

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

Application 3771C

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

This conditional use application seeks approval to hold ten (10) required parking spaces in reserve, pursuant to Zoning Code §155-95.1, as part of a land development plan at Penn Wynne Elementary School. A Conditional Use Hearing was conducted on July 18, 2016 and the following recommendations are made pursuant to Code §155-141.2.A.5.

FINDINGS OF FACT

1. The applicant is Lower Merion School District (“LMSD”) c/o, attorney Jamie Jun, Esq. (“Applicant”).
2. LMSD is the owner of real property known as 250 Haverford Road, Lower Merion Township (“Property”).
3. The Property is located in both the R-4 and R-5 residence districts and consists of 7.7 acres with frontage on Haverford Road, Suffolk Lane, Trent Road and Drayton Lane.
4. The Property is improved with a two-story structure used as an elementary school, Penn Wynne Elementary School (“PWES”). The footprint of the structure is 62,189 square feet. The school building was initially constructed in 1932, with additions in 1949 and 2001, and is a Class II historic resource. There are parking areas, a playground and a grass field also located on the Property.
5. The Applicant anticipates gradual increased enrollment at the elementary school over the next three years based on its enrollment projections. To accommodate

more students, the Applicant submitted a Waiver of Land Development Plan showing a 4,743 square foot modular building containing four classrooms and a bathroom, as well as ten (10) parking spaces and stormwater management. It received approval on March 16, 2016.

6. The Lower Merion Planning Commission reviewed the application and recommended approval on July 11, 2016 without conditions.

7. The Conditional Use Hearing Officer conducted a public hearing on July 18, 2016.

8. Christopher Leswing, PP, AICP, Assistant Director of the Lower Merion Township Building and Planning Department, testified and offered three (3) documents into evidence that were subsequently admitted into the record:

- a. Proof of Publication of Legal Notices (Exhibit T-1);
- b. Staff Memo to Planning Commission dated 7/8/16 (Exhibit T-2);
- c. Planning Commission recommendations (Exhibit T-3).

9. The Applicant offered twelve (12) exhibits in support of their Application.

All exhibits were subsequently admitted into the record:

- a. Google earth aerial map of the Property (Ex.A-1);
- b. Grading Permit Plan dated 3/25/16(Ex A-2);
- c. Parking Lot and Seepage Bed Plan dated 3/25/16 (Ex A-3);
- d. Parking License Agreement (Ex A-4);
- e. Diagram of Access to Licensed Parking Spaces and Remote On-Street Parking (Ex A-5);
- f. Transportation Impact Assessment (Ex A-6);
- g. Code Compliance Analysis (Ex A-7);
- h. Letter from the Penn Wynne Civic Association (Ex A-8);
- i. Letter of Approval of Waiver of Land Development (Ex A-9);
- j. C.V. of Patrick A. Guinnane, Director of Operations for LMSD (Ex. A-10)
- k. C.V. of Angelo M. Capuzzi, P.E., P.L.S. (Ex. A-11)
- l. C.V. of Frank Tavani, P.E., PTOE (Ex. A-12).

10. Applicant's Attorney, Jamie Jun, testified that LMSD seeks conditional use approval to hold ten parking spaces and stormwater management facilities in reserve in connection with installing a temporary modular building at Penn Wynne Elementary School. Additional classroom space is needed because enrollment projections show a gradual increase in the number of students over a three-year period.

11. Patrick Guinnane testified on behalf of LMSD. He has been Director of Operations for LMSD since 2001 and is licensed as a civil engineer. He explained that the oldest portion of PWES was built in 1932 and is a Class II historic resource, and additions were built in 1949 and 2001. Enrollment projections for the school district show gradually increasing student population over the next three years, with the greatest increase at PWES. As a result, LMSD needs additional classroom space at PWES and favors installing a temporary building while figuring out what to do with enrollment growth, Guinnane testified. LMSD has submitted a waiver of land development plan to install a temporary modular building containing four additional classrooms and construct ten (10) parking spaces and stormwater management facilities, as shown on Ex. A-2 & 3.

12. The Property currently contains 56 on-site parking spaces and street parking in the surrounding neighborhood has traditionally met additional parking demand, Guinnane testified. The proposed expansion of PWES requires ten (10) additional parking spaces for staff and visitors under Code §155.95.AA

13. LMSD has entered into a license agreement with Presentation BVM Church for use of twenty parking spaces in its parking lot located at 240 Haverford Road, see Ex A-4. The license is renewable annually and teachers and staff will be asked to volunteer to park at the lot. Presentation BVM's lot is within walking distance of PWES,

as shown on the Applicant's diagram, Ex. A-5. The Penn Wynne Civic Association and the Penn Wynne Home and School Association support deferring the construction of ten (10) on-site parking spaces and leasing twenty (20) off-site parking spaces at Presentation BVM, according to a letter dated July 6, 2016, see Ex. A-8.

14. Guinnane testified that ten (10) additional on-site parking spaces are currently not needed because of the license agreement with Presentation BVM and readily available street parking. Deferring the construction of these parking spaces makes sense while the student population grows incrementally over the next three years and gives flexibility to LMSD to figure out what to do with enrollment growth according to Guinnane. The Lower Merion School Board might agree to a Covenant to install additional parking and stormwater management if the Zoning Officer determines it is necessary in the future. Guinnane further testified that holding ten parking spaces and stormwater management facilities in reserve will not affect the health, safety morals or welfare of the public.

15. Angelo M. Capuzzi PE, PLS employed by Chester Valley Engineers testified in support of the Application. He is a registered engineer and land surveyor who prepared the Grading Permit Plan dated 3/25/16 (Ex A-2); Parking Lot and Seepage Bed#2 Details (Ex A-3). Capuzzi testified that land adjacent to Drayton Lane is the best location to install additional parking spaces at PWES with a basin and recharge bed underneath it. These stormwater management improvements would serve no purpose at this time, Capuzzi testified, because grading work is not yet needed.

16. Capuzzi testified that holding ten (10) parking spaces in reserve will result in less impervious surface coverage and stormwater runoff at PWES. There are no

adverse planning effects if ten (10) parking spaces and stormwater management are held in reserve and doing so will improve the health, safety and welfare of the community, according to Capuzzi.

17. Frank Tavani PE, PTOE, testified in support of the Application as the traffic engineer who prepared the Transportation Impact Assessment measuring traffic counts, levels of service and parking (Exhibit A-6). Tavani testified that he has become well acquainted with traffic and parking at the location. There currently are 56 on-site parking spaces and 108 on-street parking spaces according to Tavani. PWES is surrounded by a residential area and parking demand drops during the day when residents go to work and school is in session. The school day begins at 9:05 a.m. and ends at 3:35 p.m. Half day kindergarten classes with morning and afternoon sessions also occur during the school day. The current total peak student population is 720 students with future projected growth to 823 students during the 2019-2020 school year, together with 83 staff members. An additional 103 students and five staff members¹ will necessitate four new classrooms at PWES and ten (10) on-site parking spaces.

18. Tavani collected traffic data while school was in session in December 2015 and found peak periods between 8:00 and 9:00 am and between 3:30 and 4:30 pm. Parking demand follows these peak periods. Pick up and drop off activity takes place in the parking lot adjacent to Suffolk Lane. Queues spill onto Suffolk Lane during the afternoon dismissal time and briefly reach a maximum length near Haverford Road for approximately nine (9) minutes, but do not interfere with through traffic along surrounding roads, according to Tavani's report (Ex. A-6 at p. 1). Non-school traffic is

¹ Tavani's report states five (5) new staff members may be expected at PWES, however the Applicant identifies a need for four (4) new staff members.

light to non-existent on Suffolk Lane during peak school hours. Queues during the morning arrival time are contained on-site.

19. Faculty, staff and visitors currently park in the existing 56 on-site parking spaces and in the surrounding neighborhood where there are 108 legal parking spaces calculated by Tavani. Even during the greatest peak demand, there still remained available 36 parking spaces according to Tavani's testimony. Level of service at the study area intersections and driveways will operate under future conditions no worse than level "C", also see Ex. A-6 at p. 2.

20. Tavani testified there is existing surplus study-area parking supply which is more than three times greater than code requirements. Licensing twenty parking spaces at Presentation BVM, together with this surplus parking, leads him to recommend that any additional parking be placed in reserve until such time as it is determined that new on-site parking is actually required. He further testified that holding ten (10) additional parking spaces in reserve will not materially and adversely affect traffic, circulation or levels of service of adjacent intersections. Tavani recommends installing school speed limit zones along Suffolk Lane and Drayton Lane to mitigate impacts at the site, Ex A-6 at p.2.

21. Township resident Tannia Schreiber testified that she would like all stakeholders to be required to meet after twelve months and assess how things are working out.

APPLICABLE ORDINANCES

22. Specific criteria for conditional use approval to hold parking spaces in reserve are found in Code §155-95-1, stated in pertinent part as follows:

Reserve Parking

- A. Expansion of Use. Where a use regulated by §155-95 is being expanded and the Board determines that the additional number of 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. (Not applicable)
- C. The applicant must document that 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 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.
- F. Regardless of the number of spaces actually developed, a parking area to accommodate the aggregate number of parking spaces required shall be fully designed, and the area held as reserve parking shall be clearly designated on the plan. The reserve parking area shall be considered in calculating the impervious surface ratio. The parking reserve area shall be planted with vegetative cover and integrated into the site's land development plan. Such area shall be required to be developed as designed if and when the Zoning Officer determines the need.

23. The Applicants must also comply with general requirements for conditional uses 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.

CONCLUSIONS OF LAW

Compliance with Reserve Parking Criteria under Code §155-95-1

27. The Applicant has complied with Code §155-95-1(A) through testimony of Patrick Guinnane, expert testimony of Angelo M. Capuzzi and Frank Tavani and documentary evidence adequately demonstrating that ten (10) parking spaces are not

currently needed. The anticipated rate of enrollment growth will take place over three years, there are currently available 36 street parking spaces and the Applicant has licensed 20 parking spaces at Presentation BVM Church. Faculty and staff currently park in the surrounding neighborhood, however, only a portion of existing on-street parking is utilized. If an additional ten vehicles were to park in the neighborhood, ample additional parking would still remain throughout the day and there would be no significant impact on traffic or parking in the area according to traffic engineer Frank Tavani.

28. The Applicant is not required to comply with Code §155-95-1(B) because a new or changed use is not proposed.

29. The Applicant has complied with Code §155-95-1(C) through testimony of Patrick Guinnane, expert testimony of Angelo M. Capuzzi and the Grading Permit Plan dated March 25, 2016 and last revised May 31, 2016 which adequately depict the proposed location of ten (10) parking spaces should they be required to be constructed. (See Exhibits A-2). A parking Lot and Seepage Bed #2 Details Plan dated March 25, 2016 and last revised May 31, 2016 depicts the stormwater management facility that will also be installed should the reserve parking spaces be required to be constructed.

30. The Applicant has complied with Code §155-95-1(D) by adequately demonstrating that additional stormwater management facilities are not necessary at this time because new on-site parking is currently not needed and would disturb existing green space at the heavily utilized site. Moreover, the location of stormwater management facilities may change if LMSD makes permanent improvements at PWES.

31. The Applicant has complied with Code §155-95-1(E) through testimony of Patrick Guinnane agreeing that LMSD's Board will record a covenant, in a form

acceptable to 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 PWES's use of the property.

32. The Applicant has complied with Code §155-95-1(F) through testimony and the Grading Permit Plan prepared by Chester Valley Engineers dated March 25, 2016 and last revised May 31, 2016. The reserve parking area has been included in the impervious surface calculations. No changes are proposed to the reserve parking area, which is and will remain green space, until such time as the Zoning Officer determines the reserve parking spaces shall be installed or until necessary upon LMSD's finalization of its plan for improvements at PWES.

Compliance with General Conditional Use Procedures of §155-141

37. Testimony at the conditional use hearing and documentary evidence admitted into the record meets the burden of proof imposed by Code §155-141.2 (B)(1), specifically, the Applicants have demonstrated with credible evidence that holding the required parking spaces in reserve complies with community development standards stated in Article I. Some of the stated objectives are to promote, protect and facilitate coordinated and practical community development and provision of adequate vehicle parking, adequate schools and public grounds. Permitting LMSD to hold ten parking spaces in reserve will allow it to coordinate development of PWES with development of other public schools in the district. Adequate vehicle parking will be provided through licensed parking spaces at Presentation BVM Church. Moreover, there is adequate capacity for ten additional vehicles to park in the surrounding neighborhood. LMSD's stated goal is to provide adequate facilities for the anticipated enrollment growth while

not unnecessarily impacting existing improvements and green space until it has fully evaluated all of its needs and options. The Applicant has shown there will be no adverse effect on the health, safety, morals or general welfare of the public; to the contrary, holding ten parking spaces in reserve will preserve the existing fields and green space.

38. The Applicant has demonstrated, pursuant to Code §155-141.2 (B)(2), that LMSD will comply with the requirements specified in Code §155-95-1.

39. The Applicants have demonstrated that the proposed improvements shall preserve the character of the neighborhood pursuant to Code 155-141.2(B)(3). This burden of proof was met through testimony of Patrick Guinnane and expert testimony of Angelo M. Capuzzi and Frank Tavani that holding parking spaces in reserve will preserve PWES in its current condition until LMSD determines what permanent improvements are needed to accommodate the anticipated increase in enrollment and staff.

40. The Applicant has demonstrated that the proposed improvements shall be serviced by existing public service systems pursuant to Code 155-141.2(B)(4). PWES is currently properly serviced by all existing public service systems and will continue to be so serviced. Expert testimony by Frank Tavani established that peak traffic generated by expansion of PWES will continue to be accommodated in a safe and efficient manner. (See Exhibit A-6).

41. The Applicants have demonstrated that the proposed improvements comply with internal circulation, parking, buffering and all other elements of proper land development planning pursuant to Code 155-141.2(B)(5). Expert testimony by Frank Tavani described proper internal circulation and parking. (*See* Exhibit A-6). Expert testimony by Angelo Capuzzi demonstrated that additional parking and stormwater

management will be installed if permanent improvements are installed at the site. (See Exhibit A-2 & 3)

42. The Applicants have submitted sufficient plans, studies and other data showing compliance with regulations to the Planning Commission, Township Staff and the Hearing Officer pursuant to Code §155-141.2(B)(6), specifically Exhibits A-1 to 12. The Applicants have submitted Grading Permit Plan and Seepage Bed #2 Details Plan prepared by Chester Valley Engineers; Transportation Impact Assessment prepared by F. Tavani and Associates, Inc. as well as presentations provided to the Planning Commission and Conditional Use Hearing Officer.

43. The Applicants have agreed to comply with any condition which may be imposed by the Board of Commissioners and accepted by LMSD's Board of Directors in compliance with Code §155-141.2(B)(7).

DISCUSSION

Lower Merion School District's anticipated enrollment growth will peak during the 2019-2020 school year, with incremental annual increases leading up to it. Incremental growth provides time for the school district to plan and assess permanent needs. Accordingly LMSD proposes temporary modular buildings to expand classroom space at PWES where the highest rate of growth is predicted and requests flexibility while assessing dynamic conditions. Extending such flexibility to LMSD is both a courtesy and common sense, but more importantly the Applicant has met its burden of proof for conditional use approval. The Applicant has demonstrated that ten (10) required parking spaces are not currently needed at PWES because twenty parking spaces have been licensed at Presentation BVM Church and street parking is readily available.

Preserving the existing green space at PWES, which would otherwise be partially used for a new parking lot and stormwater management facilities, is preferable since it is heavily utilized by elementary school students and once gone cannot be easily replaced. Credible expert testimony has demonstrated that expanded use at PWES will not materially or adversely affect traffic, circulation or levels of service of adjacent intersections. The Applicant also demonstrated that there will be no adverse impact on the public health, safety, morals and general welfare. The Penn Wynne Civic Association and Penn Wynne Home and School Association support LMSD's conditional use application contingent upon the leasing of twenty parking spaces at Presentation BVM Church. Accordingly, it is in the public interest to allow ten (10) parking spaces to be held in reserve so that the existing field and streetscape are preserved, which will result in less impervious surface coverage on the Property. Moreover, the Applicant is not yet ready to move forward with permanent installations at PWES and needs time to assess the impact of predicted incremental enrollment growth.

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

ORDER

AND NOW on this ____ day of July, 2016, the application of Lower Merion School District for conditional use approval to hold 10 parking spaces required for its expansion of use as reserve parking without paving the spaces and hold stormwater management facilities in reserve at 250 Haverford Road, pursuant to §155-95-1 of the Zoning Code of the Township of Lower Merion is granted, subject to the following conditions:

1. The applicant shall agree in a recorded covenant, to be 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.

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