

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

Application 3789C

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

This is a conditional use application filed by Hans-Guenter H. Frank and Mary K. Frank seeking approval to use the carriage house, a Class II historic resource as an accessory apartment pursuant to Zoning Code § 155-151.C.2. A Conditional Use Hearing was conducted on July 11, 2017 and the following recommendations are made pursuant to Code §155-141.2.A.5.

FINDINGS OF FACT

1. The applicants are Hans-Guenter H. and Mary K. Frank (“Applicants”).
2. The Applicants are the owners of real property known as 44 Linwood Avenue, Ardmore, Lower Merion Township (“Property”).
3. The Property is located in an R4 residence district on a 48,433-square foot lot (1.1 acre) lot with frontage on Linwood Avenue. It is adjacent to similar residential uses, as well as a public park, Linwood Park.
4. The Property has been improved with a two story, 5,364 square foot house (“Main House”) and a two story, 1,146 square foot detached carriage house (“Carriage House”).
5. The Main House and its original owner have been described as follows:

The house was constructed between 1900 and 1908 for Josiah S. Pearce, President of the Merion Title & Trust Company. Pearce had many local roles, including postmaster, justice of the peace and undertaker. He named the house at 44 Linwood “Woodlynne,” a play on the name of the road by which it sits. Pearce (1841-1915) wrote a series of articles for the Ardmore

Chronical called “Early Recollections of Ardmore” that were subsequently reprinted and form the backbone of historical knowledge about Ardmore. It is not known who Pearce hired to design the residence. It exhibits many traits of high-class construction, including a Porte cochere, Tudor half timbering and stone gate posts, all of which remain.

(Leswing memo dated 7/7/17, Ex. T-2 at p. 1)

6. The Main House and Carriage House are listed on the Lower Merion Township Historic Resource Inventory as Class II Historic Resources. The Applicants received Historical Commission approval for improvements to the Carriage House in 2011.

7. The Applicants request conditional use approval under the Historic Resource Overlay District (“HROD”) to use the Carriage House as an accessory apartment pursuant to Zoning Code § 155-151.C.2. (Application).

8. The Lower Merion Historical Commission reviewed the Application and recommended approval on May 22, 2017, subject to a condition requiring the Applicants to provide a Declaration of Covenants, Easements and Restrictions on the main house and the carriage house.

9. The Lower Merion Planning Commission reviewed the application and recommended approval on July 10, 2017.

10. The Conditional Use Hearing Officer conducted a public hearing on July 11, 2017.

11. Andrea Campisi, Senior Planner in the Lower Merion Township Building and Planning Department, offered three (3) documents into evidence at the conditional use hearing:

- a. Proof of Publication of Legal Notices (Exhibit T-1);
- b. Leswing Memo to Planning Commission dated 5/3/13 (Exhibit T-2);

- a. Planning Commission and Historical Commission recommendations (Exhibit T-3).

12. Campisi testified that the Property meets code requirements for parking.

There are two off-street parking spaces for the Main House and two off-street parking spaces for the Carriage House.

13. The Applicants provided supporting documents together with their Application and they were admitted into the record at the conditional use hearing:

- a. Sketch of Property depicting Main House, Carriage House, driveways and parking with all dimensions (Exhibit A-1);
- b. Map of neighborhood depicting footprint of Main House and Carriage House dated 10/6/16 (Exhibit A-2);
- c. Photos of Carriage House and Main House. (Ex. A-3);
- d. Letter dated 3/23/11 regarding approvals of alterations to Carriage House by the Lower Merion Historical Commission (Exhibit A-4);
- e. Letter dated 4/27/11 regarding approvals of alterations to Carriage House by the Lower Merion Historical Commission (Exhibit A-5).

14. Hans-Guenter Frank testified that the Main House was in poor condition when he and his wife purchased the property in 2001. The Property was in foreclosure, the Main House had water damage and was in need of repair throughout the structure. Extensive renovations occurred from 2001-2004, and in 2007, with proper permits granted. The Applicants moved into the Main House in 2004.

15. The Carriage House was in a state of “near collapse” and needed structural renovation to maintain its integrity, Frank testified. In 2011, the Applicants applied to the Historical Commission to renovate the Carriage House including roof timbers, rafters, footers, garage door, windows and enclosure of the Port cochere. The Historical Commission approved their planned renovations and the Department of Building and

Planning issued permits. Those renovations were completed in 2011-12. (See Ex. A-4, 5). The Applicants have also renovated the interior of the Carriage House, where there is evidence of past residential use.

16. Frank testified that rental income from the Carriage House will help maintain both structures on the Property. He described a 25' x 45' paved parking pad next to the Carriage House with space for three (3) cars and another two (2) cars near the Port cochere. (See Ex. A-1). Plantings screen the parking areas from view from neighboring properties. Tenants will be required to maintain reasonable noise levels as a condition of the lease. Lighting will be designed to screen the source of illumination and glare from adjacent properties. No special events generating unusual amounts of traffic are planned at the Property by the Applicants and future tenants will not be permitted to generate unusual traffic as a condition of the lease. No signage, advertising or display windows will be affixed to the Carriage House.

17. The Ardwood Civic Association, via Jesse Roache, has indicated approval of the Applicant's planned use of the Carriage House as an accessory apartment.

APPLICABLE ORDINANCES

18. The preservation and protection of buildings, structures and sites of historic, architectural, cultural, archeological, educational and aesthetic merit are public necessities and are in the interests of the health, prosperity and welfare of the people of Lower Merion as matters of public policy. Code §155-149.

19. The Historic Resource Overlay District is intended, among other things, to promote the general welfare by protecting the integrity of the historical resources of Lower Merion Township, provide incentives for the continued use of Historic Resources

and to facilitate their appropriate reuse, and encourage the conservation of historic settings and landscapes. Code §155-149(A)(D)(E).

20. Properties designated Class II Historic Resources in the Historic Resource Overlay District may, by conditional use, be approved for an accessory apartment use in a structure accessory to the principal dwelling on the Property which is determined by the Board of Commissioners to be a contributing resource, pursuant to Code §155-151. C.2.

21. Specific requirements for conditional use approval of a Historic Resource 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. (...)
 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.

22. The Applicants must also comply with the 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Compliance with Zoning Code §155-151.C.2

23. The Main House is a Class II Historic Resource.
24. The Carriage House is a structure accessory to the principal dwelling on the property.
25. The Carriage House is a contributing resource and is listed on the Historic Resource Inventory as such.
26. An accessory apartment in the Carriage House will be the only other single family dwelling unit on the property.
27. Three off-street parking spaces will be provided for use by tenants.

Compliance with Zoning Code §155-151.C.2

37. The Applicants have met the requirements for an accessory apartment use in the Carriage House pursuant to Code §155-151.C.
38. The Applicants have submitted documents and testimony demonstrating three off-street parking spaces are available for use by residents of the Carriage House, exceeding code requirements.
39. Tenant parking spaces will be screened from view from neighboring properties, according to the sketch (Ex A-1) and the Applicant's testimony.
40. Uses generating unusual amounts of noise will not be permitted by tenants pursuant to their lease with the Applicants, pursuant to the Applicant's testimony.

41. Lighting shall be designed to screen the source of illumination and glare from adjacent properties, pursuant to the Applicant's testimony.

42. No show windows, advertisements or displays will be visible outside the premises and none are planned for the Carriage House according to the Applicant's testimony.

43. Special events generating an unusual volume of traffic will not be permitted by tenants pursuant to their lease with the Applicants, pursuant to the Applicant's testimony.

Compliance with Historic Resource Conditional Use Procedures of §155-153

27. The Applicants have complied with Code §155-153(B)(1)(a-k) through testimony by Mr. Frank and documentary evidence, as follows:

- a. The exact location of the Carriage House, *see* Ex. A-1, 2.
- b. No exterior changes to the Historic Resources themselves are proposed at this time. Previous exterior changes were approved by the Historical Commission, *see* Ex. A-4, 5.
- c. The Property is surrounded by single family homes and adjacent to Linwood Park, *see* Ex. A-2
- d. Accessory use of the Carriage House will not change the general historic and architectural nature of the Property. Tenant's cars and exterior lights will be adequately screened from view with a landscape buffer. Noise and events generating unusual traffic will not be permitted as a condition of the lease. Carriage houses on adjacent properties are also used as accessory apartments.
- e. The appropriateness of exterior architectural features of structures involved in the proposed work is not applicable. No changes to the Historic Resources are proposed.
- f. The general design of the site and the relation of the Main House to the Carriage House shall remain relatively unchanged because parking and lighting will be adequately screened and will not negatively impact views of the Historic Resources.

- g. No rehabilitation work will destroy the distinguishing qualities or character of the historic resource or its environment are proposed.
- h. No changes to the Historic Resources' contributing architectural features are proposed.
- i. No changes to the Historic Resources' distinctive stylistic features or examples of skilled craftsmanship are proposed.
- 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 environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected is not applicable. No changes to the Historic Resources are proposed.
- 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 is not applicable. No changes to the Historic Resources are proposed.

28. The Applicants have complied with Code §155-153(B)(2) by referencing the Secretary of the Interior's Standards for Rehabilitation of Historic Structures recommendation for preserving the historic character of a property and avoiding alteration of the features and spaces that characterize a property. (*See Exhibit A-4, 5*)

28. The Applicants are not required to comply with Code §155-153(B)(3) because land development or subdivision is not proposed.

29. The Applicants are willing to subject the property to guarantees to protect the historical integrity of both Historic Resources through covenants in a form acceptable to the Township Solicitor, complying with Code §155-153(B)(4).

33. The Applicants have met their burden of proving that the historic integrity of the Historic Resources 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, in compliance with Code §155-153(B)(5). The testimony of Mr. Frank about landscape buffers screening views of tenant cars and exterior lights from neighboring houses, three parking spaces dedicated to tenant use, as well as documents and photographs submitted in support of the application meets this burden of proof. (*See* Exhibit A-1-5).

34. The Applicants have shown the grant of the application will not be destructive of the integrity of the historic resource or detrimentally affect the value of surrounding properties, in compliance with Code §155-153(B)(6). The Ardwood Civic Association supports this Application according to Mr. Frank's testimony.

35. The Applicants have demonstrated that they will comply with parking requirements, in compliance with Code §155-153(B)(7), because three off-street parking spaces for tenants are available, *see* Ex. A-1.

36. The Applicants will comply with Code §155-153(B)(8) because signage is not proposed.

37. The Applicants will comply with any conditions which may be imposed by the Board of Commissioners and accepted by the Applicants, in compliance with Code §155-153(B)(9).

38. The Applicants are not required to comply with Code §155-153(B)(10) because increases in rates or volumes of stormwater are not proposed.

Compliance with General Conditional Use Procedures of §155-141

44. Testimony by the Applicant 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 their proposal complies with community development standards and the legislative intent set forth in the Historic Resource Overlay District. The guarantee required by Code §155-153 B(4) will protect the historical integrity of the Historic Resources.

45. The Applicant has established with credible evidence compliance with the conditions for the grant of conditional uses enumerated in Code §155-153, pursuant to Code §155-141.2 (B)(2).

46. The Applicant has established with credible evidence that the proposed improvements shall preserve the character of the neighborhood pursuant to Code 155-141.2(B)(3). Neighboring houses with detached carriage houses are also used as accessory apartments, according to Frank's testimony.

47. The Applicant has demonstrated that the proposed improvements shall be serviced by existing public service systems and shall accommodate peak traffic, pursuant to Code 155-141.2(B)(4). (*See* Ex. A-1, 2.)

48. The Applicant has demonstrated that the Carriage house complies with buffering and all other elements of proper land development planning pursuant to Code 155-141.2(B)(5) through the testimony of Mr. Frank, together with the plans and exhibits in support of the application. (*See* Ex. A-1-5.)

49. The Applicant has 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), *see* Exhibits A-1-5.

50. The Applicant has agreed to comply with any conditions advisable to ensure compliance with the purpose and intent of this chapter which may be imposed by

the Board of Commissioners, in compliance with Code §155-141.2(B)(7), and is acceptable to them.

DISCUSSION

58. The Applicants have restored the Main House and Carriage House over the course of sixteen years, reversing years of neglect to the historic resources and improving their surrounding neighborhood. They have worked with the Historical Commission and the Building and Planning Department throughout these renovations and complied with all permitting procedures. In light of their proven track record, as well as their well supported Application for Conditional Use, approval of the Carriage House as an accessory apartment is recommended to the Board of Commissioners. It will add available housing stock to the neighborhood and proper measures will be taken to mitigate the effects of tenant parking, potential noise and light on neighbors. Income from the Carriage House will subsidize future maintenance of both historic resources on the property and protect their integrity. No one has objected to this application and no evidence showing it is contrary to the public health, safety, morals or welfare was introduced at the Conditional Use Hearing.

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

ORDER

AND NOW on this ____ day of July, 2017, the application of Hans-Guenter H. Frank and Mary Frank for conditional use approval an accessory apartment at 44 Linwood Road, Ardmore, Lower Merion Township pursuant to §155-151.C.2 of the

Zoning Code of the Township of Lower Merion is granted, subject to the following conditions:

1. The applicant shall submit a Declaration of Covenants, Easements and Restrictions to guarantee the permanent protection of the historical integrity of the exterior of the main house and carriage house in a form satisfactory to the Township Solicitor.
2. The applicant shall provide additional information regarding the location of trash storage for the apartment in the carriage house. If trash storage will occur outside of the carriage house, the trash area shall be visually screened or an enclosure shall be provided.
3. This grant of Conditional Use approval is based on the documents and plans submitted and the representations made in support of the application, all of which are specifically incorporated herein by reference thereto.

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