence that complies with applicable parking standards, pursuant Code § 155-6.3.F.

G. *Compliance with Code § 155-10.14.C Specific Criteria for Conditional Use*

74. Conditional use standards for FFLs ("specific criteria") are found in Code § 155-10.14.C.

75. Code § 155-10.14.C.1 prohibits FFLs from being permitted to operate in or on the grounds of, or within 1,000 feet of the grounds of, a public, parochial or private school, unless the FFL can demonstrate compliance with 18 U.S.C. § 922(q), as amended.

76. 18 U.S.C. § 922(q)(2) and (3) prohibits possessing or discharging a firearm in a school zone but does not apply to possessing or discharging a firearm on private property not part of school grounds.

77. The term "firearm" means:

A. any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
B. the frame or receiver of any such weapon;
C. any firearm muffler or firearm silencer; or
D. any destructive device. Such term does not include an antique firearm.

18 § USC 921(a)(3).

78. The term "destructive device" means:

A. any explosive, incendiary, or poison gas—

i. bomb,
ii. grenade,
iii. rocket having a propellant charge of more than four ounces,
iv. missile having an explosive or incendiary charge of more than one-quarter ounce,
v. mine, or
vi. device similar to any of the devices described in the preceding clauses;

B. any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and,

C. any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

(…)

18 § USC 921(a)(4).

79. The term "school zone" means:

A. in, or on the grounds of, a public, parochial or private school; or
B. within a distance of 1,000 feet from the grounds of a public, parochial or private school.

18 § USC 921(a)(26).

80. The Property is located within 1,000 feet of the grounds of Belmont Hills Elementary School. However, the Property is owned by a private entity, Rock Hill Road Associates, LP, and is not part of school grounds.

81. The Applicant has presented evidence that the proposed FFL at 230 Rock Hill Road complies with 18 U.S.C. § 922(q) because it will be located on private property not part of a school grounds, and therefore also complies with Code § 155-10.14.C.1.

82. Code § 155-10.14.C.2 requires an FFL to produce and keep on file with the Township a current copy of the applicable license or licenses issued by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as any other required state, county, municipal, or administrative licenses or registrations, including but not limited to any required by the Pennsylvania State Police.

83. Shot Tec has agreed to "obtain, produce to the Township, and keep on file with the Township a current copy of the applicable ATF license as well as any other required state, county, municipal, or administrative licenses or registrations, including but not limited to any required by the Pennsylvania State Police," in compliance with Code § 155-10.14.C.2. *See*, Ex A-2 at p. 6.

84. Code § 155-10.14.C.3 requires an FFL to identify any fictitious name under which the FFL will operate, the street and mailing address for the business.

85. The Applicant has provided the entity name under which the FFL will operate and the business street and mailing address:

> Shot Tec, LLC
> 230 Rock Hill Road, Bala Cynwyd, PA 19004

See, Supplement to Application for Conditional Use at p. 6.

86. The Applicant has complied with Code § 155-10.14.C.3 by providing its entity name, business address, and mailing address.

87. Lower Merion Township has been permanently enjoined from enforcing the remaining specific criteria in Ordinance 4267, found in Code § 155-10.14.C(4) through (12), by the Court Order dated 5/28/2024, therefore compliance with them is not required.

H. Compliance with Code §155-11.1.F, Process and Procedures for Conditional Uses

88. Code §155-11.1.F sets forth the process and procedures for conditional uses.

89. Code §155-11.1.F(3) states the "Applicant shall have the initial burden of persuasion that the application complies with the specific requirements for the proposed use set forth in Article V, Uses," subject to Code §155-11.1.F(4).

90. The Applicant has presented evidence that the conditional use application for the proposed FFL complies with specific requirements for the proposed use in the RHR set forth in Article V, Uses, and, thereby, Code §155-11.1.F(3).

91. Code §155-11.1.F(4) states "Opponents shall have the initial duty of presenting substantial evidence that the application does not comply with the general criteria of this chapter, but the Applicant shall retain the ultimate burden of persuasion concerning those criteria."

92. The Applicant has submitted a statement reasonably informing the Township of the nature and conditions of the proposed use, in compliance with Code §155-11.1.F(6)(a). *See,* Ex. A-2, Supplement to Application for Conditional Use.

93. The application for conditional use approval contains all data, information, and reports necessary for the Board of Commissioners to evaluate the proposal in compliance with Code §155-11.1.F(6)(b).

94. Code §155-11.1.F(7)(a) through (n) requires the Applicant to submit a site plan with information about the existing building and proposed use.

95. The Applicant has submitted a site plan that provides information required by the ordinance, except for information precluded by the Court Order in compliance with Code §155-11.1.F(7). *See*, Ex. A- 7.

96. The Assistant Director of Planning stated at the conditional use hearing that the site plan is satisfactory. (N.T. p. 9).

I. Compliance with Code §155-11.1.F.9(f) General Criteria

97. General criteria for conditional use approval are found in Code §155-11.1.F.9(f) *et seq.*

98. Code §155-11.1F(9)(f)[1] requires the Applicant to provide substantial evidence that the proposed FFL "meets all conditions of uses found in the use classification section of this chapter."

99. The Township Planning Commission recommended that the "Applicant be granted approval to proceed with the requested conditional use." Ex. T-4 at p. 1. It did not explicitly address whether the proposed FFL "meets all conditions of uses found in the use classification section of this chapter." The Planning Commission's recommendation, therefore, implies the requested FFL is in conformance with this criterion.

100. The Assistant Director of Planning stated at the conditional use hearing that the Applicant has met the general criteria for conditional use approval in Code §155-11.1F(9)(f), which includes this criterion. (N.T. p. 9).

101. The Applicant has presented substantial evidence that the proposed FFL complies with all conditions of uses found in the use classification section of this chapter, in compliance with Code §155-11.1F(9)(f)[1].

102. Code §155-11.1F(9)(f)[2] requires the Applicant to provide substantial evidence that the proposed use "does not conflict with the Township and County Comprehensive Plans and other plans adopted by the Township."

103. The Applicant has provided documentary evidence that an FFL is permitted by conditional use in the RHR. *See*, Ex. A-2, Supplement to the Application for Conditional Use at p. 9 *citing* Article V, Uses, Table 5.3.

104. A conditional use in a zoning ordinance "indicates legislative acceptance that the use is consistent with the zoning plan." In Re McGlynn, 974 A.2d 525, 537 (Pa. Cmwlth. 2009).

105. The Township Planning Commission recommended that the "Applicant be granted approval to proceed with the requested conditional use." Ex. T-4 at p. 1. It did not explicitly address whether the proposed FFL "does not conflict with the Township and County Comprehensive Plans and other plans adopted by the Township." The Planning Commission's recommendation, therefore, implies the requested FFL is in conformance with this criterion.

106. The Assistant Director of Planning stated at the conditional use hearing that the Applicant has met the general criteria for conditional use approval in Code §155-11.1F(9)(f). (N.T. p. 9).

107. The Applicant has provided substantial evidence that the proposed FFL does not conflict with the Township and County Comprehensive Plans, in compliance with Code §155-11.1F(9)(f)[2].

108. Code §155-11.1F(9)(f)[3] requires the Applicant to provide substantial evidence that the proposed FFL "is consistent with the spirit, purposes and intent of the applicable zoning district."

109. A specific purpose of the RHR is to "[e]nable the development of a mix of commercial, institutional and residential uses" Code §155-6.3.A.1(a)

110. The Applicant provided documentary evidence that an FFL operating from a retail shop is consistent with the mixed-use RHR district:

> The proposed use is consistent with the spirit, purposes and intent of the Lower Merion Township Zoning Code and the RHR zone as set forth at [Code] 155-6.3.A. The proposed use is in the best interests of the Township, the convenience of the community and public welfare. Specifically, it will provide an operating FFL within Lower Merion Township to responsibly serve the security needs and U.S. and Pennsylvania Constitutional rights of residents that emphasizes the safe transfer, handling and operation of firearms and offers professional training and instruction thereon.

Ex. A-2, Supplement to Application for Conditional Use at p. 6.

111. At the conditional use hearing, Attorney Kraybill stated that [the Property] is surrounded by commercial establishments such as a pizza place and a pharmacy.

112. Schmidt testified that the proposed use is "very consistent" with mixed uses in the neighborhood. Shot Tec is already operational as a "fire-arms related business" at the Property and wants an FFL to have the ability to call in background checks to the state police PICS (Pennsylvania Instant Criminal Background System) and NICS (National Instant Criminal

Background System) and get an approval number. (N.T. pp. 46-47). Shot Tec's business with an FFL will continue to be consistent with mixed uses in the RHR. (N.T. 48).

113. The Township Planning Commission recommended to the Hearing Officer that the "Applicant be granted approval to proceed with the requested conditional use," Ex. T-4 at p. 1. It did not explicitly address whether the proposed FFL is "consistent with the spirit, purposes and intent of the applicable zoning district." The Planning Commission's recommendation, therefore, implies the proposed FFL complies with this criterion.

114. The Assistant Director of Planning stated at the conditional use hearing that the Applicant has met the general criteria for conditional use approval in Code §155-11.1F(9)(f). (N.T. p. 9).

115. The Applicant has provided substantial evidence that the proposed FFL is "consistent with the spirit, purposes, and intent of the applicable zoning district" in compliance with Code §155-11.1F(9)(f)[3] because it is located in a commercial strip in a mixed-use district. It will offer professional training and instruction in firearms, and facilitate the legal sale, surrender, and transfer of firearms, in addition to its current retail items. The Planning Commission impliedly agreed that the proposed FFL meets §155-11.1F(9)(f)[3] criterion. The Assistant Director of Planning explicitly agreed that the proposed FFL meets §155-11.1F(9)(f)[3] criterion.

116. Code §155-11.1F(9)(f)[4] requires the Applicant to provide substantial evidence that the proposed FFL "is in conformance with all applicable requirements of this Chapter and all municipal, state and federal codes applicable to the use or process in question."

117. The Township Planning Commission recommended to the Hearing Officer that the "Applicant be granted approval to proceed with the requested conditional use," Ex. T-4 at p.

1. It did not explicitly address whether the proposed FFL is "is in conformance with all applicable requirements of this Chapter and all municipal, state and federal codes applicable to the use or process in question." The Planning Commission's recommendation, therefore, implies the requested FFL is in conformance with this criterion.

118. The Assistant Director of Planning stated at the conditional use hearing that the Applicant has met the general criteria for conditional use approval in Code §155-11.1F(9)(f). (N.T. p. 9).

119. The Applicant has provided substantial evidence that the proposed FFL is in conformance with all applicable requirements of this Chapter and all municipal, state and federal codes applicable to the use or process in question, in compliance with Code §155-11.1F(9)(f)[4], including the specific criteria for conditional use for FFLs contained in Code §155-10.14, regulations for the zoning district Code §155-6.3, Rock Hill Road District, and 18 U.S.C. § 922(q), discussed *supra*.

120. Code §155-11.1F(9)(f)[5] requires the Applicant to provide substantial evidence the proposed FFL is "suitable to the Property in question when considering traffic, vehicular and pedestrian circulation, location and design of parking areas, adjacent land uses and other impacts on the surrounding area. The scale of the proposed uses relates to and complements the surrounding area."

121. At the conditional use hearing, the Assistant Director of Planning stated the proposed FFL is suitable for the Property even though residential uses are located in an adjacent zoning district. There is a large natural barrier between the Property and the residential district to the south, specifically a significant elevation change. RHR is "unique in its form in the first

place" with significant elevation changes to the north, south, east and west. Moreover, Shot Tec is located in a commercial strip with other businesses on both sides. (N.T. pp. 11-12).

122. Attorney Kraybill stated that Shot Tec's change of operations, if an FFL is granted, will be immaterial to surrounding neighbors. The same use that is being made right now would be only nominally different after the FFL is received in comparison to what is already existing. The current use is essentially clerical and training. It is less intensive than a pharmacy or pizza place in terms of traffic and impact on the neighborhood. (N.T. p. 49).

123. Schmidt described FFLs as being unobtrusive in the communities where they are located. He testified that the majority of [existing] FFLs in Lower Merion Township are located in residences because they're grandfathered under the zoning code and "you'd never know [it]. They're very much like a notary." (N.T. pp. 49-50). People have "enumerated affirmed rights" to "access, surrender and transfer a firearm. All the government asks is that you do a bit of paperwork (…) to make sure you're not a criminal." (N.T. p. 50). The Hearing Officer found Schmidt's testimony regarding FFLs completing paperwork similar to notary services to be probative and credible.

124. Schmidt testified that inventory would be kept in safes in a storage room measuring approximately 5-ft x 10-ft inside the store. The storage room has an alarm. (N.T. pp. 34-36). Customers entering the store cannot see "real firearms within view." (N.T. pp. 34). There is no view of retail inventory from the exterior through the store windows. (N.T. pp. 37). The Hearing Officer found Schmidt's testimony regarding how inventory will be stored and secured at Shot Tec's location, and not visible through windows or in plain view inside the store to be probative and credible.

125. Evidence of the location and design of parking has been provided by Shot Tec. It has provided documentation of sufficient parking with at least ten (10) parking spaces available for its uses, as depicted on the Site Plan, Ex. A-3. The business condominium complex utilizes shared driveway and parking facilities, with ingress/egress to the Property via the same driveway that serves as the western ingress/egress for the CVS Pharmacy. The Assistant Director of Planning stated at the conditional use hearing that the Applicant's site plan satisfies the requirements of Code §155-11.1.F.(7).

126. The Township Planning Commission recommended to the Hearing Officer that the "Applicant be granted approval to proceed with the requested conditional use," Ex. T-4 at p. 1. It did not explicitly address whether the proposed FFL is suitable to the Property in question when considering adjacent land uses and other impacts on the surrounding area, *inter alia.* The Planning Commission's recommendation, therefore, implies the requested FFL meets §155-11.1F(9)(f)[5] criterion.

127. The Applicant has provided substantial evidence that the proposed FFL is suitable to the Property in question when considering traffic, vehicular and pedestrian circulation, location and design of parking areas, adjacent land uses and other impacts on the surrounding area, in compliance with §155-11.1F(9)(f)[5]. The Planning Commission impliedly agreed that the Applicant met §155-11.1F(9)(f)[5] criterion. The Assistant Director of Planning explicitly agreed that the Applicant met §155-11.1F(9)(f)[5] criterion and stated Shot Tec's business is consistent with adjacent business uses in the commercial strip along Rock Hill Road. He also described Rock Hill Road's topography with steep elevation changes making an FFL suitable for the property despite residential uses in the surrounding area. Lastly, Schmidt's testimony about

how firearms are stored and secured on-site and are not visible from the exterior through windows or in plain view inside the store is probative.

128. Code §155-11.1F(9)(f)[6] requires the Applicant to provide substantial evidence that "all uses shall be capable of being served by public sewer."

129. The property is currently served by public sewer and the proposed use will not appreciably increase the existing business's sewer and water needs, *see* Supplement to Application for Conditional Use, Ex. A-2 at p. 9.

130. The Applicant has provided substantial evidence that the proposed FFL shall be capable of being served by public sewer in compliance with §155-11.1F(9)(f)[6].

J. *The Public Health, Safety and General Welfare of the Community*

131. Shot Tech has satisfied its burden of proving the proposed FFL is the type of use permitted by conditional use in the RHR, and that it complied with the specific and general requirements of the ordinances for such use. Consequently, a presumption arose that Shot Tec's proposed FFL use would be consistent with the health, safety, and general welfare of the community. Accordingly, the burden shifted to Objectors to rebut the presumption by demonstrating to a high degree of probability that the proposed FFL will adversely affect the public welfare in a way not normally expected from an FFL. The issue is whether substantial evidence supports the Objectors' claims that this proposed FFL will pose a greater detriment to the community than any other FFL in RHR.

132. There was no testimony at the conditional use hearing or documentary evidence about how Shot Tec's proposed FFL would be more detrimental to the community than any other FFL in RHR. Rather, Objectors testified about the proposed FFL's proximity to Belmont Hills Elementary School, the Cynwyd Trailhead, and residential uses being a threat to public health,

safety and general welfare, without introducing any comparative evidence. As such, the Objector's have not met their heavy burden of presenting substantial evidence that the proposed FFL does not comply with the general criteria for conditional use approval, *discussed infra.*

133. Shot Tec's business location in the mixed-use RHR district with residential uses does not necessarily make the proposed FFL a threat to public health, safety, and welfare. The Hearing Officer presumes the Board of Commissioners was mindful of its duty to protect the public health, safety and welfare when it designated four mixed-use districts that contain residential uses to permit FFLs by conditional use. The Assistant Director of Planning stated that the proposed FFL is suitable for [Shot Tec's] location because steep elevation differentials to the north and south separate it from residential uses in adjacent districts. (N.T. pp. 10-12). There is no substantial evidence in the record that Shot Tec's proposed FFL near residential uses in the RHR or adjacent districts will adversely affect the public welfare in a way not normally expected from an FFL. Similarly, there is no substantial evidence in the record that Shot Tec's proposed FFL near residential uses in the RHR will pose a greater detriment to the community than any other FFL. The Applicant has met its ultimate burden of persuasion to show Shot Tec's proposed FFL near some residential uses will not adversely affect public health, safety and welfare.

134. Shot Tec's business location within 1,000-ft of Belmont Hills Elementary School falls within the federal Gun Free School Zones' statutory exception for private property not part of school grounds. As a result, Shot Tec complies with federal law, 18 U.S.C. §922(q), and Code §155-10.14.C.1. Additionally, Shot Tec's location is at a lower elevation with no clear view of the school. There was no expert testimony about ballistics if a shot were fired from Shot Tec's premises toward the school, therefore any threat of harm at the school from the proposed FFL is speculative. Moreover, it is not possible to walk or drive from Shot Tec's location to the school

in a straight line because of the steep elevation change. The route to the school by motor vehicle or on foot is circuitous, rendering the school not immediately accessible to a person possessing a firearm even though it is within 1000 linear feet of Shot Tec's location. There is no substantial evidence in the record that Shot Tec's proposed FFL near Belmont Hills Elementary School will adversely affect the public welfare in a way not normally expected from an FFL. Similarly, there is no substantial evidence in the record that Shot Tec's proposed FFL near Belmont Hills Elementary School will pose a greater detriment to the community than any other FFL. The Applicant has met its ultimate burden of persuasion to show Shot Tec's proposed FFL near Belmont Hills Elementary School will not adversely affect public health, safety and welfare.

135. Shot Tec's business location is separated from the Cynwyd Trailhead by two lots. The Cynwyd Trail is located further away across Belmont Avenue. *See*, Ex T-3, p. 4. The proposed FFL near the Cynwyd Trail and Trailhead is not necessarily a threat to public health, safety and welfare. The Hearing Officer presumes the Board of Commissioners mindful of its duty to protect the public health, safety, and welfare when it designated four districts containing public parks and public gathering spaces to permit FFLs by conditional use. Objectors did not provide expert testimony about ballistics if a shot were fired from Shot Tec's premises toward the Cynwyd Trailhead or the Cynwyd Trail, therefore, any lay testimony is speculative. In rebuttal, Schmidt testified about two procedures employed by Shot Tec to prevent the unintentional discharge of weapons: tennis ball pinning and holster removal. Shot Tec also provides customer education and training with firearms to prevent unintentional discharge of firearms. There is no substantial evidence in the record that Shot Tec's proposed FFL near the Cynwyd Trailhead and Cynwyd Trail will adversely affect the public welfare in a way not normally expected from an FFL. Similarly, there is no substantial evidence in the record that

Shot Tec's proposed FFL near the Cynwyd Trailhead or the Cynwyd Trail will pose a greater detriment to the community than any other FFL. The Applicant has met its ultimate burden of persuasion to show Shot Tec's proposed FFL near the Cynwyd Trailhead and the Cynwyd Trail will not adversely affect public health, safety and welfare.

II. CONCLUSIONS OF LAW

A. General Legal Standards for Granting a Conditional Use

136. Municipalities possess only those powers expressly granted to them by the General Assembly. In re Appeal of Maibach, LLC, 26 A.3d 1213 (Pa. Cmwlth. 2011).

137. Section 909.1(b)(3) of the MPC[3] grants a municipality's governing body authority to render final adjudications on applications for conditional uses. A conditional use is one to which the applicant is entitled provided that the specific standards of the zoning ordinance are met. *In re Thompson*, 896 A.2d 659, 670 (Pa. Cmwlth. 2006), *appeal denied*, 591 Pa. 669, 916 A.2d 636 (2007).

138. An applicant seeking a conditional use must show compliance with the express standards of the zoning ordinance that relate to the specific conditional use. Id.

139. If the Applicant demonstrates compliance with the zoning ordinance, the governing body must grant the application unless objectors introduce sufficient evidence that the proposed use will have a detrimental effect on the public health, safety, and welfare. Id.[4]

140. A conditional use is one specifically recognized by the legislature as consistent with the zoning plan. Aldrige v. Jackson Twp., 983 A. 2d. 247, 253 (Pa. Cmwlth. 2009).

[3] Added by the Act of December 21, 1988, P.L. 1329, 53 P.S. §10909.1.
[4] "Because the law regarding conditional uses and special exceptions is virtually identical, the burden of proof standards are the same for both." In re Thompson, 896 A.2d at 670.

141. As such it is presumed the particular type of use does not, of itself, adversely affect the public interest. Id.

142. A conditional use in a zoning ordinance indicates legislative acceptance that the use is consistent with the zoning plan and a use application should only be denied where the adverse impact on the public interest exceeds that which might be expected in normal circumstances. In re McGlynn, 974 A.2d 525, 537 (Pa. Cmwlth. 2009).

143. A governing body may impose reasonable conditions on the grant of a conditional use. Section 913.2 of the MPC;[5] Levin v. Board of Supervisors of Benner Township, Centre County, 669 A.2d 1063 (Pa. Cmwlth. 1995), *aff'd*, 547 Pa. 161, 689 A.2d 224 (1997).

144. A Board is permitted to impose reasonable conditions on the use of a property to mitigate any potential adverse impacts from the proposed use. Feldman v. Bd. of Supervisors of E. Caln Twp., 48 A.3d 543, 548 (Pa. Commw. Ct. 2012) *citing* Edgmont Township v. Springton Lake Montessori School, 154 Pa. Commw. 76, 622 A.2d 418 (Pa. Cmwlth. 1993).

145. The governing body is entitled to deference in the interpretation of its own zoning code. In Re Arnold, 984 A.2d 1 (Pa. Cmwlth. 2009).

B. Standards and Criteria for Conditional Uses in Lower Merion Township

146. Process and procedures for conditional uses are found in Code §155-11.1.F, including the following:

> 1. The Board of Commissioners shall have the power to approve or disapprove conditional uses when this chapter specifically requires the obtaining of such approval.
> 2. In granting a conditional use, the Board of Commissioners shall make findings of fact consistent with the provisions of this chapter. The Board shall not approve a conditional use except in conformance with the conditions and standards outlined in this chapter.

[5] Added by the Act of December 21, 1988, P.L. 1329, 53 P.S. §10913.2.

3. Subject to §155-155-11.1.F(4) below, the Applicant shall have the initial burden of persuasion that the application complies with the specific requirements for the proposed use set forth in Article V, Uses.
4. Opponents shall have the initial duty of presenting substantial evidence that the application does not comply with the general criteria of this chapter, but the Applicant shall retain the ultimate burden of persuasion concerning those criteria.

147. General Criteria for conditional use approval are found in Code § 155-11.1.F.9(f):

> Criteria for conditional use approval. The Board of Commissioners shall grant a conditional use only if it finds substantial evidence that any proposed development plan submitted comply with the following:
>
> 1. Meets all conditions of uses expressed in the use classification section of this chapter;
>
> 2. Does not conflict with the Township and County Comprehensive Plans and other plans adopted by the township;
>
> 3. Is consistent with the spirit, purposes and intent of the applicable zoning district;
>
> 4. Is in conformance with all applicable requirements of this Chapter and all municipal, state and federal codes applicable to the use or process in question;
>
> 5. Is suitable to the property in question. This criterion shall consider issues such as traffic, vehicular and pedestrian circulation, location and design of parking areas, adjacent land use(s) and other impacts on the surrounding area. If the proposal is adjacent to a residential district, the scale of the use shall relate to and complement the surrounding area.
>
> 6. Public Utilities. All uses shall be capable of being served by public sewer. A use may be permitted to be served on an on-lot sanitary system, only if deemed acceptable by the Board of Commissioners and the adopted 537 Plan of the Township, upon recommendation of the Township Engineer. Sufficient water supply must be available to accommodate the needs of the proposed use.

C. *Conclusions of Law Regarding Code §155-11.1.F, Process and Procedures*

148. Evidence presented at the conditional use hearing, through documents which were introduced into the record and the testimony of witnesses, demonstrates

compliance with the conditional use process and procedures set forth in Code §155-11.1.F(3)(4)(6)(7)(8) and (9).

149. The proposed FFL must "comply with the specific requirements for the proposed use set forth in Article V, Uses," pursuant to Code §155-11.1.F(3)

150. Use requirements set forth in Article V, Uses, Table 5.3 permit FFL uses by conditional use approval in the RHR.

151. Specific requirements for the proposed FFL use by conditional use approval are set forth in Code § 155-10.14.C, *discussed infra.*

152. It is recommended that the Board determine, as a matter of law, that the proposed FFL use complies with the specific requirements for the proposed FFL use and Code §155-11.1.F(3)(4)(6)(7)(8) and (9).

D. Conclusions of Law Regarding Code § 155-10.14.C Specific Criteria

153. It is recommended that the Board determine, as a matter of law, that the proposed FFL at 230 Rock Hill Road complies with 18 U.S.C. § 922(q) because it will be located on private property not part of a school grounds, and therefore, also complies with Code § 155-10.14.C.1, subject to conditions.

154. It is recommended that the Board determine, as a matter of law, that Shot Tec has agreed to obtain, produce to the Township, and keep on file with the Township a current copy of the applicable ATF license as well as any other required state, county, municipal, or administrative licenses or registrations, including but not limited to any required by the Pennsylvania State Police, in compliance with Code § 155-10.14.C.2, subject to conditions.

155. It is recommended that the Board determine, as a matter of law, that the Applicant has provided the entity name under which the proposed FFL will operate and the business street and mailing address in compliance with Code § 155-10.14.C.3, subject to conditions.

156. It is recommended that the Board determine, as a matter of law, that the proposed FFL use complies with the specific requirements for the proposed FFL use set forth in Code § 155-10.14.C, subject to conditions.

E. *Conclusions of Law Regarding Code §155-11.1.F.9(f) General Criteria*

157. Evidence presented at the conditional use hearing, through documents that were introduced into the record and the testimony of witnesses, has demonstrated the Applicant has complied with all general standards and criteria for conditional uses, pursuant to Code §155-11.1.F.9(f)(1)(2)(3)(4)(5)(6), subject to conditions, *see infra.*

158. It is recommended that the Board determine, as a matter of law, that the proposed FFL use complies with all general standards and criteria for conditional uses, pursuant to Code §155-11.1.F.9(f)(1)(2)(3)(4)(5)(6), subject to conditions.

159. It is recommended that the Board determine the Applicant has demonstrated, as matter of law, that the proposed FFL use meets all conditions of uses found in the use classification section of this chapter pursuant to Code §155-11.1F(9)(f)(1).

160. It is recommended that the Board determine, as a matter of law, that the proposed FFL use is allowed by conditional use in the RHR and is consistent with the Township and County Comprehensive Plans and other plans adopted by the Township, in compliance with Code §155-11.1F(9)(f)[2].

161. It is recommended that the Board determine, as a matter of law, that the proposed FFL use is consistent with the spirit, purposes and intent of the RHR, in compliance with Code §155-11.1F(9)(f)[3].

162. It is recommended that the Board determine, as a matter of law, that the proposed FFL use is in conformance with all applicable requirements of this Chapter and all municipal, state and federal codes applicable to the use or process in question, in compliance with Code §155-11.1F(9)(f)[4].

163. It is recommended that the Board determine, as a matter of law, that the proposed FFL use is suitable to the Property in question when considering traffic, vehicular and pedestrian circulation, location and design of parking areas, adjacent land uses and other impacts on the surrounding area, pursuant to §155-11.1F(9)(f)[5].

164. It is recommended that the Board determine, as a matter of law, that the proposed FFL use shall be capable of being served by public sewer in compliance with §155-11.1F(9)(f)[6].

165. As conditioned herein, the proposed FFL use will not have an adverse impact on the public health, safety and welfare not normally generated by that kind of use and will not pose a substantial threat to the health and safety of the community.

166. The Applicant has met its initial burden of proof that the proposed FFL use is permitted by conditional use in the RHR, and that it complied with the specific and general requirements of the ordinance for such use.

167. The Objectors have not met their burden of proof that the proposed FFL will have an adverse impact on the public health, safety and welfare not normally generated by that kind of use and will pose a substantial threat to the health and safety of the community.

168. The Applicant has met its ultimate burden of persuasion that the proposed FFL use will not have an adverse impact on the public health, safety and welfare not normally generated by that kind of use and will not pose a substantial threat to the health and safety of the community.

F. Discussion

169. Shot Tec, LLC has applied for conditional use approval as a Federal Firearms Licensee at 230 Rock Hill Road in the Rock Hill Road zoning district. A Federal Firearms Licensee ("FFL") is defined as "a person of at least 21 years or a legal entity duly licensed by the Bureau of Alcohol, Tobacco, Firearms and Explosives and engaged in the business of manufacturing, selling or dealing, shipping, receiving, or importing federally regulated firearms, ammunition or destructive devices." Code §155-2.1.

170. In 2023, the Board of Commissioners enacted Ordinance 4267 and amended the zoning code to include § 155-10.14, Federal Firearms Licensee. The conditional use standards in Ordinance 4267 contain twelve (12) subsections. As a result of these supplemental performance and use regulations, FFLs are permitted in four districts by conditional use approval: TC2, Town Center; LI, Light Industrial; CAD-RCA, City Avenue District Regional Center Area; and RHR, Rock Hill Road. All four zoning districts are mixed-use and allow residential uses. They also contain public parks and public gathering spaces.

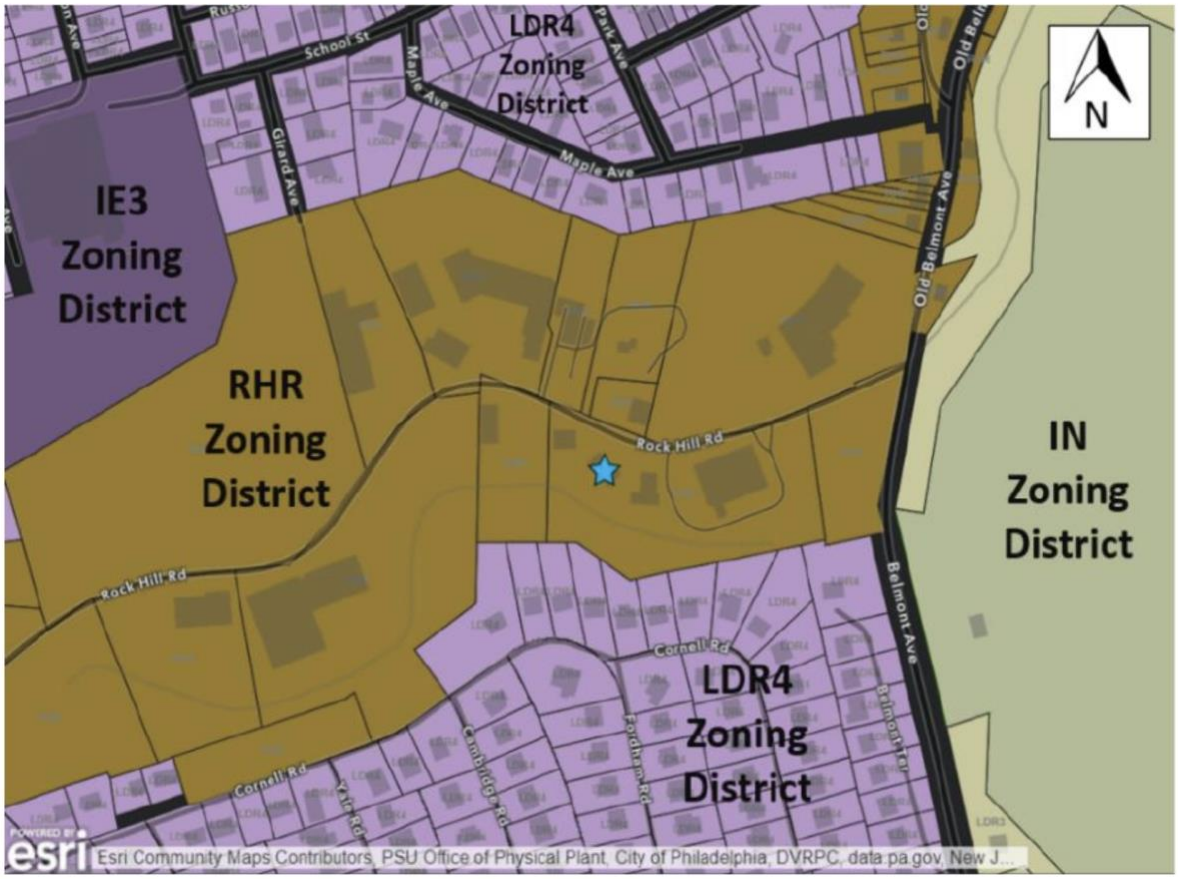
171. Ordinance 4267 was appealed to the Court of Common Pleas of Montgomery County by the Applicant and other plaintiffs in an action entitled Firearm Owners Against Crime, Institute for Legal, Legislative, and Institutional Action, et al. v. Lower Merion Township, docket number 2023-15859. The Court's Memorandum and Order dated 5/28/2024

permanently enjoined Lower Merion Township from enforcing conditional use standards (4) through (12), and part of (3).

172. Shot Tec currently operates a retail shop at 230 Rock Hill Road where it teaches people how to shoot and defend themselves using advanced simulation technology with laser training devices. It also teaches defensive training in avoiding and de-escalating conflict. The retail side of the business offers body armor, hearing protection, holsters, safes, and other items related to firearms, but not firearms themselves according to Grant Schmidt, the owner of Shot Tec. (N.T. p. 25).

173. Shot Tec, LLC would like Lower Merion Township to approve its conditional use application for an FFL so that it may apply for federal FFL Type 01 and Type 07, pursuant to 18 U.S.C. § 923. Type 01 is dealer in firearms other than destructive devices. Type 07 is manufacturer of firearms other than destructive devices. Schmidt testified Type 07 was necessary to prototype a design for use with a simulation trainer that was in "no way, shape, or form functional as a firearm." (N.T. p. 26). "So, in that case, the 'manufacturer' is largely clerical as opposed to machinery based." (N.T. p. 26). The ultimate goal of the business is to process background checks with form 4473 and SP4-100. Shot Tec's witness testimony emphasized that an FFL is necessary to conduct background checks and legally transfer firearms, but he also testified about firearm sales with such licensure.

174. Shot Tec's store at 230 Rock Hill Road is located in the narrow mixed-use RHR district. It was once the site of a quarry that removed materials from the ground and created steep elevation differentials with surrounding districts: the LDR4 to the north (Belmont Hills) and south (College Park), the IN to the east (Cynwyd Trail), and IE3 to the northwest (Belmont Hills Elementary School).



175. A conditional use is a use that is "specifically recognized by the municipality as consistent with the zoning plan." Aldridge v. Jackson Twp., 983 A. 2d 247, 253 (Pa. Cmwlth. 2009). The applicable zoning ordinance provides the criteria upon which conditional uses are to be reviewed. In Re Thompson, 896 A.2d 659, 670 (Pa. Cmwlth. 2006) Each ordinance differs, but usually they provide specific, objective criteria and general, subjective criteria. Williams Holdings Grp. LLC v. Bd. Of Supervisors of W. Hanover Twp., 101 A. 3d. 1202, 1212-13 (Pa. Cmwlth. 2014).

176. An Applicant bears the initial burden of demonstrating that its proposed use meets the specific, objective criteria of the ordinance, Williams Holdings, 101 A. 3d. at 1212. Once an Applicant meets its prima facie burden, "a presumption arises that the proposed use is consistent with the general welfare," Aldridge, 983 A. 2d at 253. The application must be

granted unless the Objectors present sufficient evidence that the proposed use has a detrimental effect on the public health, safety and welfare, In Re Thompson, 896 A.2d at 670. Whether a proposed use is a detriment to the public health, safety and welfare is an example of a general, subjective criterion. Williams Holdings, 101 A. 3d. 1202. The rationale for this shifting burden of persuasion is "it would be manifestly unfair to require [an Applicant] to prove conformity with a policy statement, the precise meaning of which is supposed to be reflected in specific requirements." Bray v. Zoning Board of Adjustment, 410 A.2d 909, 911 (Pa. Cmwlth, 1980) *quoting* Appeal of Baker, 339 A. 2d. 131, 135 (Pa. Cmwlth. 1975).

177. The burden shifts to Objectors to "rebut the presumption by proving, to a high degree of probability, the proposed use will adversely affect the public welfare in a way not normally expected from the type of use." Aldridge, 983 A. 2d at 253. The Objectors cannot meet this burden of persuasion with a "speculation of possible harms." Water Gap Capital Partners, LLC v. Smithfield Township Board, 299 A. 3d 193 (2023) *quoting* Marquise Investment Inc. v. City of Pittsburgh, 11 A. 3d 607, 615 (Pa. Cmwlth. 2010). The Objectors' evidence "cannot consist of "bald assertions, personal opinions, and perceptions of the use and its effect on the neighborhood." Visionquest Nations Ltd. v. Board of Supervisors of Honeybrook Township, 569 A. 2d 915, 917 (Pa. 1990). Rather, the Objectors must present substantial evidence regarding actual harm. Id. In meeting this burden, an Applicant's past conduct is both relevant and probative in determining whether the Applicant meets the conditions of licensure for conducting future business activities of the same nature as those in which it had previously engaged. Water Gap, 299 A. 3d at 193 *citing* EQT Production Co., v. Borough of Jefferson Hills, 208 A.3d 1010, 1026 (Pa. 2019).

The Proposed FFL is Permitted by Conditional Use in RHR

178. Section 6.3.E of the Zoning Ordinance permits Federal Firearms Licensee uses by conditional use, pursuant to Article V, Uses. Table 5.3 Regulations and Code § 155-10.14.C. The Rock Hill Road (RHR) district permits Federal Firearms Licensee uses by conditional use. Shot Tec's business is located in the RHR district, therefore, the proposed FFL is permitted by conditional use at Shot Tec's business location, 230 Rock Hill Road, Lower Merion Township.

The Applicant Has Demonstrated Compliance with the Specific and General Criteria for Conditional Use Approval

179. Shot Tec has demonstrated that the proposed FFL complies with the specific, objective criteria of Code §155-10.14.C.(1) through (3). Findings of Fact Nos. 74- 87 refer to the evidence considered by the Hearing Officer in reaching this conclusion.

180. The Applicant has presented evidence that the proposed FFL at 230 Rock Hill Road complies with 18 U.S.C. § 922(q) because it will be located on private property not part of a school grounds, and therefore also complies with Code § 155-10.14.C.1.

181. Shot Tec has agreed to "obtain, produce to the Township, and keep on file with the Township a current copy of the applicable ATF license as well as any other required state, county, municipal, or administrative licenses or registrations, including but not limited to any required by the Pennsylvania State Police," in compliance with Code § 155-10.14.C.2. *See*, Ex A-2 at p. 6.

182. The Applicant has provided the entity name under which the FFL will operate and the business street and mailing address in compliance with Code § 155-10.14.C.3.

183. Shot Tec has demonstrated that the proposed FFL complies with the general, subjective criteria of Code § 155-11.1.F(9)(f)[1] through [6]. Findings of Fact Nos. 97-130 refer

to the evidence considered by the Hearing Officer in reaching this conclusion. Two criteria are discussed below, in paragraphs 184 to 185.

184. The proposed FFL is consistent with the spirit, purposes, and intent of the RHR because it is permitted by conditional use by the zoning ordinance. A conditional use is a use that is "specifically recognized by the municipality as consistent with the zoning plan." Aldridge v. Jackson Twp., 983 A. 2d 247, 253

185. The proposed FFL is suitable for the Property considering adjacent land uses and other impacts on the surrounding area for several reasons. Shot Tec is located in a commercial strip with business uses on either side of it in the mixed-use district. Steep changes in elevation in all directions separate Shot Tec's location from nearby residential uses. Shot Tec stores inventory in safes in an alarmed room inside the shop. No firearms are immediately visible when a customer enters the shop. People cannot look through Shop Tec's exterior windows and see firearms inside the shop. Schmidt's testimony about the layout of the shop, views into the shop, and where firearm inventory is stored is relevant, probative and credible. The Assistant Director of Planning agreed that the proposed FFL is appropriate for the location. Parking, driveway ingress and egress, access and circulation are provided as shown in the site plan, Ex. A-3.

186. As a result, Shot Tec has met its burden of proving that its proposed FFL use is the type of use permitted by conditional use, and that it has complied with the specific and general requirements of the ordinance for such use. Consequently, a presumption has arisen that Shot Tec's proposed FFL use would be consistent with the health, safety, and general welfare of the community. *See,* Aldridge, 983 A. 2d at 253. Accordingly, the burden shifted to Objectors to rebut the presumption by demonstrating to a high degree of probability that the proposed FFL use will adversely affect the public welfare in a way not normally expected from an FFL, Id.

The Proposed FFL as Conditioned Herein, Will Be Consistent with the Health, Safety and General Welfare of the Community

187. The issue of whether an FFL will adversely affect public health, safety and welfare elicited sharply contrasting testimony at the conditional use hearing. The difference of opinion centered on whether one believes that firearms increase or decrease safety. Objectors, who reside in RHR, believe an FFL at 230 Rock Hill Road will threaten public safety at nearby residential uses, Belmont Hills Elementary School, the Cynwyd Trailhead, and the Cynwyd Trail. Supporters, such as Shot Tec's owner Schmidt and two customers, testified that firearms allow them to protect themselves and their families from crime. Their testimony described, *inter alia*, criminal incidents at a local public high school many years ago and, more recently, in a public park. Although several people testified that they have police or military training and experience, no testimony was offered as an expert opinion in public health, safety and welfare, and no such weight was given to that testimony by the Hearing Officer.

188. Two members of the public objected to an FFL at the Property because its proximity to residential uses, Belmont Hills Elementary School, the Cynwyd Trailhead, and the Cynwyd Trail public park threatens the public health, safety and welfare. Each location is addressed separately, *infra.*

189. Marcus Barron, the president of the Homeowner's Association Board of Directors at the Greenhouse Condominium, 19 Rock Hill Road, with training in the Lower Merion Police Department's Citizen's Police Academy and experience as a member of the Lower Merion Township Community Watch testified:

> a gun business is simply just not welcome in our neighborhood (…) the problem is the welfare and quality of life in the surrounding community. And I (…) do not believe it will be in the best interests of the residents of the Rock Hill district, as well as in College Park or Belmont Hills.

(N.T. pp. 83-84).

190. Similarly, Paula Lynn, a resident of 19 Rock Hill Road, testified there's "another seven-story apartment building being built on Rock Hill Road. It's becoming more and more residential as we speak." (N.T. p. 67). The permits call for the street to be "not as crooked as it is now. It's going to be straighter and larger." (N.T. p. 68).

191. The Hearing Officer presumes the Board of Commissioners was mindful of the public health, safety and welfare when it amended the zoning code to designate four mixed-use districts containing residential uses where FFLs are permitted by conditional use. Therefore, based on that fact alone, an FFL in a mixed-use district with some residential uses is not necessarily a threat to public health, safety and welfare.

192. Two residential districts adjoin the RHR: the College Hill LDR4 district to the south and the Belmont Hills LDR4 district to the north. Significant elevation changes between the districts were created by excavation when a quarry was located in RHR. The Assistant Director of Planning stated that these significant elevation changes make the proposed FFL appropriate for the Property even though it abuts an LDR4 district to the south and one property away across the street to the north. Additionally, Shot Tec is located in the middle of a commercial strip with business uses on both sides. The Hearing Officer found the Assistant Director of Planning's testimony about the appropriateness of the proposed FFL in relation to residential uses in the RHR and abutting districts to be relevant, probative and credible.

193. In light of the foregoing, the Objectors failed to sustain their burden of proof to demonstrate to a high degree of probability that the proposed FFL use will adversely affect the public welfare in a way not normally expected from an FFL because there are residential uses in RHR and surrounding neighborhoods.

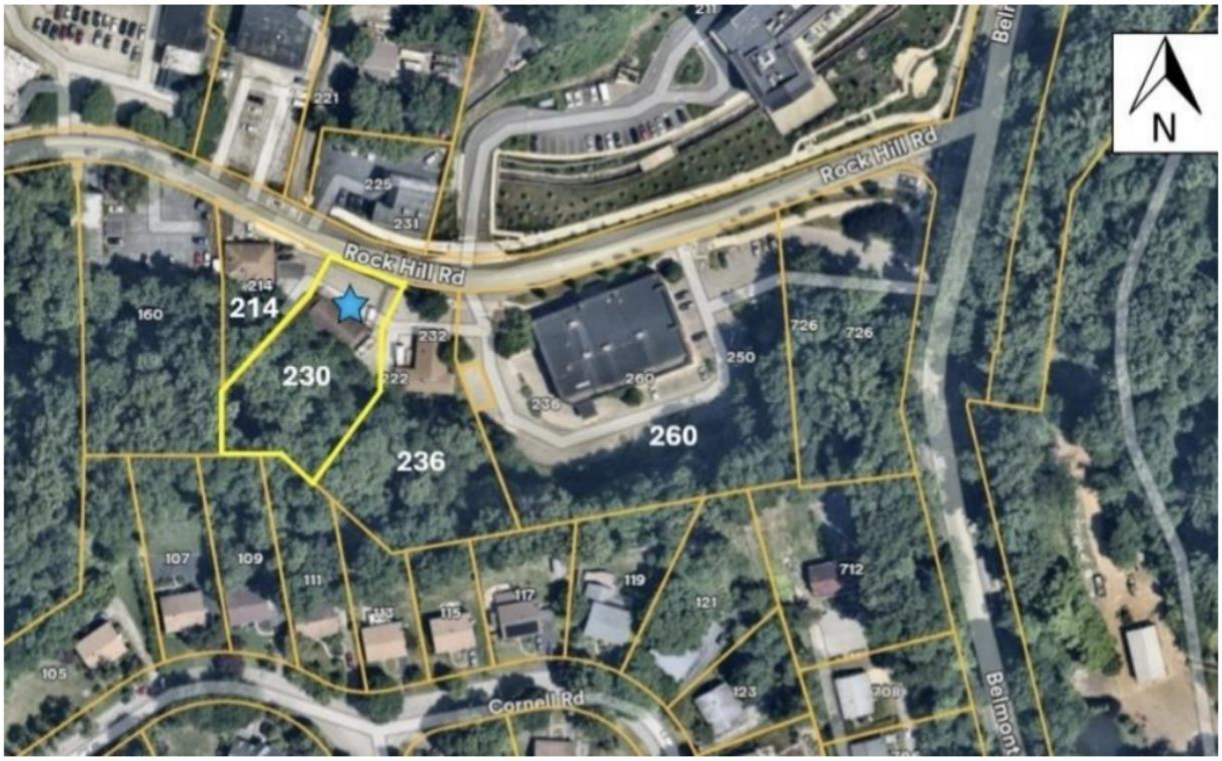
194. Objectors also objected to an FFL because of its proximity to Belmont Hills Elementary School. Baron pointed out that despite the steep elevation change and circuitous path to the school by motor vehicle, "a shot round from a gun would travel in straight line path less than 1,000-ft to the elementary school." (N.T. pp. 55-56).

195. Shot Tec's business location is privately owned and not part of school grounds, therefore, possession of a firearm within 1000 feet of Belmont Hills Elementary School complies with 18 U.S.C. § 922(q) and is not prohibited by Lower Merion Code § 155-10.14(C). Moreover, a steep grade change places the school much higher than Shot Tec's location. There was no expert testimony about ballistics if a shot is fired from Shot Tec's premises toward the school, therefore, any evidence implying a threat of harm to the school is speculative. The school is not visible from Shot Tec's location. It is not possible to walk or drive from Shot Tec's location to the school in a straight line because of the steep elevation change. The route by motor vehicle or on foot is circuitous, therefore the school is not immediately accessible from Shot Tec's location.

196. Although the Objectors were credible, they failed to sustain their heavy burden of proof that demonstrating to a high degree of probability that the proposed FFL use will adversely affect the public welfare because it is located within 1,000 feet of Belmont Hills Elementary School, or in a way not normally expected from an FFL. The Objectors' evidence "cannot consist of "bald assertions, personal opinions, and perceptions of the use and its effect on the neighborhood." Visionquest, 569 A. 2d 917.

197. Objectors also objected to Shot Tec having an FFL because of its proximity to the Cynwyd Trailhead, and the Cynwyd Trail public park. Baron pointed out there's no cliff between Shot Tec and these public amenities. (N.T. p. 52).

198. The Assistant Director of Planning stated the trailhead is "two lots over" and the trail is across Belmont Avenue. (N.T. pp. 53-55). As depicted below, some distance separates Shot Tec's location (blue star on map) from the trailhead parking lot and the trail on both sides of the intersection of Rock Hill Road and Belmont Avenue.



199. The Applicant's witness, Schmidt, acknowledged that "concerns about unintentional discharge are real," therefore, Shot Tec provides customers with education and training to "decrease the likelihood of such an incident." (N.T. pp. 64). Some customers bring firearms with them so Shot Tec has developed procedures to prevent customers from accidentally discharging their firearms in the shop. Tennis ball pinning requires customers to hold a tennis ball in each hand, so they do not handle their firearm. (N.T. p. 58-59). Holster removal requires customers to remove their holster in one unit rather than drawing the firearm before removing the holster. (N.T. 62-23). Shot Tec also follows expert guidance on best practices. Schmidt testified, "we follow the recommendations of the National Shooting Board

Foundation, as well as the ATF best practices and we consult with FFL consultants which advise us on best practices." (N.T. p. 58). Schmidt's testimony was accepted as relevant and credible by the Hearing Officer.

200. Shot Tec's current educational practices and shop procedures to prevent unintentional discharge of firearms are probative about Shot Tec's future practice as an FFL. The current practices and procedures indicate safety measures are in place for the benefit of Shot Tec customers and the surrounding community. An applicant's past conduct is both relevant and probative in determining whether the applicant meets the conditions of licensure for conducting future business activities of the same nature as those in which it had previously engaged. Water Gap, 299 A. 3d at 193 *citing* EQT Production Co., v. Borough of Jefferson Hills, 208 A.3d 1010, 1026 (Pa. 2019).

201. Evidence of the risk of firearms discharge from the proposed FFL to the Cynwyd Trailhead two properties away, and Cynwyd Trail even further away across Belmont Avenue falls short of the high degree of probability necessary to carry the Objector's heavy burden of proof. The risk of unintentional discharge of a firearm is mitigated by Shot Tec's procedures and practices. Any testimony implying an intentional discharge of a firearm from Shot Tec's location toward the Cynwyd Trailhead is speculative without evidence of actual harm.

202. The Objectors' evidence "cannot consist of "bald assertions, personal opinions, and perceptions of the use and its effect on the neighborhood." Visionquest, 569 A. 2d 917. Here, the Objectors did not present substantial evidence that the application does not comply with the general criteria for conditional use approval and Shot Tec has met the ultimate burden of persuasion concerning those criteria. Moreover, the Objectors, although credible and genuinely concerned for their community, failed to sustain their heavy burden of proof demonstrating to a

high degree of probability that the proposed FFL use will adversely affect the public welfare in a way not normally expected from an FFL.

203. For the reasons set forth above, the following order is recommended to the Board of Commissioners.

ORDER

And now on this ___ day of January 2025, the application of Shot Tec, LLC for conditional use approval for FFL is granted, subject to the following condition:

a. The issuance of a Federal Firearms License by the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to the Applicant.

This recommendation for the grant of Conditional Use approval is based on the documents and plans submitted in support of the application, all of which are specifically incorporated by reference thereto.

By: Pamela M. Loughman
Pamela M. Loughman, Esq.
Conditional Use Hearing Officer

TOWNSHIP OF LOWER MERION

RESOLUTION NO. _____

WHEREAS, the Township of Lower Merion received a zoning application filed on behalf of Shot Tec, LLC (designated as Application CU #3922), which seeks conditional use approval to permit the operation of a Federal Firearms License ("FFL") at 230 Rock Hill Road, Bala Cynwyd;

WHEREAS, the application was referred to Pamela M. Loughman, Esq., Hearing Officer, to conduct a public administrative hearing on the application and then, based the record developed during that hearing, to recommend Findings of Fact, Conclusions of Law, and an Order for the consideration of the Board of Commissioners;

WHEREAS, following that hearing, the Hearing Officer prepared and submitted to the Board of Commissioners her "Recommendations for Findings of Fact, Conclusions of Law and Order," (the "Report") wherein the Hearing Officer recommended that the requested relief be conditionally granted; and

WHEREAS, the Board of Commissioners, having reviewed and considered the Hearing Officer's Report, as well as the record, renders the following decision on the application.

NOW THEREFORE, the Board of Commissioners of the Township of Lower Merion hereby resolves:

1. Paragraphs 1 through 203 set forth in the Report are hereby accepted in their entirety as the Findings of Fact and Conclusions of Law of the Board of Commissioners with respect to Application CU #3922, the application of Shot Tec, LLC, which concerns 230 Rock Hill Road, Bala Cynwyd.

2. The proposed order set forth in the Report is hereby adopted, pursuant to 53 P.S. § 10908(10), as the final decision of the Board of Commissioners with respect to the aforementioned application.

ORDER

AND NOW on this ____ day of _____, 2025, the application of Shot Tec, LLC for conditional use approval for FFL is granted, subject to the following condition:

a. The issuance of a Federal Firearms License by the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) to the Applicant.

This grant of Conditional Use approval is based on the documents and plans submitted in support of the application, all of which are specifically incorporated by reference thereto.

BOARD OF COMMISSIONERS
TOWNSHIP OF LOWER MERION

BY: _____
Todd M. Sinai, President

ATTEST:

_____
Jody L. Kelley, Secretary

Staff Report *Agenda Item #3*

Meeting Date: *November 4, 2024*

TO: **Planning Commission Members**

FROM: **Department of Building and Planning – Charles Doyle, Assistant Director of Planning**

SUBJECT: **Conditional Use Application – 230 Rock Hill Road, Bala Cynwyd, Ward 3, CU# 3922C**

FOREWORD:

The Planning Commission routinely reviews Conditional Use applications in conjunction with a land development approval. In instances where a Conditional Use application is submitted with a land development the Planning Commission provides comment regarding planning-related topics such as vehicular circulation, proper site layout, stormwater management or consistency with the goals of a particular district.

The Shot Tech Conditional Use application is not associated with a land development application. Therefore, the Subdivision Land Development Code and portions of the Zoning Code not pertaining to FFL's and Conditional do not apply. Staff further notes that the applicant is only required to demonstrate compliance with the specific Conditional Use criteria at the Conditional Use Hearing.

PROPOSAL:

Peter Kraybill, Esq., on behalf of the applicant Shot Tec, LLC, is seeking conditional use approval to operate a Federal Firearms Licensee (FFL) business at 230 Rock Hill Road, Bala Cynwyd, pursuant to Zoning Code §155-5.1, Table 5.3 Permitted Uses and §155-10.14 Federal Firearms Licensee (FFL).

Shot Tec, LLC is currently operating as a retail store and security training facility but does not sell firearms or other federally regulated items. The existing commercial operations are described by the applicant as a training facility that educates individuals on the safe handling and operation of firearms using laser guns only and does not involve the actual firearms. The retail store sells items such as body armor, hearing protection, firearm cleaning supplies, education materials and other related items.

MUNICIPAL REGULATORY BACKGROUND:

In 2023, the Township exercised zoning rights to regulate the location of federal firearms dealers by defining Federal Firearms Licensees (FFL); permitting FFL uses upon conditional use approval within the CAD-RCA City Avenue District Regional Center Area, LI Light Industrial, RHR Rock Hill Road and TC2 Town Center districts; and create Article X, § 155-10.14, Federal Firearms Licensee (FFL), that includes a series of twelve (12) supplemental performance and use regulations.

Following Township code adoption, the applicant appealed the FFL ordinance regulations to the Mongomery County Court of Common Pleas, specifically the supplemental performance regulations imposed under § 155-10.14.C, Federal Firearms Licensee. On May 28, 2024, an Opinion and Order from the County Courts was provided that precludes the Township from enforcing § 155-10.14.C (4) – (12) and edited § 155-10.14.C (3) citing such provisions are preempted by the Pennsylvania Uniform Firearms Act, leaving the following applicable conditional use standards as:

I. **§ 155-10.14.C.1:** No FFL shall be permitted to operate in or on the grounds of, or within 1,000 feet of the grounds of, a public, parochial or private school, unless the FFL can demonstrate compliance with 18 U.S.C. § 922(q), as amended.

- *The applicant has submitted Exhibit F, that addresses technical requirements of § 155-10.14.C.1, requiring a 1,000' distance from schools. The exhibit indicates compliance with 18 U.S.C. § 922(q), citing the location of such use is not within a school zone, as defined in the federal guidelines. The applicant claims such federal regulations are preemptive of local regulations, stating such 1,000' distance are merely from radial distance and not viable distance travelled which exceeds 1,000' distance.*

II. **§ 155-10.14.C.2:** An FFL shall produce and keep on file with the Township a current copy of the applicable license or licenses issued by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), as well as any other required state, county, municipal, or administrative licenses or registrations, including but not limited to any required by the Pennsylvania State Police.

- *The applicant has indicated on their Conditional Use Application that they will acquire an ATF license as well as any other necessary licenses prior to operation of the FFL.*

III. **§ 155-10.14.C.3:** An FFL shall identify any fictious name under which the FFL will operate, the street and mailing address for the business.

- *The applicant has indicated on their Conditional Use Application that they will operate the FFL under its company name Shot Tec LLC and will do business at the street and mailing address of 230 Rock Hill Road, Bala Cynwyd, 19004.*

As of the date of this memo, the applicant is currently in litigation over the constitutionality of requiring such conditional use requirements entirely for FFLs. An expedited appeal on this matter was determined by the County Courts for a hearing on November 25, 2024. Regardless of that determination, the applicant has committed to application of the conditional use determination through the Township plan approval process.

FEDERAL FIREARMS REGULATIONS:

The foundation for the following federal firearms application is based upon both United States constitutional rights and legal precedence, known as case law, beginning at the national, then the state, and finally the local municipal level. Limitations on the Township's ability to regulate lawful sales of federal firearms generally include:

- The 2nd Amendment of the Constitution establishes a citizen's federal right to bear arms and preemptive protection from certain over-regulation at state and local levels.
- The 5th and 14th Amendments of the Constitution concerning due process of the law, exclusionary zoning, preemption of law by states, just compensation and takings.
- The Commonwealth of Pennsylvania is Dillon's rule state, where local governing bodies are limited to rights expressly permitted by the Code of the Commonwealth of Pennsylvania. This means a municipality may only exercise such powers and authorities as are granted to it by Pennsylvania's legislature. Statewide statutory limitation on regulation by a municipality is referred to as preemption.
- Pennsylvania adopted 18 Pa.C.S.A. § 6120 which significantly limits municipalities' authority to regulate firearms. It provides: *"No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth".*
- Case law regarding a 1960's Surrick v. Upper Providence Twp. Zoning Hearing Board decision and a Fair Share Doctrine ruling. Pennsylvania's fair share doctrine essentially requires a fair and proportionally appropriate amount of land for all legally permitted uses within a Township.
- Act 247 of 1968, the PA Municipalities Planning Code, our state's enabling planning code, also requires that all lawful land uses must be accommodated somewhere within a municipality (e.g. adult uses, billboards or bars regardless of whether they present adverse impacts and may be regarded as a nuisance). Not providing for a particular land use can result in a zoning validity challenge, such as a claim that the zoning ordinance is exclusionary. Furthermore, failure

to provide for lawful use is exclusionary and grounds for a legal challenge for which relief is to permit the use as and where proposed.

CONDITIONAL USE - SUBMISSION MATERIALS:

Upon submitting the Conditional Use Application and supplemental documents dated September 27, 2024, the applicant has presented the following materials in their conditional use application:

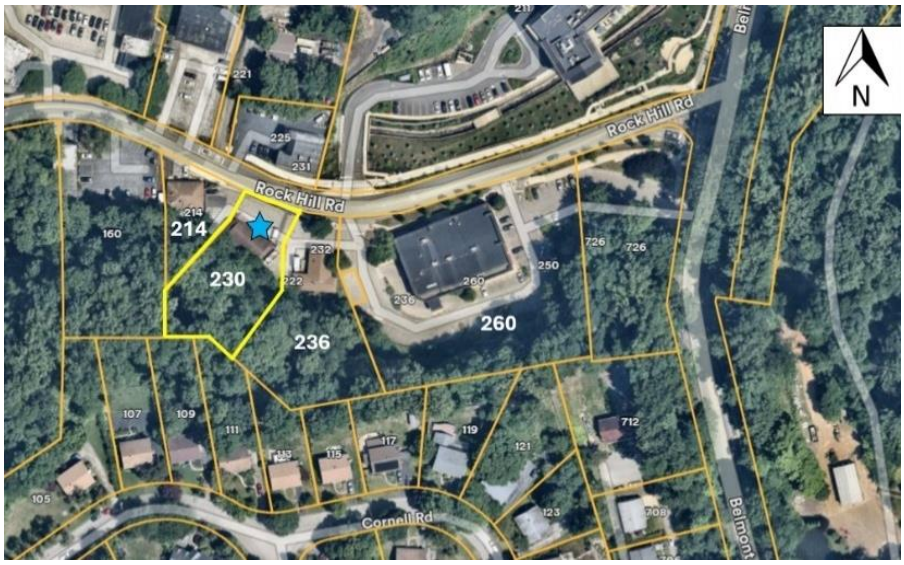
- **Exhibit A** – Surveyor Site Plan Drawing (Dated: 9/12/24)
- **Exhibit B** – Montgomery County – GIS Parcel Map
- **Exhibit C** – Redacted Lease Redacted Agreement – 230 Rock Hill Road
- **Exhibit D** – 230 Rock Hill Road Owner Consent to Conditional Use Application of Shot Tec LLC
- **Exhibit E** – May 28, 2024 – Montgomery County Court Order on Injunction - § 155-10.14.C
- **EXHIBIT F** – US Bureau of Alcohol, Tobacco Firearms and Explosives (ATF) - Gun Free School Zone Notice (2006)

PROPERTY DESCRIPTION & HISTORY:

The subject .58-acre lot, 230 Rock Hill Road, is one of four that constitute a larger strip of commercial spaces, operated as a condominium association under ownership of Rock Hill Road Associates, LP. Lots that make up the Rock Hill Road addresses shared between the approximate 3.43-acre property include:

- 214 (.26-acre): Rock Hill Road Pizza, a restaurant
- 230 (.58-acre): Rock Hill Road Shot Tec, commercial/retail space
- 236 (.72-acre): United Construction Management & Solutions, commercial
- 260 (1.87-acre): CVS Pharmacy, commercial/retail

230 Rock Hill Road contains an existing 1-story commercial building with a footprint totaling 2,121 sq. ft. currently operating as a retail store by Shot Tec, as previously identified.



MEETING SCHEDULE & PROCESS:

The *tentative* schedule for the Conditional Use request is as follows:

→	November 4, 2024	**Planning Commission**	**Review of the Conditional Use request**
UPCOMING	November 19, 2024	Hearing Officer	Conditional Use Hearing
	December 11, 2024	Building & Planning Committee	Review of the Conditional Use request
	December 18, 2024	Board of Commissioners	Review of the Conditional Use request

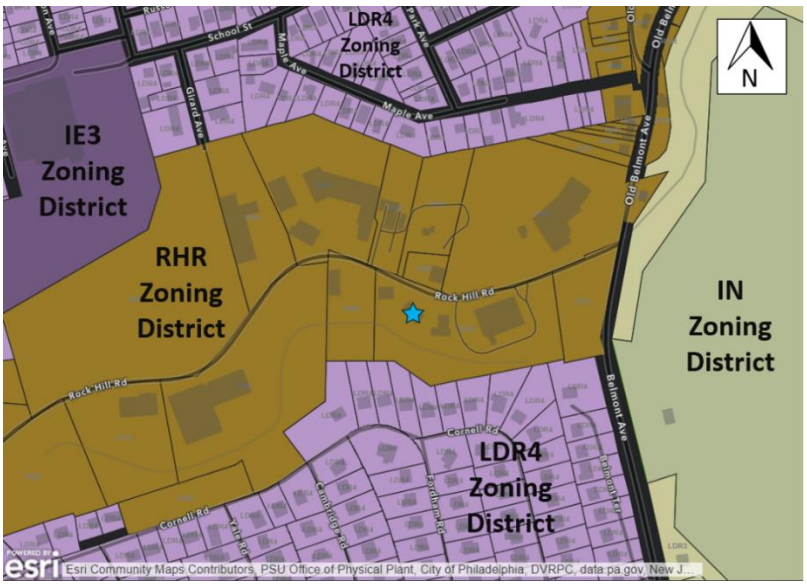
Additional information about the Township's Land Development approval process is illustrated in the Subdivision & Land Development Flowchart. This application is currently in the *Stage 4: Public Meetings* portion of the process.

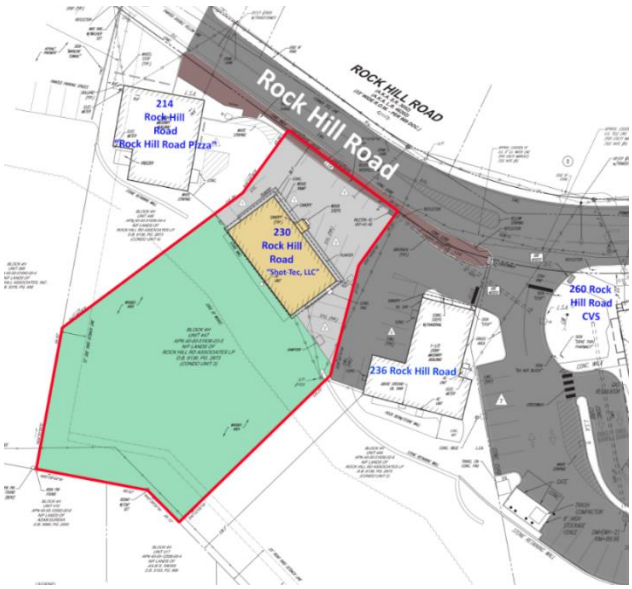
ZONING:

The lot is located in the RHR Rock Hill Road District with district provisions established under Article VI, Special Districts, § 155-6.3: RHR Rock Hill Road District. Because the conditional use application does not include significant land development aspects associated with the occupation of an FFL, many of these regulations are not applicable. Rather, application portions of the Zoning Code are generally limited to:

- Article V, Uses, §155-5.1, Table 5.3 Permitted Uses, that permits FFLs under conditional use approval;
- Article VIII, Parking Standards, Table 8.1.1. Minimum Parking Requirements: Special Districts that require four (4) parking spaces per 1,000 sq. ft. of building area (to which the applicant exceeds the required 8 spaces with 10 spaces provided);
- Article X, § 155-10.14, Federal Firearms Licensee (FFL), that is now limited from twelve requirement to three as aforementioned; and
- Article XI, Process and Procedures, § 155-11.1F, Conditional uses, that establishes minimum universal criteria for granting of a conditional use, that are highlighted further below in this document.

General Zoning code provisions under § 155-10.14 identify that "FFLs present unique zoning challenges for a multitude of reasons, including but not limited to the dichotomy of firearms being both constitutionally and statutorily protected while also being classified by Pennsylvania's penal code as dangerous weapons (e.g., 18 Pa.C.S.A. § 913). Consequently, the business of manufacturing, selling or dealing, shipping, receiving, or importing firearms, ammunition, and/or destructive devices is always incompatible with the residential use of properties and surrounding residential areas, as well as pedestrian-oriented retail districts, as identified in the Township's Comprehensive Plan. This type of business, however, may be compatible with other zoning districts if certain standards are met which will harmonize this particular use with the uses permitted within those other districts."





CONDITIONAL USE & ZONING CODE REQUIREMENTS:

Zoning Code Section 155-11.1.F regulates the conditional use procedure. It requires that the applicant have the initial burden of persuasion that the application complies with the specific requirements of Section 155-11.1.F. Opponents have the initial duty of presenting substantial evidence that the application does not comply with the general criteria of this chapter, but the applicant shall retain the ultimate burden of persuasion concerning those criteria.

The applicant includes testimony for compliance with Township zoning code and conditional use requirements under Section 24 (a-h) and Section 25 (a-f) of their proposed Conditional Use Application. The Planning Commission shall confirm determination plans are consistent with the following:

(f) Criteria for conditional use approval. The Board of Commissioners shall grant a conditional use only if it finds substantial evidence that any proposed development plan submitted complies with all of the following:

[1] Meets all conditions of uses expressed in the use classification section of this chapter.

[2] Does not conflict with the Township and County Comprehensive Plans and other plans adopted by the Township.

[3] Is consistent with the spirit, purposes, and intent of the applicable zoning district.

[4] Is in conformance with all applicable requirements of this chapter and all municipal, state and federal codes applicable to the use or process in question.

[5] Is suitable for the property in question. This criterion shall consider issues such as traffic, vehicular and pedestrian circulation, location and design of parking areas, adjacent land use(s), and other impacts on the surrounding area. If the proposal is adjacent to a residential district, the scale of the use shall relate to and complement the surrounding area.

[6] Public utilities. All uses shall be capable of being served by public sewer. A use may be permitted to be served by an on-lot sanitary system only if deemed acceptable by the Board of Commissioners and the adopted 537 Plan of the Township, upon recommendation of the Township Engineer. Sufficient water supply must be available to accommodate all the needs of the proposed use.

ACTION:

The Planning Commission must take the following actions with respect to this application:

1. A recommendation on the requested Conditional Use.

LOWER MERION
MONTGOMERY COUNTY, PENNSYLVANIA
A First-Class Township

AGENDA ITEM INFORMATION

ITEM: APPROVAL OF CERTIFICATES OF APPROPRIATENESS

Consider for recommendation to the Board of Commissioners approval of the following certificates of appropriateness as recommended by the Historical Architectural Review Board at their meeting held on January 7, 2025:

a) 901 Youngs Ford Road, Gladwyne Historic District, 25-01 – approval to construct a new pool, pool house, and to add a pedestrian door to a previously approved new garage, citing Secretary of the Interior's Standard 10.

b) 7 East Lancaster Avenue, Ardmore Commercial Historic District, 25-02 – approval to add cellular antennas on the rooftop of the former Merion Title & Trust Co, with a request from HARB to reduce the height of the antennas, citing Secretary of the Interior's Standards 9 and 10.

c) 17 West Lancaster Avenue, Ardmore Commercial Historic District, 25-03 – approval to repair storefront cladding and install two new signs, citing Secretary of the Interior's Standards 9 and 10.

PUBLIC COMMENT

ATTACHMENTS:

	Description	Type
🗋	Slides	Backup Material

901 Youngs Ford Road – Gladwyne Commercial Historic District,

25-01	HARB

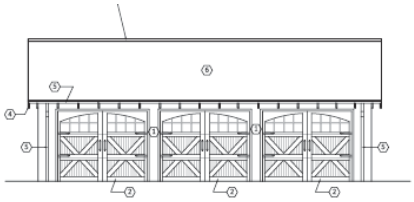
2

Recommendation:

Approval to construct a new pool, pool house, and to add a pedestrian door to a previously approved new garage, citing Secretary of the Interior's Standard 10.

3

Proposed Side Elevation (With proposed new door highlighted)



Proposed Front Elevation

Location of Garage Viewed From Merion Square Road

Proposed Garage (Originally Approved in December, 2023)

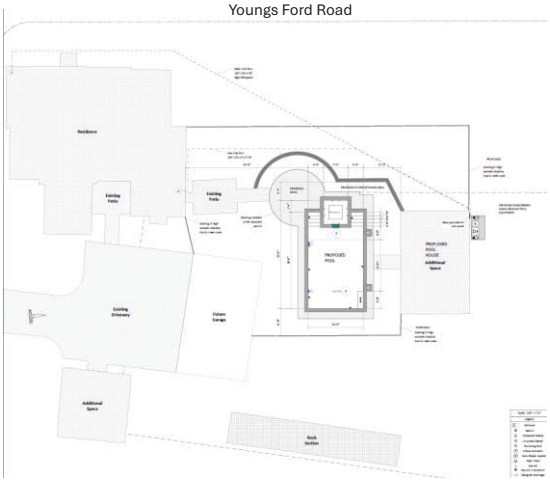
4

② STREET ELEVATION PROPOSED

③ POOL ELEVATION PROPOSED

④ REAR YARD ELEVATION PROPOSED

⑤ SIDE YARD ELEVATION PROPOSED



Proposed Pool and Pool House

5

7 East Lancaster Avenue, Ardmore Commercial Historic District

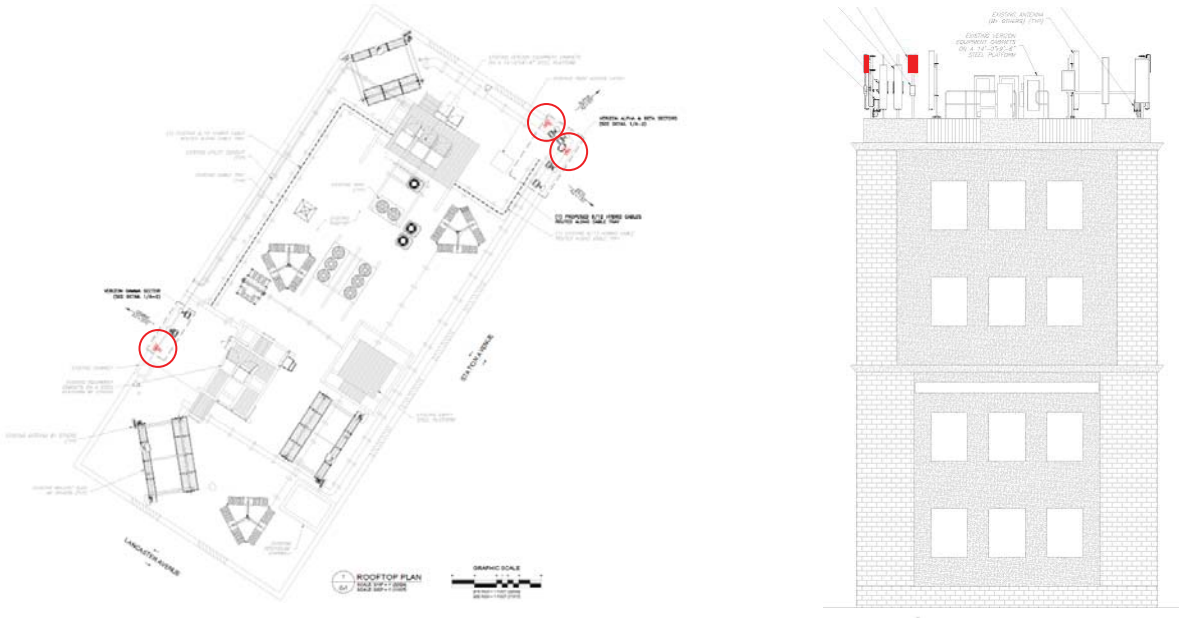
25-02	HARB

6

Recommendation:

Approval to add cellular antennas on the rooftop of the former Merion Title & Trust Co, with a request from HARB to reduce the height of the antennas, citing Secretary of the Interior's Standards 9 and 10.

7



Rooftop Plan and Rear Building Elevation

8

Current

Proposed

Photo Simulation 1

9

Current

Proposed

Photo Simulation 1 (Enlarged)

10

Current

Proposed

Photo Simulation 2

11

Current

Proposed

Photo Simulation 2 (Enlarged)

12

17 West Lancaster Avenue, Ardmore Commercial Historic District

25-03	HARB

13

Recommendation:

Approval to repair storefront cladding and install two new signs, citing Secretary of the Interior's Standards 9 and 10.

14

Renovated Façade With New Signs

15

Wall Sign Will Be Halo-Lit

16

AGENDA ITEM INFORMATION

ITEM: APPROVAL OF HISTORICAL COMMISSION APPLICATIONS

Consider for recommendation to the Board of Commissioners the following applications as recommended by the Historical Commission at their meeting held on December 16, 2024:

a) 415 City Avenue Unit F2, Merion Station, York Lynne Manor, Class 2, 2024-R-25 – approval to replace five windows within one unit of the York Lynne Manor condominium building with a zero day delay, citing Secretary of the Interior's Standards 5 and 9.

b) 49 Anderson Avenue/5 Coulter Avenue, Ardmore, Suburban Square, Class 2, 2024-R-28 – approval to install four awnings along the Coulter Avenue façade, acrylic dimensional letters over the Anderson Avenue entrance, and a bracket-mounted projecting sign at the corner, with a subcommittee to review location and installation details, citing Secretary of the Interior's Standard 9.

c) 1117 Old Gulph Road/601 N. Ithan Avenue, Bryn Mawr, Beaumont Gatehouse, Class 2, 2024-R-29 – approval to modify door openings, with a subcommittee to review details as required, citing Secretary of the Interior's Standard 9.

PUBLIC COMMENT

ATTACHMENTS:

	Description	Type
🗋	Slides	Backup Material

415 City Avenue Unit F2, Merion Station – York Lynne Manor

Class 2	Historical Commission

18

Recommendation:

Approval to replace five windows within one unit of the York Lynne Manor condominium building with a zero day delay, citing Secretary of the Interior's Standards 5 and 9.

19

Locations of Five Windows to be Replaced

20

Location of Unit Within York Lynne Manor

21

Window Condition Detail Photos Provided by Applicant

22

Additional HC Comment:

The Commission recommends a zero day delay, citing Secretary of the Interior's Standards 5 and 9, for the reason that the submitted replacement windows and panning do not meet historic precedent as established and maintained by the Historical Commission. The Commission acknowledges the applicant's extenuating circumstances and **establishes a subcommittee to engage with building management and the condo association to establish guidelines for future alterations to the exterior building envelope, including steel casement and wood double-hung windows, that are more in line with historic preservation standards.**

23

49 Anderson Avenue/5 Coulter Avenue, Ardmore – Suburban Square

Class 2	Historical Commission

24

Recommendation:

Approval to install four awnings along the Coulter Avenue façade, acrylic dimensional letters over the Anderson Avenue entrance, and a bracket-mounted projecting sign at the corner, with a subcommittee to review location and installation details, citing Secretary of the Interior's Standard 9.

25

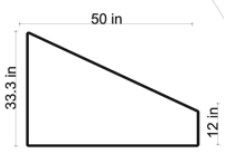
Acrylic logo over storefront

Projecting blade sign at corner

Proposed Signs

26

Note: Renderings depict locations only and are not dimensionally accurate. True awning frame profile at right.



Four Proposed Awnings Along Coulter Avenue

27

1117 Old Gulph Road/601 N. Ithan Avenue, Bryn Mawr – Beaumont Gatehouse

Class 2	Historical Commission

28

Recommendation:

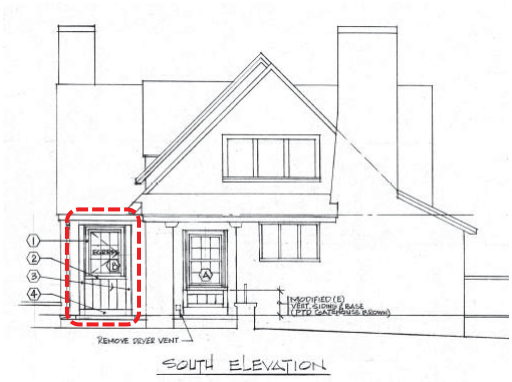
Approval to modify door openings, with a subcommittee to review details as required, citing Secretary of the Interior's Standard 9.

29

This is a non-original door opening that was partially in-filled with vertical boards in the past. The size of the opening will be reduced to accommodate a double-hung window.

East (Rear) Elevation

30



This is an original door opening visible from Old Gulph Road. A window will be replacing the door, which will be retained and stored on site. The remainder of the opening within the stone wall will be in-filled with vertical boards similar to the in-fill on the east elevation. A plan originally proposed to modify another original door opening on the north elevation in the same way was changed to instead retain and weatherproof the door, after discussion with the HC.

South (Side) Elevation

31