

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

Application CU 3756

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

This conditional use application was filed by Federal Realty Investment Trust seeking approval to deviate from the following design standards of the City Avenue District pursuant to Lower Merion Code §155-217.F.5.e.7 seeking approval of variations to the sidewalk and landscaped verge along St. Asaph's Road otherwise required by Lower Merion Code §155-217.F.1.a.1.

A Conditional Use Hearing was held on October 17, 2016 before the Conditional Use Hearing Officer.<sup>1</sup>

1. The Applicant is Federal Realty Investment Trust ("FRIT") c/o Brian Donley, 50 East Wynnewood Road, Suite 200, Wynnewood PA ("Applicant"). The Applicant is represented by George W. Broseman, Esq. of Kaplin, Stewart.

2. FRIT is the title owner of the Bala Cynwyd Shopping Center ("BCSC" or "Property") located in Lower Merion Township. The BCSC is comprised of a large parcel containing 19.9 acres and improved with seven commercial buildings ("Main Parcel") and a smaller parcel improved with one commercial building leased by L.A. Fitness ("L.A. Fitness Parcel"). The BCSC is located in the City Avenue District-Bala Cynwyd Retail District ("BCR District").

3. The BCSC is bound by the following:

North: Belmont Avenue containing commercial uses;

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<sup>1</sup> The Conditional Use Hearing Officer is authorized to conduct the hearing pursuant to Code §155-141.2.A.5.

East: City Avenue containing commercial uses and bordering the City of Philadelphia;

South: Conshohocken State Road and the Church of St. Asaph containing commercial and institutional uses; and

West: St. Asaph's Road containing residential uses.

4. The Property was developed as a shopping center in the 1950's and is currently improved with six one-story commercial buildings, one two-story commercial building and 1,261 parking spaces in surface parking lots with ingress and egress from all four sides. The commercial buildings collectively contain 369,738 square feet of commercial space leased to approximately 28 tenants.

5. The Lower Merion Board of Commissioners approved in-fill development at the BCSC in 2010, which permitted construction of a 4,025 square foot bank with three drive-through lanes; a 9,000 square foot retail/restaurant building, installation of a stormwater management system and reconfiguration of the parking lot in the vicinity of the improvements.

6. A four (4) foot wide sidewalk along St. Asaph's Road was installed as part of the 2010 approval. Prior to this approval there was no sidewalk along the St. Asaph's frontage of the Property. The new sidewalk contains over 1,300 linear feet.

7. The Main Parcel of the BCSC is the subject of this Conditional Use application. It is bound on three sides by public streets: St. Asaph's Road (1,306.34 feet of frontage); Belmont Avenue (505.62 feet of frontage); and City Avenue (1,304.79 feet of frontage).

8. Lower Merion Township enacted the City Avenue District ("CAD") in 2012. CAD's purpose is for LMT and the City of Philadelphia to encourage development and redevelopment of the City Avenue District that combines residential, institutional and commercial uses in close proximity thus decreasing auto dependency, encouraging pedestrian access, transit use, shared parking and accessways and mitigating the effects of congestion,

vehicular traffic and pollution. The regulations promote pedestrian friendly development and protect the health, safety and general welfare of citizens, Code §155-216.A.

9. The CAD was amended in 2014 to create an additional the Bala Village (“BV”). Code §155-216.B., an additional zoning district:

10. The BCR District ordinance is intended to preserve the existing retail character of the uses that cater to the surrounding residential community and provide a transition to the existing residential neighborhood. The BCR district incorporates many of the dimensional, design and architectural standards found in the RCA. The zoning for the shopping center was specifically crafted to transition the existing Bala Cynwyd Shopping Center into the pedestrian oriented mixed use vision for City Avenue. See, Ex T-2 at p.1. The regulations promote pedestrian friendly design, as stated in Code §155-217A, which is an integral part of the ordinance.

11. The Applicant submitted a Land Development Plan on July 6,2015 seeking to:

- a. build a six-story residential apartment building containing 87 units above at grade parking, pursuant to the BCR zoning district;
- b. reconfigure the existing parking lot and loading areas located in the northwestern portion of the property;
- c. construct a supplemental eight (8) foot wide paved multipurpose path in the project area from the property boundary with the Church of St. Asaph’s to the existing driveway extending from St. Asaph’s Road; and,
- d. construct a six (6) foot wide multipurpose path on the Church of St. Asaph’s property that connects to the aforementioned eight (8) foot wide multipurpose path on the subject property and extends to the existing sidewalk along Conshohocken State Road.

12. On November 23, 2015 the Applicant submitted a Conditional Use application to deviate from the development design standards for pedestrianways specified in Code §155-

218.F.1.a.1. Specifically, the Applicant seeks to install a narrower sidewalk and landscaped verge along St. Asaph's Road than required by Code to allow it to fit into the existing right of way.

13. The Board of Commissioners may, by conditional use, approve variations to the sidewalk and landscaped verge pursuant to Code §155-217.F.5.e.7 if the Applicant demonstrates to the satisfaction of the Board that such variations are in furtherance of the legislative intent of this article.

14. The Lower Merion Planning Commission reviewed the Tentative Sketch Plan and Conditional Use application on October 10, 2016 and recommended approval.

15. The Conditional Use Hearing Officer conducted a public hearing at the Lower Merion Township building on October 17, 2016.

16. Christopher Leswing, PP, AICP, Assistant Director of Planning at the Lower Merion Township Building and Planning Department, offered seven (7) exhibits into evidence:

- a. Planning Commission recommendation (Ex T-1);
- b. Lower Merion Township staff memo dated 10/7/16 (Ex T-2);
- c. Lower Merion Township staff supplemental memo dated 10/17/16 (Ex T-3);
- d. Email from George Broseman, Esq. dated 10/10/16 (Ex T-4)
- e. Letter from Carl N. Weiner, Esq. dated 8/20/10 (Ex T-5);
- f. Letter from David Joss dated 3/28/11 enclosing settlement agreement and mutual release (Ex T-6);
- g. Proof of publication of the hearing notice (Ex. T-7).

17. George Broseman, Esq, objected to a portion of Ex. T-3 entitled "Public Comment Received at the October 10<sup>th</sup> Planning Commission Meeting" on grounds of hearsay. The remaining parts of Exhibit T-3 and all the other exhibits introduced by Township staff are admitted into the record.

18. The Applicant offered twelve (12) exhibits in support of its Conditional Use application which were subsequently admitted into the record:

- a. Conditional Use Application with Amendment (Exhibit A-1);
- b. Authorization from Church of St. Asaph's (Exhibit A-2);
- c. Existing Conditions Plan (Exhibit A-3);
- d. 1953 Deed Restriction (Exhibit A-4);
- e. 2010 Land Development Approval Letter (Exhibit A-5);
- f. 2010 Land Development Record Plan (Exhibit A-6);
- g. Appeal of 2010 Land Development Approval (Exhibit A-7);
- h. Land Development Appeal Settlement Agreement (2011) (Exhibit A-8);
- i. Township Official Map & Ordinance (adopted 4/25/12) (Exhibit A-9);
- j. 2014 Settlement Agreement (Exhibit A-10);
- k. Christos Dinoulis CV (Exhibit A-11);
- l. Tentative Sketch Land Development Plan set (Exhibit A-12).

19. Christopher Leswing testified that Township staff has issues with the conditional use application but not the land development plan. The Applicant's planned pedestrianway doesn't contain the full width of sidewalk and landscaped verge required by Code. As a result, the Applicant needs conditional use approval for its alternative concept and its burden is to show that it complies with the legislative intent of the CAD ordinance. Leswing testified that the privet hedge adjacent to the sidewalk encroaches upon it unless regularly trimmed. Even when the privet hedge doesn't encroach on the sidewalk, it is an adjacent obstruction detracting from the public's use of the sidewalk. In Leswing's professional opinion as a planner, the sidewalk would function better without the privet hedge immediately adjacent to it.

20. George Broseman, Esq., representing the Applicant, testified the Planning Commission approved FRIT's Tentative Sketch Plan for the proposed six story residential building to be built over existing parking area between St. Asaph's Road and the rear of one of the commercial buildings in the BCSC. In conjunction with the new apartment building, Code requires an eight (8) foot wide sidewalk and an eight (8) foot wide landscaped verge along St. Asaph's Road in this location, but the right of way is only ten (10) feet wide. The Applicant's plans retain the existing, recently installed five (5) foot wide sidewalk and add a new multipurpose pathway which is eight (8) feet wide along St. Asaph's Road.

21. By way of background, Broseman explained, when the BCSC was initially developed in 1953, a deed restriction calling for a 50-foot-wide buffer strip along St. Asaph's Road was recorded. The purpose of the buffer strip was to protect the residents of residential properties on St. Asaph's Road facing the BCSC. An action to quiet title filed in 2008 resulted in a settlement agreement in 2011 that allowed a sidewalk to be constructed solely within the ten-foot-wide public right of way along St Asaph's Road without encroaching into the 50-foot-wide buffer strip. The public right of way is located approximately 10 feet behind the curb. In 2010 FRIT received land development approval that included a five-foot-wide sidewalk in the right of way as shown on the Master Record Plan, see Ex A-6. Broseman testified that the plan is consistent with the 2011 settlement agreement. Lower Merion Township adopted a map ordinance in 2012 showing the buffer strip remaining intact, similar to the settlement agreement, see Ex. A-9. There is no sidewalk on the frontage of St. Asaph's Church or the Bala House Montessori School because an existing stone wall in the right of way created an unsafe condition and the Board of Commissioners granted waivers.

22. Brian Donnelly is employed by FRIT as the Director of Development. He has over 16 years of experience in development and leasing. Donnelly testified that the new apartment building will be located in the northwest corner between St. Asaph's Road and the shopping center, depicted as a shaded area in Ex A-12. FRIT recently installed a new sidewalk, five (5) foot wide and approximately 1,300 lineal feet long, St Asaph's Road, pursuant to the 2010 Land Development Record Plan (Ex. A-6) and condition of approval #19 in the 2010 Land Development Approval letter (Ex. A-5). Donnelly testified FRIT coordinated with Township staff when the five (5) foot wide sidewalk was built along St. Asaph's Road. He further testified

that FRIT did not intend any concessions when it entered into the 2011 settlement agreement (Ex. A-7).

23. With regard to the intent of the BCR district, Donnelly stated that the proposed apartment building is close to the train station, preserves the landscape buffer and creates a mix of residential and commercial uses. The proposed multipurpose path will improve pedestrian connections and facilitate further viability of the shopping center. Donnelly further testified that the multipurpose path will provide a pedestrian connection between St. Asaph's Road to Conshohocken State Road, Specifically, it will wrap around the side yard of the St. Asaph's Church and the rear of the Bala House Montessori School providing a pedestrian connection which had not previously existed. The new pedestrian connection will support alternate modes of mass transportation and reduce automobile congestion, Donnelly testified, as well as minimize pedestrian-vehicle conflicts.

24. Donnelly testified the current land development plan is a "stand alone in-fill project with no connection to future development." He stated that FRIT has no future plans for development at the BCSC.

25. Christos Dinoulis is an engineer employed as a project manager by Bohler Engineering, see Ex. A-11. He testified about the Tentative Sketch Plan set showing the proposed apartment building in the northwest corner of the BCSC, see Ex. A-12, which will reduce impervious surface coverage by 16,479 square feet. The existing right of way extends into the St. Asaph's Road approximately 9.5 to 10 feet wide, therefore not wide enough for an eight (8) foot wide landscaped verge and eight (8) foot wide sidewalk. There is no sidewalk along the Church of St. Asaph's and Bala House Montessori School's frontage on St. Asaph's Road because an existing stone wall in the right of way would make a sidewalk unsafe in that location. He described the privet hedge as "half in the right of way and half on FRIT's property" and

admitted that a portion of it encroaches into the sidewalk. Dinoulis further testified that the proposed alternate designs for the sidewalk and landscaped verge will have no detrimental effect to the public health, safety and welfare, and are consistent with the Township's official map.

26. Terence Foley is the President of the City Avenue Special Services District. He testified that there are seven (7) bus routes on City Avenue and several bus stops at the BCSC. Foley testified that the proposed multipurpose path extends the goals of the plan and will ease pedestrian/vehicle conflicts. He believes it will be a "great asset to the community."

27. Merle Zucker, a resident of Lower Merion Township and President of the Fairmont Condominiums located at 41 Conshohocken State Road, testified she has concerns about the Conditional Use Application because there is a property without a sidewalk on St. Asaph's Road facing the BCSC. She said it is dangerous for pedestrians to walk along St. Asaph's Road because of the missing sidewalk connection. She would rather see a continuous sidewalk on the opposite side of St. Asaph's Road than on the BCSC side of the street.

28. Jay Ochroch is a resident of Lower Merion Township and President of the Sutton Terrace Condominiums located on St. Asaph's Road. He is also a partner at the law firm of Fox Rothschild. He testified that he has questions about FRIT's request for conditional use approval and also expressed concern about the missing sidewalk along St. Asaph's Road facing the BCSC (the other side of the street). He expressed a similar opinion to Ms. Zucker about a sidewalk on the west side of St. Asaph's Road being preferable to a continuous sidewalk on the BCSC side of the street. Ochroch admitted that the Township has the authority to control the right of way not the property owner, when questioned by Leswing.

29. Michael Karmatz is a resident of Lower Merion Township and President of Sutton Terrace Condominiums located on St. Asaph's Road.



30. Leswing testified in rebuttal that the Township is not opposing the entire conditional use application, but would like FRIT to flesh out its alternative design to make sure it furthers the legislative intent of the CAD ordinance. In particular, the privet hedge could be relocated to another area on the property outside the right of way to create a continuous clear area for pedestrians and no obstruction from the branches.

#### APPLICABLE ORDINANCES

31. The City Avenue District is intended to encourage development that combines residential, institutional and commercial uses in close proximity thus decreasing auto dependency, encouraging pedestrian access, transit use and shared parking and accessways, and mitigating the effects of congestion, vehicular traffic and pollution. The regulations promote pedestrian friendly development and protect the health, safety and general welfare of the citizens of Lower Merion Township. Further, this article is designed to enhance the economic stability of the City Avenue area, Code § 155-216.

32. The Bala Cynwyd Retail District is designed to complement the new zoning on the Philadelphia side of City Avenue, preserve the existing character of the area and provide a transition to the existing residential neighborhood, Code § 155-218.

33. The general goals and objectives of the City Avenue District Regional Center Area, contained in Code § 155-217, are also applicable in the BCR District, Code § 155-218.A.1. The RCA's goals and objectives are to encourage higher density, multiple purpose, pedestrian oriented development and more economically productive use of land parcels in the vicinity of City Avenue, Code § 155-218.A.1. Preserving the retail uses that cater to the surrounding residential community is also a goal of this article, Code § 155-218.A.1.

34. These general goals and objectives include the following specific purposes:

- a. Enable the development of a mix of commercial, institutional and residential uses;
- b. Minimize pedestrian and vehicular conflicts and encourage the renovation and erection of buildings that provide direct connections from buildings to the street and sidewalk;
- c. Discourage the dependence on automobile use by promoting alternate modes of transportation including buses and trains, improving connections and links to public transit and creating safe and inviting pedestrian accessways, thereby reducing traffic congestion;
- d. Create transition in bulk and scale between higher density development and existing residential neighborhoods;
- e. Enhance the visual character and identity of the district through building mass, scale and design, landscaping and signage, all appropriate to the goals and objectives of the RCA zoning.
- f. Promote the smooth flow of vehicular traffic through the corridor while reducing cut through traffic in the neighboring residential districts by creating pedestrian scaled blocks, separated by public access streets with sidewalks;
- g. Encourage the development of shared parking, wrapped structure parking, underground structure parking and attractive and convenient off street parking facilities to reduce on-street congestion and facilitate vehicular and pedestrian circulation.
- h. Promote the creation and maintenance of landscaped open areas among buildings for public gathering space.
- i. Protect the character and quality of existing residential neighborhoods proximate to the RCA.

Code § 155-217.A.2

35. The development design standards provided in Code § 155-217.F shall also apply in the BCR, except for architectural design standards for pedestrianways:

the area between the curb and buildings or structures located along St. Asaph's Road shall consist of a landscaped verge adjacent to the curb a minimum of eight feet in width, a public walkway with a minimum unobstructed width of eight feet and a landscaped area between the building and the sidewalk."

Code § 155-218.F.1.a.1.

36. The Board of Commissioners may, by conditional use, approve the use of architectural concepts, designs and materials which differ from those set above, if the applicant demonstrates to the satisfaction of the Board that such concepts and designs are in furtherance of the legislative intent of this article and of this subsection. Code § 155-217.F.5.e.7.

37. 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.
3. In all cases the applicant's burden of proof shall include the burden of persuading the Board by credible evidence that the applicant has satisfied the criteria set forth in Subsection C(1)(a) of this subsection. In any case where the Board requests that the applicant produce evidence relating to the criteria set forth in Subsection C(2) of this subsection or where any other party opposing the application shall claim that an allowance of the application will have any of the effects listed in Subsection C(2) of this subsection, the applicant's burden of proof shall include the burden of persuading the Board by credible evidence that the allowance of a conditional use will not be contrary to the public interest with respect to the criteria so placed in issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Legal Authority for Use

38. The Board of Commissioners of Lower Merion Township enacted Ordinances No.3971

and No. 4030 which established the BCR.

39. The BCR has been codified through Code §155-216, 217 and 218.

40. Conditional use standards are set forth in Code §155-141.2 (general requirements) and §155-160 (specific documentary requirements).

B. *Compliance with Requirements of Code Section 155-218.F.1.a.1*

41. The Applicant seeks conditional use approval to deviate from the architectural design standards for pedestrianways, specifically the landscaped verge adjacent to the curb a minimum of eight feet in width, a public walkway with a minimum unobstructed width of eight feet, and a landscaped area between the building and sidewalk required by Code §155-218.F.1.a.1.

42. The Applicant has established that allowing the existing five (5) foot wide sidewalk to remain in lieu of an eight (8) foot wide sidewalk will save great numbers of existing trees and vegetation in the landscaped verge along St. Asaph's Road. It also fits within the existing 9.5 to 10 foot right of way in that location. The Applicant has successfully demonstrated that the alternate design meets its burden of proof through the testimony of Brian Donnelly, engineer Christos Dinoulis and renderings of the Tentative Sketch Plan included in Ex A-12.

43. The Applicant has established that its alternative design elements, concepts and designs are in furtherance of the legislative intent of this article and of this subsection, Code § 155-217.F.5.e.7., through the testimony of Donnelly, Dinoulis and Terrence Foley. The alternative design for the sidewalk and landscaped verge meets the legislative intent of the BCR, RCA and CAD to promote pedestrian friendly development, combines residential, institutional and commercial uses in close proximity thus decreasing auto dependency, encouraging pedestrian access, transit use, shared parking and accessways and mitigating the effects of congestion, vehicular traffic and pollution.

C. Compliance with Requirements of Code Section 155-141.2.B

44. The Applicant has complied with the general standards for conditional use approval found in Code §155-141.2 (B)(2), *supra*.

45. The Applicant has demonstrated that granting the conditional use shall preserve the character of the neighborhood in compliance with Code §155-141(B)(3). The proposed development supports pedestrian oriented design intended in the BCR district.

46. The proposed development shall be serviced by existing public service systems in compliance with Code §155-141(B)(4).

47. The proposed development has been properly designed with regard to internal circulation, parking, buffering and other elements of proper land planning, pursuant to Code §155-141(B)(5), see Tentative Sketch Land Development Plan (Ex. A-12).

48. Sufficient plans, studies and other data showing compliance with the regulations for the permitted use have been submitted to Township Staff, the Lower Merion Planning Commission and the Hearing Officer pursuant to Code §155-141(B)(6),

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

DISCUSSION

50. The BCSC's frontage along St. Asaph's Road may be one of the most heavily litigated strips of land in Lower Merion Township. Since 1953, it has been the subject of a deed restriction, litigation, a quiet title action, two settlement agreements and an exception to the Code requirements found in 155-217F. Many people have spent many hours over many years trying to create the right balance between the BCSC and the adjacent residential neighborhood. That balance of interests must be weighed with the objectives of the CAD on the scale, including but

not limited to providing pedestrian connections and reducing automobile dependency, within the conditional use process.

51. The specific issue underlying this Application is whether the proposed five (5) foot wide sidewalk and four (4) foot wide landscaped verge which are half of the Code's required width, are acceptable alternatives to the design standard for pedestrianways along St. Asaph's Road in the BCR district. FRIT has articulated a good rationale showing why the Code's specific requirements for eight (8) foot widths do not fit within the existing 9.5 to 10 foot right of way. Moreover, if the required eight (8) foot wide sidewalk were to be installed, then mature trees and vegetation may be lost, reducing the green buffer between the BCSC and the adjacent residential neighborhood. That said, the existing privet hedge partially encroaches onto the sidewalk and creates an obstruction. Maximizing the pedestrian environment to meet the objectives of the ordinance may be accomplished by removing all obstructions between the curb and the right of way and relocating the privet hedge to another location on the property. Three neighbors who are also presidents of their respective co-op boards testified that the existing five (5) foot wide sidewalk is acceptable to them and their constituents in its current location. In addition, Terence Foley of the City Avenue Special Services District testified that the proposed sidewalk and multipurpose path extends the goals of the CAD and will be a great asset to the community.

52. Township staff has a duty to ensure that proposed alternative designs for the sidewalk and landscaped verge will meet the specific goals and legislative intent of the BCR district and, therefore, testified at the conditional use hearing that the Applicant's plans should be fleshed out. Leswing's testimony about encroachments created by the privet hedge butting up against the sidewalk, as well as Dinoulis' testimony that the privet hedge is half in the right of way and half on FRIT's property, make it appropriate to recommend that the privet hedge be

removed from the right of way and relocated to another portion of the property to meet the objectives of the ordinance. The Township has the authority to order obstructions removed from the right of way to create a continuous clear area for pedestrians.

53. Having heard all the testimony and reviewed all the exhibits, it appears that the proposed alternative design for the sidewalk and landscaped verge, will allow residents, businesses and pedestrians to harmoniously co-exist near the BCSC and further the goals and intent of the BCR district if the existing privet hedge is removed and all obstructions, such as guy wires, signage and tree branches, are removed between the curb and the right of way.

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

#### ORDER

AND NOW on this \_\_\_\_ day of November, 2016, the application of Federal Realty Investment Trust for conditional use approval to deviate from the design standards of Zoning Code Section 155-217.F.1.a.1 for the sidewalk and landscaped verge along St. Asaphs Road is granted, subject to the following conditions:

1. The privet hedge which exists along the St. Asaphs Road frontage of the property and any other pedestrian obstructions, such as guy wires, signage and tree branches, shall be removed from the public right of way.
2. Any new plantings shall be located so as to maintain a three-foot setback from the edge of the sidewalk along St. Asaphs Road. This setback shall take into consideration the size of the proposed plant material at maturity.

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