

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

Application 3768C

**RECOMMENDATIONS FOR PROPOSED FINDINGS
OF FACT, CONCLUSIONS OF LAW AND ORDER**

This is a conditional use application filed by CI6E Lancaster Avenue Associates, L.P. seeking approval to hold 64 parking spaces in reserve, pursuant to Zoning Code §155-95.1, to exceed the allowable impervious surface by 900 square feet, and to develop the property to the R-7 zoning district rather than the Open Space Preservation District, pursuant to Zoning Code §155-144. A Conditional Use Hearing was conducted on September 6, 2016 and the following recommendations are made pursuant to Code §155-141.2.A.5. At the hearing, the applicant withdrew the request to exceed the allowable impervious surface.

FINDINGS OF FACT

1. The applicant is CI6E Lancaster Avenue Associates, L.P. (“Applicant”).
2. The Applicant is the equitable owner of real property known as 6 Lancaster Avenue, Lower Merion Township (“Property”) and previously known as the Palmer Theological Seminary and Eastern Baptist Seminary.
3. The Property is a 7.6-acre corner lot with frontage on Lancaster Avenue and City Avenue, both of which are major arterial roads, located in the R-7 Residence District. Saunders House, a convalescent facility, is located to the southwest of the Property and Lankenau Hospital is located to the west. Saint Charles Borromeo Seminary is located across Lancaster Avenue. Overbrook Presbyterian Church and residential uses are located across City Avenue in West Philadelphia.

4. The Property has been improved with two buildings listed as Class I Historic Resources on the Lower Merion Township Historic Resource Inventory and the National Register of Historic Places. Palmer Seminary was originally constructed in 1918 as the Green Hill Farms Hotel and Apartments, and subsequently used as Eastern Baptist Seminary. The Curtis Lee Memorial Chapel (“Lee Chapel”) was constructed in 1950. Residential apartment use was approved in both buildings in 2012 and professional office space in Lee Chapel was approved in 2013.

5. The Property consists of two distinct topographic levels referred to as the “upper lot” and the “lower lot”. The Historic Resources are situated on the upper lot, close to the intersection of Lancaster Avenue and City Avenue, at an elevation slightly below street level. A parking lot is located at a lower elevation to the west, with a single access driveway to Lancaster Avenue. To the south of that existing lot there is an area of steep slopes that separates the existing lot from an even lower level of open area.

6. The Applicant proposes a 22-unit apartment building constructed on the lower lot. Approved uses on the property currently require 264 parking spaces, but 70 are held in reserve. To comply with the parking requirement for an additional 22 apartment units under the Zoning Code, the Applicant is required to provide two (2) parking spaces per unit. To meet this requirement, the Applicant proposes to designate 82 parking spaces on the lower lot but hold 64 in reserve.

7. In 2011, the Applicant submitted an initial conditional use application, in conjunction with a land development plan, to convert the existing historic resources into 132 apartments.

8. On March 21, 2012, the Board of Commissioners granted conditional use approval to convert the historic resources, Palmer Seminary and Lee Chapel, into 132 apartments in consideration for permanent façade easements. The conditional use approval included the following:

- A. to hold 70 required parking spaces in reserve, including 15 spaces along Lancaster Avenue pursuant to §155-95.1;
- B. to increase the impervious surface coverage by 15% (from 40% to 46%) to install the required parking, pursuant to Code §155-152;
- C. for conventional development of the property in accordance with the R-7 zoning district, rather than the Open Space Preservation District, pursuant to Code §155-144.

9. On May 16, 2012, the Board of Commissioners also approved the Preliminary Land Development Plan (“Plan”).

10. In 2013, the Applicant received approval to amend the Plan to reduce the number of apartment units from 132 to 112. In conjunction with the amendment, the Applicant received conditional use approval on January 16, 2013 to permit 12,000 square feet of the Lee Chapel to be used as professional office space pursuant to Code §155-151(B)(2)(a) rather than twenty apartment units.

11. On November 7, 2013, the Zoning Hearing Board granted a special exception to install three parking spaces and a vehicle circulation drive within the required front yard setback near Lancaster Avenue pursuant to Code §155-95(A)(2) and Code §155-144(D)(1).

12. On March 24, 2016, the Applicant submitted a Preliminary Plan which was subsequently accepted as a Tentative Sketch Plan (“2016 Plan”) seeking approval to:

- A. construct a 22-unit apartment building ranging in height from three to four stories with a 12,471 square foot footprint over one level of parking

containing 34 spaces;

- B. modify the eastern most portion of the existing surface parking lot;
- C. installation of an underground stormwater management facility; and
- D. installation of a sidewalk connection to Lancaster Avenue from the front of the proposed building.

13. The current Conditional Use Application (“2016 CUA”) was filed in conjunction with the 2016 Plan seeking approval to:

- A. hold 64 parking spaces in reserve pursuant to Code §155-95.1;
- B. exceed the allowable impervious surface coverage Code §155-152(C)(request subsequently withdrawn,) and
- C. develop the property to the R-7 zoning district rather than the Open Space Preservation District (OSPD).

14. On May 23, 2016, the Lower Merion Historical Commission reviewed the proposed 2016 Plan and recommended approval as proposed, with notes on exterior material to be provided in a revised set of documents for staff approval. The Historical Commission also determined that the proposal has minimal or no impact on the adjacent historic resource. With regard to the 2016 CUA, the Historical Commission recommended approval to increase the impervious surface coverage, subject to the condition that such impervious surface coverage shall only be used for reserve parking as required by the Township.

15. On July 11, 2016, the Lower Merion Planning Commission reviewed the 2016 CUA and recommended approval to hold 64 parking spaces in reserve and to develop to the underlying zoning rather than the Open Space Preservation District. It did not recommend additional impervious surface coverage.

16. The Applicant withdrew its request for condition use approval to exceed the impervious surface coverage at the conditional use hearing on Sept. 6, 2016.

17. The Conditional Use Hearing Officer conducted a public hearing on September 6, 2016.

18. Christopher Leswing, PP, AICP, Assistant Director of the Lower Merion Township Building and Planning Department, testified at the hearing and offered four (4) documents into the record:

- Ex. T-1 Proof of Publication of Notice in the Main Line Times;
- Ex. T-2 Leswing Memo dated 6/3/16 to the Planning Commission;
- Ex. T-3 Planning Commission Recommendations on the 2016 Tentative Sketch Plan;
- Ex. T-4 Planning Commission Recommendations on the 2016 Conditional Use Application.

19. The Applicant offered eighteen (18) documents in support of the 2016 Conditional Use Application into the record:

- Ex. A-1 Deed;
- Ex. A-2 Existing Conditions Plan – Recorded Site Plan;
- Ex. A-3 Conditional Use Approval for OSPD, Impervious Surface and Reserve parking, #3673 dated 3/21/12;
- Ex. A-4 Conditional Use Approval for Professional Office, #3689 dated 1/16/13;
- Ex. A-5 ZHB Appeal #4319-parking approval for front yard parking;
- Ex. A-6 Board of Commissioners conditions of approval from preliminary plan 2nd amendment dated 1/16/12;
- Ex. A-7 Historical Commission minutes dated 5/23/16;
- Ex. A-8 Planning Commission minutes dated 7/11/16;
- Ex. A-9 Preliminary Plan approved by PC
 - a. with curb cut,
 - b. without curb cut;
- Ex. A-10 New single driveway plan with 82 parking spaces;
- Ex. A-11 Reserved parking plan with and without structured parking;
- Ex. A-12 New Open Space Plan
- Ex. A-13 Recorded easements and covenants dated 6/4/13;
- Ex. A-14 New landscaping plan;
- Ex. A-15 Parking report by Frank Tavani and Assoc. dated 9/16;
- Ex. A-16 Architectural drawing of new building presented to HC;

- Ex. A-17 Saunders easement to Eastern Baptist Theological Seminary as of 4/11/12;
Ex. A-18 Curriculum Vitae of expert witnesses

20. Leswing testified for Lower Merion Township that two conditional use approvals are sought by the Applicant: to hold 64 parking spaces in reserve and to develop pursuant to the R-7 zoning district rather than the Open Space Preservation District. He noted that the printed version of the new Comprehensive Plan contains recommendations for circulation elements such as vehicular mobility. Staff believes that holding parking in reserve will help implement the “one less car trip” approach recommended in section C2D of the Comprehensive Plan. Moreover, reducing curb cuts will increase connectivity and roadway efficiency as stated in section C2F of the Comprehensive Plan. Lancaster Avenue has been identified as a focus area for bike and pedestrian mobility in the circulation element. Train and bus transportation is available within walking distance of the property. There are 15 existing compact spaces which are not counted toward the available parking and are currently in use. Shared parking efficiencies from multiple uses also support the reserve parking request. The Comprehensive Plan also recommends improving access between community facilities, such as Lankenau Hospital, and transit nodes.

21. Kenneth E. Aaron, Esq., representing the Applicant, testified the 2016 Plans are presented in phases to minimize environmental impact at the site. Reserving 134 parking spaces, including 70 parking spaces already approved for reserve, accomplishes this goal. Surface parking should be sufficient because eliminating the existing curb cut onto Lancaster Avenue will allow 18 parking spaces to be installed. Three phases of additional parking culminating in a structured parking garage are also

provided in the plan set. The Property should be developed under the R-7 zoning district because it preserves the natural and scenic features, as well as the historic resources to an equal or greater degree than the Open Space Preservation District, Aaron testified.

22. Bobby Fijan, a partner of Cross Properties and one of the Applicant's principals, provided a brief overview of the property's recent history. Initially, the property was rezoned from R-3 to R-7 and two existing structures were placed on the Historic Resource Inventory. Palmer Seminary was approved for 132 residential apartment units, subsequently reduced to 110 units at the Applicant's request and Lee Chapel was approved for professional office space. Seventy reserve parking spaces were approved in conjunction with the adaptive reuse of the historic resources, even though only 50 reserve parking spaces were requested by the Applicant. Apartments in Palmer Seminary are almost entirely leased and occupied, but very few parking spaces in the lower lot are currently being used.

23. Fijan further testified that the current 2016 Plan specifies a three to four story apartment building with 22 residential units to the west of Palmer Seminary, in close proximity to the old library and above an existing parking lot. Although the 2016 Plan includes a structured parking garage, it is not likely to be needed and 64 parking spaces should be held in reserve (in addition to the existing 70 reserve spaces). Parking demand can be met with 82 spaces in surface parking: 34 parking spaces under the new apartment building; 12 existing parking spaces adjacent to Lancaster Avenue that will be reconfigured and a curb cut eliminated, and 36 parking spaces in the existing lower lot will remain. If additional parking is needed, then the final phase parking plan for structured parking behind the proposed expansion will be installed. The proposed

apartment building will not reduce open space, increase impervious surface coverage, or demolish the Historic Resources according to Fijan's testimony.

24. The proposed expansion is a good fit for the neighborhood, according to Fijan. There are no residential properties in Lower Merion Township adjoining this property and it is almost entirely surrounded by institutional uses, although there is some residential across City Avenue in West Philadelphia. Abundant public transportation is available from five bus lines and the Overbrook train station located one block away.

25. Michael J. Bowker, P.E. is a registered engineer in the Commonwealth of Pennsylvania and has been an employee of Momenee and Associates, Inc. since 1996. Momenee was hired by Cross Properties for phase two on this property. Bowker prepared the tentative sketch plans dated January 21, 2016 (Ex. A-9a & b) and testified Ex. A-9a depicts the existing curb cut onto Lancaster Avenue. Bowker explained that removing the curb cut lowers impervious surface coverage to 45.7%, as shown in Ex. A-9b, which is a 5% reduction over existing conditions. The initial parking plan, shown on Ex. A-11, depicts 34 parking spaces under the new building with three to four stories above it (upper left corner of exhibit). Three additional phases of parking plans providing increasing amounts of on-site parking are also depicted. The last phase contains a parking structure, as shown in lower right corner of document. There is 58% open space if reserve parking is permitted. Exhibit A-12 shows the replacement open space plan with garage structure and 53.3% open space. Small, unconnected areas were not included in the open space calculation. Overall, Bowker noted that the property will be properly serviced by utilities and granting the conditional use application will not have an adverse impact on public health, safety or welfare.

26. Lisa L. Thomas, RLA, AICP, LEED AP, is the president of Glackin Thomas Panzak, Inc. She prepared landscape plans for the property (Ex. A-14) and testified about landscaping and the open space management plan. Thomas testified that this property currently meets the Open Space Preservation District ordinance because it is residential and contains more than 5 acres. The proposed expansion isn't possible under the Open Space Preservation District ordinance, but would be possible under the R-7 zoning ordinance. If the expansion is permitted, original landscaping installed around the Historic Resources will be untouched and will remain as currently installed. New landscaping will soften the façade of the new building and reduce its impact as seen from the street. All reserve parking constructed on the property is depicted on Sheet LP-2C of Ex. A-14. Thomas testified that there's no reason to disturb the land if reserve parking is not built. She "doesn't see a need for stormwater management at this time" and testified the expansion plans are not detrimental to the public interest.

27. Frank Tavani, PE, PTOE, is the principal of F. Tavani and Associates, Inc. He has been a traffic engineer for more than 20 years and he prepared the parking investigations study dated Sept. 1, 2016 (Ex A-15). Tavani stated his report summarizes parking demand observations, looks at the Applicant's proposed plans and makes recommendations. He found current parking demand has not reached its available supply in the upper lot and the lower lot is lightly used. Moreover, peak parking demand for the existing leased apartments is well below the Township's required 2.00 spaces per unit. Tavani found peak parking demand in June 2016 was 1.2 spaces per unit and in August was 1.11 spaces per unit. The Institute of Transportation Engineers ("ITE") suggests 1.23 spaces per unit. (See, Ex. A-15 at pp. 2-3). Tavani concluded that the initial stage of the

proposed plan, providing 185 parking spaces, is adequate for future use with 22 additional residential units. Three additional phases of future parking plans can satisfy any unanticipated parking demand, although Tavani finds it “extremely unlikely we’ll get to that point.”

APPLICABLE ORDINANCES

28. Reserve parking requirements are found in Lower Merion Township Zoning Code §155-95. It provides for reserve parking by special exception, or, where land development is required, by conditional use approval granted by the Board of Commissioners.

Code §155-95.1 Reserve Parking.

The parking space requirements of §155-95 above may be held as “reserve parking” without actually paving spaces, when authorized as a special exception. If land development approval is required for the proposed improvements, including the additional parking spaces, authorization shall be by conditional use approval from the Board of Commissioners, rather than by special exception. The grant of authorization by either Board shall be subject to the following:

- A. Expansion of use. Where a use regulated by §155-95 is being expanded and the Board determines that the additional number of parking spaces required by this expansion are not currently needed, it may authorize the applicant to hold in reserve the number of spaces that the Board determines are not currently required to meet the needs of the uses to which the property will be put.
- B. New or changed use. Where a new use regulated by §155-95 is created or there is a change of use on the property, and the Board determines that the number of parking spaces required are not currently needed, it may authorize the applicant to hold in reserve up to 50% of the total number of spaces in reserve.
- C. The applicant must document the full number of required spaces can be paved without violating any applicable provisions of this chapter. When constructed, the reserve parking must meet all applicable provisions of this chapter as of the date the construction permit is sought.
- D. The applicant shall install stormwater management facilities, as required by the Township, for the total required number of parking spaces, including those

held in reserve, unless the applicant demonstrated to the Board's satisfaction that the economic and practical benefit of currently installing such facilities for the reserve parking spaces is not significant when compared to the destruction that would be caused to natural features on the site.

- E. The applicant must agree in a recorded covenant, approved by the Township Solicitor, to install the reserve parking spaces at any future time if and when the Zoning Officer determines that the reserve parking spaces are needed to accommodate the use of the property. The applicant may appeal such order to the Zoning Hearing Board.

29. In this matter, the Applicant's burden with respect to its request for 64 additional parking spaces to be held in reserve is to document that the parking spaces are not currently needed and may be paved without violating any applicable provisions of this chapter. The Applicant has provided credible testimony, expert witness testimony and expert reports regarding its proposed expansion of use, such as expert testimony of Frank Tavani that there will be adequate parking in surface lots for 22 additional units and none of the reserve parking is currently needed. He further noted the plans include two additional phases of surface parking to provide 64 additional parking spaces, as well as a third phase parking structure. (See, Ex. A-15 at pp. 4-5). The Applicant also presented expert testimony from Michael Bowker, PE, that the reserve parking may be paved without violating any applicable provisions of this chapter. Christopher Leswing's testimony about train and bus transportation within walking distance of the property, 15 existing compact car parking spaces which are not counted toward the available parking and shared parking efficiencies from multiple uses also support the Applicant's reserve parking request. Lastly, the Applicant has agreed to a recorded covenant approved by the Township Solicitor, to install the reserve parking at any future time if and when the Zoning Officer determines that the reserve parking is necessary to accommodate the use of the property.

30. The Applicant's request not to install stormwater management facilities for the reserve parking, pursuant to Code §155-95.1.D, was not specified in its Application or adequately supported by expert testimony at the CUH. The Applicant must demonstrate that the "economic and practical benefit of currently installing such facilities for the reserve parking spaces is not significant when compared to the destruction that would be caused to natural features on the site," per Code §155-95.1.D. Landscape architect Lisa L. Thomas testified that stormwater management facilities are not necessary at this time, but did not provide details to support her opinion. There was no specific testimony about destruction to natural features on the site if stormwater management for reserve parking were to be installed. Likewise, details about how such destruction of natural features outweighs the economic and practical benefit of installing such facilities were not provided. Under these circumstances, the Hearing Officer cannot make a recommendation that exceeds the explicit requests for conditional use approval in the Application.

31. Conventional development of a tract in the Open Space Preservation District may be approved by conditional use pursuant to Code §155-144.

§155-144. Conditional Uses

Authorization to develop a tract pursuant to the requirements of the underlying residential district (conventional development) rather than the Open Space Preservation District, may be granted by the Board of Commissioners as a conditional use pursuant to §155-141.2, provided that the applicant proves compliance with the standards and criteria set for the in §155-141.2 and, in addition thereto, establishes the following:

- A. That conventional development will preserve natural and scenic features, historic sites and historic resources to a degree greater or equal than development under the Open Space Preservation District would permit. The applicant may be required to protect such features, sites, and resources from further development with appropriate covenants running with the land. Where

development of less than the entire parcel is intended or where the parcel is intended to be developed at less density than conventional development would permit, the applicant may be required to file a development plan for the entire parcel pursuant to §135-17C(12) or may be required to restrict further subdivision and/or development on the remainder of the tract by recorded covenant or agreement.

- B. That the applicant has achieved the open space preservation goals set forth in §155-1442 by deed restriction, conveyance of a perpetual conservation easement to a recognized non-profit corporation established for that purpose or by any other means of facility ownership set forth in §155-148.

32. The Applicant requests permission to develop the tract pursuant to the underlying zoning district rather than the Open Space Preservation District, as typically required for a residential tract larger than five acres. The Board of Commissioners previously approved a similar request by the Applicant on March 22, 2013 (permitting conventional development, reserve parking and increase of impervious surface coverage.) The Code requires 50% or more open space. In this case, the Applicant's Open Space Plan shows 58.2% open space if no reserve parking is required (Ex. A-10). The final phase Open Space Plan shows 53.3% open space with reserve parking installed, not including small unconnected areas, (Ex. A-12). The Applicant has agreed to update its Maintenance and Operations Plan for the open space. Expert testimony by registered landscape architect and certified planner Lisa Thomas described restoration of the original landscaping and additional landscaping along Lancaster Avenue to soften views from the street.

Appropriate native trees and plant material will be used, preserving and protecting the landscape area around the buildings while further enhancing the site. She testified the proposed plan will not be contrary to the public interest and have no adverse impact. The testimony and exhibits adequately demonstrate that allowing conventional development will preserve natural and scenic features, historic site and historic resources to a greater

or equal extent than development under the Open Space Preservation District. Moreover, the recent precedent of allowing conventional development at this site suggests it is appropriate.

33. The specific requirements for obtaining conditional use approval are found in Code §155-153, stated in pertinent part as follows:

Specific Requirements for Conditional Use Approval

- a. Application procedures for conditional use approval
(...)
2. An applicant seeking conditional use approval under the provision of this article shall submit the appropriate application to the Director of Building and Planning in accordance with the provisions of 155-141.2. The information to be provided shall include the following:
 - a. Name and address of the record owner and applicant (if different).
 - b. Site plan showing all buildings and structures on the property.
 - c. Recent photographs of the historic resource.
 - d. A detailed narrative description of the proposed use(s).
 - e. Any physical changes proposed for the affected historic resource(s) and their surrounding landscape.
 - f. Any proposed modifications to otherwise applicable area, bulk and parking regulations.
- (...)
- B. Criteria for the grant of conditional use approval. Where a use is permitted in a Historic Resource Overlay District by conditional use that use shall not be granted unless the following requirements have been satisfied in addition to those set forth at 155-141.2:
 1. The applicant shall have the burden of demonstrating that approval of the application will not jeopardize the preservation of the Historic Resource(s) contained on the property subject to the application. To sustain this burden, the applicant shall present evidence demonstrating the following:
 - a. The exact location of the area in which the work will be done.
 - b. The exterior changes of the structure to be erected.
 - c. A list of the surrounding structures with their general characteristics.
 - d. The effect of the proposed change upon the general historic and architectural nature of the property.

- e. The appropriateness of exterior architectural features of structures involved in the proposed work.
 - f. The general design, arrangement, texture, material, scale mass, and color of any affected building, structure or site and the relation of such factors to similar features of other structures on the property.
 - g. That rehabilitation work will not destroy the distinguishing qualities or character of the historic resource or its environment.
 - h. In the event that replacement of contributing architectural features is necessary, the new material should, as closely as possible, match the material being replaced in kind. (...)
 - i. Distinctive stylistic features or examples of skilled craftsmanship shall be preserved.
 - j. Changes which may have taken place in the course of time are evidence of the history and development of the building, structure or site and its development. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
 - k. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
(...)
4. A means to guarantee the permanent protection of the historical integrity of the subject resource(s), such as the establishment of conservation easement(s) or appropriate covenants in a form acceptable to the Township Solicitor, shall be provided.
 5. The applicant shall have the burden of proving that the historical integrity of the resource has been provided for through the design of the building improvements as well as through implementation of buffering, landscaping, lighting, storage, access and traffic management, interior circulation loading, parking, fencing, signage and all other land development features.
 6. The applicant shall have the burden of proving that the grant of the application will not be destructive of the integrity of the historic resource or detrimentally affect the value of surrounding properties.
 7. The applicant must comply with the parking requirements for the proposed use as set forth in this article. The Board of Commissioners may prohibit any additional parking between the right-of-way and the façade of the building if the Board finds such parking would negatively impact the historical integrity of the resource.
(...)
 9. The Board of Commissioners may attach conditions to achieve the objectives set forth in this section and to promote the public health

safety and welfare, which conditions may relate to any aspect of the proposed use of the property, including but not limited to buffering, parking, signage, traffic volume and flow, hours of operation, noise and odor emission.

34. The Applicant has complied with Code §155-153(A)(2)(a-f) through testimony by Bobby Fijan, expert testimony by Michael Bowker, Frank Tavani and Lisa Thomas, as well as documentary evidence admitted into the record at the conditional use hearing.

35. The Applicant has adequately demonstrated that approval of their application will not jeopardize the preservation of the Historic Resources, in compliance with Code §155-153(B)(1). Expert testimony and reports established that the Historic Resources will not be changed in any way if this application is approved.

36. The Applicant has previously guaranteed the permanent protection of the historical integrity of the subject resources through covenants in a form acceptable to the Township Solicitor and has agreed to update those covenants to reflect this expansion, meeting the requirements of Code §155-153(B)(4).

37. The Applicant has met its burden of proof that the historical integrity of the resources has been provided for through building design and implementation of buffering, landscaping, lighting, storage, access and traffic management, interior circulation, loading, parking, fencing, signage and all other land development features, meeting the requirements of Code §155-153(B)(5). Expert testimony from Michael Bowker, Frank Tavani and Lisa Thomas met the burden of proof.

38. The Applicant has adequately demonstrated that grant of the application will not be destructive of the integrity of the historic resource or detrimentally affect the value of surrounding properties, meeting the requirements of Code §155-

153(B)(6). Expert testimony from Michael Bowker and Lisa Thomas established these facts.

39. With regard to Code §155-153(B)(7), the Applicant submitted an expert report by Frank Tavani showing that the required number of parking spaces will not be needed. His report and testimony described industry standards would require 1.23 parking spaces per apartment unit, well below the 2.00 parking spaces required by Code. Tavani's investigations of current on-site conditions established peak parking demand between 1.11 and 1.20 parking spaces per unit. Tavani opined that 82 new parking spaces in the lower lot will be sufficient to meet parking demand arising from 22 new apartment units, for a total of 185 parking spaces. If parking demand increases in the future, development phases 2, 3 and 4 will provide 203, 249 and 304 parking spaces (respectively). Ex. A-15 at p.3. Engineering plans support the traffic study in this regard. See Ex. A9-A12.

40. The Applicant for a conditional use must also comply with general requirements found in Code §155-141.2, excerpted in pertinent part as follows:

Conditional Use Procedure and Standards

(...)

- B. The Board of Commissioners may grant approval of the listed conditional use under any district, provided that the following standards and criteria are complied with by the applicant for the conditional use. The burden of proving compliance with such standards shall be on the applicant.
 - 1. The applicant shall establish by credible evidence that the use or other subject of consideration for approval complies with the community development objectives as stated in Article I of this chapter and the declaration of legislative intent that may appear at the beginning of the applicable district under which approval is sought.
 - 2. The applicant shall establish by credible evidence compliance with conditions for the grant of conditional uses enumerated in that section

which gives the applicant the right to seek a conditional use.

3. The applicant shall establish by credible evidence that the proposed use or other subject of consideration for approval shall preserve the character of the neighborhood.
4. The applicant shall establish by credible evidence that the proposed use or other subject of consideration for approval shall be properly serviced by all existing public service systems. The peak traffic generated by the subject of approval shall be accommodated in a safe and efficient manner or improvements made in order to effect the same.
5. The applicant shall establish by credible evidence that the proposed use or other subject of consideration for approval is properly designed with regard to internal circulation, parking, buffering and all other elements of proper land planning.
6. The applicant shall provide sufficient plans studies or other data to demonstrate compliance with the regulations for the permitted use or such regulations as may be the subject of consideration for a conditional use approval.
7. The Board of Commissioners shall impose such conditions as are advisable to ensure compliance with the purpose and intent of this chapter which may include without limitation planting and buffers, harmonious design of buildings, protection of watercourses, environmental amenities, and the elimination of noxious, offensive or hazardous elements.

C. Standards of proof.

1. An applicant for a conditional use shall have the burden of establishing both:
 - a. That his application for a conditional use falls within the provision of this chapter which accords to the applicant the right to seek a conditional use; and
 - b. That allowance of the conditional use will not be contrary to the public interest.
2. In determining whether the allowance of a conditional use is contrary to the public interest, the Board shall consider whether the application, if granted, will:
 - a. Adversely affect the public health safety and welfare due to changes in traffic conditions, drainage, air quality, noise levels,

natural features of the land, neighborhood property values and neighborhood aesthetic characteristics.

(...)

e. Otherwise adversely affect the public health, safety, morals or welfare.

(...)

41. Testimony given at the conditional use hearing and evidence admitted into the record meets the burden of proof imposed by Code §155-141.2 (B)(1), specifically, the Applicants' proposal preserves and protects the Historic Resource by providing for its continued use and maintenance. Moreover, 22 apartment units will not adversely affect the general welfare, safety or morals and will be consistent with the development goals of the Township.

42. The Applicants submitted credible evidence of compliance with conditions for the grant of a conditional use, pursuant to Code 155-141.2 (B)(2). See Exhibits A-1 to A-18 admitted into the record at the conditional use hearing.

43. The Applicants have demonstrated that the proposed expansion shall preserve the character of the neighborhood through its Land Development Plans by Momenee & Associates, Inc., Landscaping Plans and Open Space Plans, as well as expert testimony by Michael Bowker, Frank Tavani and Lisa Thomas, in compliance with Code 155-141(B)(3).

44. Testimony of Michael Bowker and engineering plans by Momenee and Associates demonstrate the 22-unit apartment building shall be serviced by existing public service systems, pursuant to Code 155-141(B)(4).

45. The proposed internal circulation, parking, buffering and other elements of the Land Development plan are properly designed pursuant to Code 155-141(B)(5),

specifically 82 additional parking spaces will be provided in the initial phase and this number may be increased to 201, at the discretion of the Zoning Officer. If all reserve parking is installed, there will be 304 parking spaces on-site. Tavani report, Ex. A-15 at p. 3. Moreover, professional landscaping and the open space maintenance agreement will enhance the appearance of the property. See Land Development Plans by Glackin Thomas Panzak, Ex. A-14.

46. Sufficient plans, studies and other data showing compliance with the regulations for the permitted use have been submitted to the Planning Commission, the Historical Commission and the hearing officer pursuant to Code 155-141(B)(6),

47. The Applicant has agreed to comply with any condition which may be imposed by the Board of Commissioners and accepted by the Applicant in compliance with Code 155-141(B)(7).

48. In conclusion, the testimony adduced at the conditional use hearing and plans, studies and reports submitted by the Applicant have sufficiently demonstrated that granting this Application, *as submitted*, will not be contrary to the public interest and will preserve natural and scenic features, historic sites and resources. A new 22-unit apartment building is harmonious with the neighborhood because the site is surrounded by institutional uses, but no adjacent residential uses in Lower Merion Township, and it is serviced by at least five bus lines and within walking distance of the Overbrook Train Station. This recommendation is premised upon the Applicant installing stormwater management facilities for reserve parking per Code§155-95.1.D. If the Applicant wishes to be exempt from installing stormwater management facilities for reserve parking, then it must make an additional evidentiary showing

pursuant to Code §155-95.1.D sufficient to meet its burden of proof, *see supra* para 30.

49. For the reasons set forth above, the following Order is recommended to the Board of Commissioners.

ORDER

AND NOW on this ____ day of October, 2016, the application of CI6E Lancaster Avenue Associates, LP for conditional use approval of reserve parking for 64 required parking spaces pursuant to § 155-95.1 of the Zoning Code and conventional development pursuant to §155-144 of the Zoning Code of the Township of Lower Merion is granted, subject to the following conditions:

Amendment Plan:

1. Any conditions imposed by the Board of Commissioners in the Amendment Plan decision shall be incorporated into these conditions.
2. A revised historic covenant indicating the revisions to the site plan shall be submitted to the Township Solicitor and shall be subject to his approval.

Access to Transit:

3. The applicant shall replace the sidewalk along City Avenue to Township standards.
4. The applicant shall provide the following sidewalk/pedestrian connections to transit facilities:
 - From the southern edge of the existing apartment building to the main entrance driveway to Lankenau Hospital.
 - From both levels of the parking garage into the proposed building.
 - Along the north side of the internal driveway to the new apartment building.
5. The applicant shall provide a total of 22 additional covered bicycle racks along Lancaster Avenue and within the new building to reduce future parking demand. The location and style of the bike racks shall be determined during the land development process.

6. The applicant shall provide an on-site bike share or car share to reduce future parking demand.
7. The applicant shall provide a transit screen and map of nearby public transportation showing scheduling of available transit routes in each apartment building.

Landscape Plan:

8. Additional landscaping shall be provided along with additional restoration of the existing landscape including the removal of vines and other invasive plants along City Avenue. The Maintenance and Operations Plan for the project shall be updated to reflect the changes to the site proposed with this project. The details of the additional landscaping shall be determined during land development.

Stormwater Management:

9. The applicant shall obtain land development approval from the Township for the installation of some or all of the reserve parking.

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 herein by reference thereto.

By: _____
Pamela M. Loughman, Esq.
Conditional Use Hearing Officer
Township of Lower Merion