

Before the Conditional Use Hearing Officer
Lower Merion Township, Montgomery County
Pennsylvania
Application #3785C

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

This is a conditional use application filed by Dr. Louis Plzak seeking approval to create narrow lots and to develop the property to the underlying residential zoning district requirements in lieu of developing to the Open Space Preservation District pursuant to Zoning Code § 155-128 and § 155-144. Conditional Use Hearings were held on June 26 and July 11, 2017 before the Conditional Use Hearing Officer.¹

I. FINDINGS OF FACT

A. The Parties

2. The Applicant is Dr. Louis Plzak (“Applicant”) who is represented by George W. Broseman, Esq., and Amee S. Farrell, Esq., Kaplin Stewart, 910 Harvest Drive, Post Office Box 3037, Blue Bell PA 19422.

3. The Applicant is the legal owner of property known as 660 Williamson Road, Bryn Mawr, Lower Merion Township, Montgomery County, PA (“Property”). The Property is the subject of this application.

B. Application for Conditional Use Approval

4. On May 26, 2017, the Applicant filed a conditional use application (“Application”) pursuant to Zoning Code §155-128 and 155-144, seeking approval to create

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

narrow lots and to develop the property to the underlying residential zoning district requirements in lieu of developing to the Open Space Preservation District (“OSPD”).

C. The Property and Surrounding Area

5. The Property is zoned RA Residence District (“RA District”) and is further subject to the OSPD because it contains more than five (5) acres.

6. The Property is a 13.3 acre parcel. It is an irregularly shaped lot with limited frontage on Williamson Road. The property is bounded by passive parkland owned by Lower Merion Township to the south and southeast; residential properties to the west including a portion of residential property immediately adjacent to the western boundary that is preserved open space. There are residential properties to the immediate east and across Williamson Road to the north.

7. The Property has been improved with a single-family dwelling with accessory buildings and related improvements. Existing conditions of the Property are depicted on the Existing Site Plan dated May 24, 2017 (Ex. A-6).

8. An abutting property, 700 Black Rock Road, is owned by Lower Merion Township. It is undeveloped open space containing six (6) acres and Mill Creek. It is used by the public for passive recreation, as it contains a Bridlewild Trail, with the exception of winter months when it is used for sledding.

D. The Proposed Land Development Plan

9. The Applicant wishes to subdivide the Property into four (4) lots. One lot will contain the existing single family detached residence together with related improvements. The other three (3) lots will be available for future development with single family detached dwellings and related improvements. A shared driveway accessing Williamson Road will service the four (4) lots. The proposed subdivision will preserve approximately eight (8) acres of the

Property as restricted open space, as shown on the Proposed Subdivision Plan dated May 24, 2017 (Ex. A-6).

10. The proposed subdivision plan is premised on a land swap between the Applicant and Lower Merion Township (“Township”) to reconfigure lands for the benefit of both parties. The proposed lot line change provides for the Applicant to convey 45,575 s.f. (1.046 acres)(+/-) to the Township for consolidation with adjoining Township lands at 700 Black Rock Road. It further provides for the Township to convey 43,956 s.f. (1.009 acres)(+/-) to the Applicant for consolidation with his lands. The lot line change is depicted on the Post Land Transfer Site Plan dated May 2, 2017 (Ex. A-6). If approved, the land swap will make lot #4 more regular and lot #2 more buildable.

11. On May 1, 2017, the Lower Merion Planning Commission considered the Applicants’ Tentative Sketch Plan and voted to:

- a. Deny the land transfer plan as proposed;
- b. Recommend the Applicant investigate moving the proposed house adjacent to the Township property further down the hill; and,
- c. In favor of the development as a conditional use but not as an Open Space Preservation District Plan, provided the criteria are otherwise met for conditional use approval.

12. On May 17, 2017, the Applicant received Tentative Sketch Plan approval to subdivide the Property into four (4) lots from the Township’s Board of Commissioners.

E. The First Conditional Use Hearing

13. On June 26, 2017, a Conditional Use hearing was held.

14. The Applicant presented testimony in support of its Application from the following witnesses:

- a. Dr. Louis Plzak, Jr;
- b. Patrick Spellman, P.E. employed by Site Engineering Concepts, LLC;
- c. Bernard S. Panzak, RLA employed by Glackin Thomas Panzak;

d. Amee S. Farrell, Esq.

15. The Applicant offered documentary exhibits, marked **Ex. A-1 to A-8** for identification, all of which were subsequently admitted into the record. A list of exhibits is attached at Tab A.

16. Lower Merion Township presented one witness, Christopher Leswing, PP, AICP, Assistant Director of the Building & Planning Department at the hearing. Leswing offered proof of publication, marked **Ex. T-1**, into evidence. He testified that the Planning Commission would review the revised, current plans at a later date and its recommendations will be admitted into the record at the second conditional use hearing.

17. Patrick Spellman, P.E. is an engineer employed by Site Engineering Concepts, LLC who prepared plans labeled “Conditional Use Plan Set” (Ex. A-6) for this Application. He testified that the Property is zoned RA, is subject to the Open Space Preservation District and is partially located in a flood plain. It contains 13.3 acres located near Williamson Road accessed by a private drive which is a 90 foot wide dog-leg driveway. The existing house, garage, pool and tennis court were constructed in the early 1980s.

18. Spellman prepared a “Cover Sheet” showing the proposed land swap between Dr. Plzak and the Township. (Ex. A-6.1). Existing adjacent preservation area lies to north-west of the Property. Township owned park land containing an existing Bridlewild Trail lies to the east. The proposed land swap is depicted in dark green (45,575 s.f. of land to be given Township) and blue (approximately one acre of land to be given to Applicant) on this exhibit. If approved, the land swap improves Lot 4 because it follows the existing tree line. It also improves the Township park land because the public will be able to walk along Mill Creek.

19. Existing conditions are shown on the Existing Site Plan (Ex. A-6.2). The Property has 90 feet of frontage on Williamson Road and a long driveway that opens up into an irregular shaped lot.

20. The Post Land Transfer Site Plan is shown on Ex. A-6.3. The Property will contain 13.32 acres and proposed Lots 2 and 4 have better development potential than they would without the land swap, Spellman testified.

21. The Proposed Subdivision Plan is depicted on Ex. A-6.5. It shows four (4) rear lots accessed by a common driveway:

- a. Lot 1 containing 1.4 acres;
- b. Lot 2 containing 2.23 acres;
- c. Lot 3 containing 2.64 acres;
- d. Lot 4 containing 6.1 acres as the existing home.

22. The Existing Tract Yield Plan is shown on Ex. A-6.4. It shows subdivision pursuant to the RA zoning district yielding six (6) buildable lots with waivers for steep slopes. The existing home would be located on Lot 5, but not the pool and tennis court. The proposed driveway meets and exceeds the 20-foot minimum required frontage for legs of common driveways, according to Spellman.

23. Spellman further testified that the Proposed Subdivision Plan meets the requirements for narrow lots found in Code §155-128. Each proposed lot shall have a minimum width of 90' at the building line, as required in the RA zoning district. Moreover, each proposed lot will have a minimum of 20' at the street line and shall be capable of providing driveway and utility access to the lot. A shared driveway will reduce impervious surface coverage and reduce the number of driveways onto Williamson Road. Existing manmade steep slopes will be part of the conservation area open space. The proposed lots are not excessively irregular in shape. The houses will face each other and each house will have at least 50' around three sides.

24. Spellman testified the Proposed Subdivision Plan pursuant to the underlying RA zoning district, rather than the OSPD, meets Lower Merion Township's land use goals and Subdivision and Land Development Ordinance:

- a. The potential number of lots is reduced from six (6) to four (4) as shown on the yield plan;
- b. Maintaining the existing driveway reduces impervious surface coverage and traffic movements onto Williamson Road;
- c. Eight (8) acres of open space will be preserved;
- d. The view shed from Williamson Road will be preserved with visually contiguous open space.
- e. The four (4) lot proposal with eight (8) acres of preserved open space is consistent with the character of the surrounding residential neighborhood in terms of proposed use and associated lot sizes;
- f. The four (4) lots will be serviced by existing public water and sewer;
- g. Peak traffic generated by four (4) single family residences will be less than six (6) permitted under the yield plan, and a common driveway will use the existing curb cut rather than four individual driveways onto Williamson Road.

25. Conventional development of the Property will preserve its scenic features to a degree equal or greater than development under the OSPD, according to Spellman:

- a. The Proposed Subdivision Plan incorporates existing steep slopes, very steep slopes and streams;
- b. The view shed from Williamson Road and the existing private drive will be maintained;
- c. There are no historic resources on the Property; and
- d. Open space preservation goals will be met by a deed restriction on eight (8) acres of open space prohibiting further subdivision of land or additional building.

26. Concerns about preserving the sledding hill on adjacent land owned by the Township have been addressed by moving the house/building envelope on proposed Lot 2 back, testified Spellman.

27. Bernard S. Panzak, Jr., a registered landscape architect and principal of Glackin, Thomas, Panzak, Inc., testified in support of the Application. He prepared the Preliminary Plan (Ex. A-8) comprised of:

Ex. LP-1 Existing Conditions and Landscape;

Ex LP-2 Proposed Landscape Plan;

Ex. LP-3 Maintenance and Operation Plan; and,

Ex. LP-4 Landscape Details and Notes.

28. Panzak testified that the maintenance and continuous operations plan will ensure the conservation area has pruning, trimming, removal of debris, tree removal, tree planting, removal of invasive species, mowing with selective fertilization and aeration and stormwater management. The preserved open space has sensitive areas in a central core including a stream, valley, steep slopes and wooded section. There will not be a home owner's association of common entity, rather all maintenance will be the responsibility of individual lot owners carried out pursuant to the maintenance and operations plan. There are limitations on use and improvements, including no additional hardscape, patios or play structures; no additional roads or driveways; and fencing at appropriate boundary lines. Panzak testified that the proposed plan under RA district zoning, meets the spirit and intent of the OSPD in his professional opinion.

29. Mitchell Morgan, the resident owner of 726 Williamson Road, an abutting property, testified that he is "OK with development, but I don't want to see new houses from my house." Morgan requested plantings to screen the view from his property. He stated the proposed shared driveway is acceptable if not any wider than the currently existing driveway and denser plantings are installed around it.

30. The conditional use hearing concluded and the record was left open to allow further testimony and evidence after the Planning Commission reconsidered the plans.

31. On July 10, 2017, the Planning Commission reviewed the Preliminary Subdivision Plan from the Applicant and recommended denial of it as well as denial of the conditional use application. Its members felt that the Applicant did not adequately meet his

burden of demonstrating that the proposed subdivision plan preserves natural and scenic features to a degree equal to or greater than development permitted under the OSPD. Additionally, the Planning Commission members were concerned that the Applicant did not meet his burden of showing that the proposed site plan would not impact the public's enjoyment of the sledding hill at Black Rock Road. It pointed out that the Applicant needed to provide written and graphic materials clearly demonstrating compliance with conditional use criteria, (see Ex. T-3, *infra*).

F. The Second Conditional Use Hearing

32. On July 11, 2017, the conditional use hearing resumed. Christopher Leswing, on behalf of Lower Merion Township, testified the Applicant needs the following approvals and reliefs:

- a. Approval of the Preliminary Lot Line Change Plan;
- b. Approval of the Preliminary Subdivision Plan;
- c. Approval of the Conditional Use Plan;
- d. Relief from SALDO 135-35A(2) to create irregular lots; and
- e. Relief from SALDO 135-35A(1) to permit the depth to width ratio of proposed lots 3 and 4 to exceed 2.5 to 1.

His memo states staff supports granting the requested relief. Leswing put two additional exhibits into evidence on behalf of the Township:

Ex. T-2 Leswing's memo to the Planning Commission dated 7/7/2017 attaching the Township Engineer's reviews of three plans dated 7/3/17 by; and

Ex. T-3 Planning Commission's recommendations dated 7/10/17.

33. George W. Broseman, Esq. testified the Planning Commission has recommended approval of the proposed land swap, but denied recommendations for the proposed subdivision plan. The Applicant introduced new exhibits into evidence, labeled **Ex. A-9 to a-21**, attached hereto at Tab B.

34. Bernard S. Panzak, Jr. was recalled to testify about how the proposed Application meets the objectives of the OSPD. He explained the Property has two view preservation areas in eight (8) acres of open space, as depicted on the Existing Conditions Plan marked **Ex. A-9**:

- a. Central Open Plan viewed from Williamson Road; and
- b. Mill Creek Overlook viewed from the new trail connection running parallel to the creek.

Panzak testified that these scenic features are preserved to an equal degree as development under the OSPD and will be subject to deed restrictions on each lot. There are no historic features or cultural landscapes on the Property.

35. Specific details about preservation of the Property's scenic details are shown on the Proposed Preservation Plan, **Ex. A-10**. Panzak testified the preservation plan supplements existing natural features. The scenic corridor is preserved because new homes will be sited out of the central core area. Perimeters of the site will be left intact and planted with infill landscaping. A gap on the western side of the property will be planted, fulfilling an abutting neighbor's request for screening. The driveway area will be largely unchanged preserving the vista from the public way. The deed restricted area near the Mill Creek Overlook area has significantly wider setbacks than current conditions. All tree removal and replacement is shown on the landscape preservation plan. Panzak testified adjacent open space areas are linked to form new open space areas under the proposed landscape plan, furthering the Township's goal of unified open space between lots. The existing view shed is preserved and linked to adjacent open space, specifically lands of Morgan and Dillon to the north and Township land to the south.

36. Robert M. Lambert, Jr., P.E. a civil engineer and project manager for Site Engineering Concepts, LLC testified that scenic and natural features on the Property are preserved to a greater degree under this plan than development under the OSPD:

- a. Open space would be 50% of the Property under the OSPD, whereas 60% open space will be preserved under the proposed plan;
- b. The Yield Plan submitted with the Tentative Sketch Plan had six (6) units which could potentially be constructed on a single parcel under the OSPD;

- c. Allowable structures on one parcel are single family homes, twins and townhouses under the OSPD, whereas only four (4) single family homes are permitted under this plan;
- d. The sledding hill is 65 feet away from the Property's existing boundary, (Ex. A-11), but will be 90 feet away from Lot 2 under the proposed plan, after the land swap (Ex. A-12).
- e. The Mill Creek area would have 50 feet of land preserved along the creek, whereas 175 feet of land would be preserved under this plan, see Ex. A-15.
- f. A relocated trail running roughly parallel to Mill Creek will connect to existing trails under the proposed plan including land swap, as shown on Ex. A-15.

37. The OSPD encourages cluster development, testified Lambert, and multiple driveways become barriers to open space. If the Property were developed pursuant to OSPD, there would be only 50% open space and five (5) units on Lot 4. Houses would be sited closer to Mill Creek. The vista from Williamson Road wouldn't be protected. The proposed plan is more consistent with the form and scale of the existing neighborhood than development under OSPD. Bypassers won't notice three (3) new houses or changes on the property, testified Lambert.

38. Lambert also testified about a letter from Ryan Walker, Conservation Easement Program Manager at Natural Lands Trust ("NLT") regarding land transferred to the Township as a park in 1974, see Ex. A-13. Louis Plzak, the Applicant herein, and his wife Judith Plzak were the donors in 1974. The donated land was deed restricted to lots no less than three (3) acres. NLT's letter states it does not oppose the proposed subdivision plan because community open space would be maintained and the maximum yield of four lots remains intact. It agrees to waive the three-acre minimum lot area requirement so long as the maximum yield of four lots is retained and the conservation values of the property are maintained or enhanced. A second deed restriction states the land "shall be maintained in its natural state and used exclusively as a natural area." NLT's letter states that it defers to the expertise of Lower Merion Township in

determining whether the proposed land swap meets the objectives of the second deed restriction, see, Ex. A-13.

39. Following Lambert's testimony, the Applicant requested that the conditional use hearing be closed with no further evidence or testimony and all documents be moved into evidence without objection.

G. Legal Authority

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

Compliance with Requirements of Code 155-128 for Rear Lot Development

41. Code § 155-128, Rear Lot Development, permits development of "narrow lots" on residentially zoned property by conditional use.

42. Narrow lots are defined under the Code § 155-4.B as:

Any lot abutting a street which shall have less than the required width at the street line or at any point between the street line and a point 25 feet beyond the proposed building.

43. Rear lots are defined under the Code § 155-4 as:

A narrow lot which shall have less than the required width at the street line and at the building line but which meets the minimum lot width at the point of the proposed building closest to the street and extending the full depth of the building plus 25 feet.

44. The Board of Commissioners may authorize the creation of narrow lots by conditional use pursuant to Code §155-128.

45. Code §155-128.A states the minimum lot width at the building line shall be the minimum width required at the street line.

46. The Applicant has met the requirements of Code §155-128.A because each of the four (4) proposed lots meets the 90-foot minimum requirement at the building line in the RA District,

per the testimony of Engineers L. Patrick Spellman and Robert M Lambert, Jr. as well as the engineering site plans they prepared.

47. Code §155-128.B states the number of lots shall not be increased over the number of conforming lots otherwise permitted.

48. The Applicant has met the requirements of Code §155-128.B because the Existing Tract Yield Plan confirms that six (6) lots are otherwise permitted under zoning without the use of narrow lots; whereas four (4) are proposed in the Application, per the testimony of Engineers Patrick Spellman and Robert M Lambert, Jr. as well as the engineering site plans they prepared.

49. Code §155-128.C states every narrow lot shall include at least 20 contiguous feet at the street line (and shall maintain that width to the point the narrow lot reaches the lot width), which shall be capable of providing driveway and utility access to the lot, and which shall not be excessively irregular.

50. The Applicant has met the requirements of Code §155-128.C because the Property has approximately 90'-0" of frontage along Williamson Road, and each of the four (4) proposed lots will have a minimum of 20'-0" of street frontage. The Proposed Subdivision Plan, specifies a shared driveway to reduce impervious impact and reduce the number of driveways onto Williamson Road. The Proposed Subdivision Plan further provides for shared utility access and easements. These facts were established through the testimony of Engineers Patrick Spellman and Robert M Lambert, Jr. as well as the engineering site plans they prepared.

51. Code §155-128.D states in calculating the area of a rear lot, the area between the street line and a line drawn radial thereto at the point where the lot attains the minimum lot width required shall not be included in applying the requirements of the chapter, except those relating to impervious coverage.

52. The Applicant has met the requirements of Code §155-128.D because the lots comply with minimum lot area requirements of the RA District without inclusion of the prohibited area. The lots also meet impervious requirements of the RA District, without counting the prohibited area. These facts were established through the testimony of Engineers Patrick Spellman and Robert M Lambert, Jr. as well as the engineering site plans they prepared.

53. Code §155-128.E states the Commissioners shall designate which yard shall be considered the front yard for each rear lot.

54. The Board of Commissioners shall make the required designation of front yard and rear yard for each rear lot, pursuant to Code §155-128.E.

55. Code §155-128.F states the creation of the narrow lots shall be in accordance with the land use goals and requirements of this chapter and Chapter 135.

56. The Applicant has met the requirements of Code §155-128.F because the creation of narrow lots reduces the overall number of lots that can be created from six (6) per the yield plan to four (4) under the proposed plan, and in so doing, preserves more open space than would be preserved under the OSPD. The proposed single-family dwelling use is permitted in the RA District and is fully consistent with uses the surrounding residential neighborhood. The proposal to provide for a shared driveway and utility easements also further the intent and objectives by reducing impervious and maintaining the view shed into the Property with little disruption. Taken together, the proposal is fully consistent with the goals and requirements of both this chapter and Chapter 135. These facts were established through the testimony of Engineers Patrick Spellman and Robert M Lambert, Jr., and Registered Landscape Architect Bernard S. Panzak, Jr. as well as the engineering and landscape plans they prepared.

57. Code §155-128.G states any rear lot approved by conditional use shall connect to adjacent sanitary sewer when and if it is installed, even though the building may be more than 200 feet away.

58. The Applicant has met the requirements of Code §155-128.G because the Proposed Subdivision Plan provides for public water and sewer service, pursuant to the testimony of Engineers Patrick Spellman and Robert M Lambert, Jr. as well as the engineering site plans they prepared.

Compliance with Requirements of Code 155-144 for RA District Development

59. Code § 155-144 permits development of a tract pursuant to the underlying residential district (i.e. RA District), rather than the OSPD, provided the applicant establishes conformance with the provisions of §155-141.2, Conditional Use Application Procedure and Standards, as applicable.

60. The Applicant has complied with the requirements of Code §155-141.2, *see infra*.

61. Code §155-144, further provides that a conditional use applicant must establish the following:

- A. That the conventional development will preserve the scenic features, historic site and historic resources to a degree equal to or greater than development under the Open Space Preservation District would permit.
- B. The open space preservation goals shall be achieved by deed restriction, conveyance of a perpetual conservation easement to a recognized nonprofit established to handle such matters, or by any other means of facility ownership set forth in §155-148.

62. The Applicant has complied with the requirements of Code §155-144A because the proposed development results in preservation of 8 acres (+/-) of open space, which is consistent with or greater than what would otherwise be required under the OSPD, per the testimony of Engineers Patrick Spellman and Robert M. Lambert, Jr., as well as registered Landscape

Architect Bernard Panzak, Jr. Moreover, the Existing Conditions Plan (Ex. A-9) depicts two areas of open space on the Property; the Central Open Space and Mill Creek Overlook, as well as view preservation from Williamson Road. The Proposed Preservation Plan, Ex A-10, details how the Central Open Space and Mill Creek Overlook will be maintained and the view from Williamson Road will be protected in perpetuity. The public will have access to a relocated trail connection and promontory at the Mill Creek Overlook area under the proposed land swap with Lower Merion Township. Additionally, the sledding hill on adjacent public parkland will have a longer sled run under the proposed land swap as well.

63. The Applicant has complied with the requirements of Code §155-144A because the proposed open space will be preserved via deed restrictions on each lot, in a form acceptable to the Township Solicitor, if the proposed plan is approved.

Compliance with Conditional Use Criteria pursuant to Code §155-141.2

64. There are six (6) general requirements for conditional uses found in Code 155-141.2(B) and subsections.

65. Pursuant to Code §155-141.2(B)(1), the Applicant established by credible evidence that the proposal complies with the community development objectives as stated in Article I of Chapter 155.

66. The Applicant has shown compliance with community development objectives stated in Article I of Chapter 155 because his proposal reduces the number of lots from six (6) to four (4) under zoning, thereby reducing overall impervious and density; preserves 8 acres (+/-) of open space, as would be required under the OSPD standards, and preserves view sheds into the Property from Williamson Road and the proposed trail connection. These facts were credibly established by the testimony of Engineers Patrick Spellman and Robert M. Lambert, Jr., as well

as Registered Landscape Architect Bernard S. Panzak, Jr. and the plans, photographs and other documents admitted into the record at the conditional use hearing.

67. Code §155-141.2(B)(2) requires the Applicant to 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.

68. Here, the Applicant has shown compliance with Code §§155-128 and 155-144, *see supra*, satisfying the requirements of 155-141.2(B)(2).

69. Code §155-141.2(B)(3) requires the Applicant to establish by credible evidence that the proposed use or other subject of consideration for approval shall preserve the character of the neighborhood.

70. The Applicant has established by credible evidence from Engineers L. Patrick Spellman and Robert M. Lambert, Jr. that the proposal will preserve the character of the neighborhood. The proposed plan specifies four (4) lots, where six (6) are otherwise permitted by zoning under the yield plan. The surrounding properties are a mix of single-family detached residences and restricted open space. The proposed use and associated lot sizes are fully consistent with surrounding residential uses. Testimony of Registered Landscape Architect Bernard S. Panzak fully concurred with Engineers Spellman and Lambert about preserving the character of the neighborhood, as did testimony from adjoining neighbor Mitchell Morgan.

71. Code §155-141.2(B)(4) requires the Applicant to 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.

72. The Applicant has established by credible evidence from Engineers L. Patrick Spellman and Robert M. Lambert, Jr. that the lots will be served by public water and sewer. The peak traffic generated by four (4) single-family residences is readily accommodated by the

driveway onto Williamson Road and will be less than would be expected from the six (6) lots permitted by the yield plan. Additionally, by proposing a shared driveway, rather than four (4) independent driveways onto Williamson Road, the proposal reduces potential vehicle conflict and increases maneuvering safety into and out of the driveway and along Williamson Road.

73. Code §155-141.2(B)(5) requires the applicant has established 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.

74. Here, the Applicant has adequately demonstrated through the testimony of Registered Landscape Architect Bernard S. Panzak, Jr. and Engineers Patrick Spellman and Robert M. Lambert, Jr. as well as the plans, documents and photographs they prepared/provided that the proposal provides for 8 acres (+/-) of restricted open space, together with a shared access driveway which operates to reduce overall impervious on the site, reduce potential traffic conflicts at Williamson Road, and preserve view sheds into the Property.

75. Code §155-141.2(B)(6) requires the applicant to 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.

76. The Applicant's proposal complies with all zoning requirements of the underlying RA District, while satisfying the open space requirements and overall intent of the OSPD as shown in plans, photographs, a letter from NLT, and other documents admitted into the record at the conditional use hearing, as well as testimony from multiple expert witnesses.

77. Moreover, the evidence admitted into the record at the conditional use hearing, as well as testimony from multiple expert witnesses, meets the specific documentary requirements of Code §155-160.

DISCUSSION/CONCLUSIONS OF LAW

78. “Conventional development” almost seems like a misnomer for the Applicant’s innovative land swap and proposed subdivision plan. Not only does the proposed project create a relocated hiking trail and promontory view of Mill Creek, it also offers sensitive development to preserve two open space areas and match the surrounding neighborhood.

79. The legislative intent of the Open Space Preservation District includes providing for the “creation, retention and protection of open spaces within the Township” and “encouraging innovation and promoting flexibility, economy and ingenuity in the residential development of large tracts, including subdivisions and land developments,” see Code §155-142.

80. This Application’s proposed land swap, subdivision and development pursuant to the underlying RA district will meet the legislative intent of the OSPD to a greater extent than development under the OSPD itself. Two open space areas will be preserved in perpetuity by deed restrictions on four (4) contiguous lots, and linked together to existing open space on another parcel owned by Lower Merion Township. The view shed from Williamson Road into the central open space area will be preserved because three (3) new houses will be carefully sited. A new overlook area onto Mill Creek and a new hiking trail linking to an existing trail on Township park land will be created.

There are several key differences between this proposed plan for conventional development and OSPD development which demonstrate natural and scenic features will be preserved to a greater extent. Only 50% of the Property would be preserved as open space under OSPD development, whereas 60% will be preserved with this proposed plan for conventional development. Four housing units clustered together could be constructed on the Property pursuant to the OSPD and would not be consistent with single family homes on large lots in the

surrounding neighborhood of. Four single family houses as proposed under conventional development are a better fit with the surrounding neighborhood.

The Applicant has shown flexibility in working with the Township to create a workable plan that protects open space and fits with the surrounding neighborhood. The proposed reduction from six (6) permitted lots under the yield plan to four (4) lots is indicative of the Applicant's commitment to preserve natural and scenic features of the land. Development will include the necessary restrictive covenants, which will result in preservation of 8 acres of open space. The proposed shared driveway will reduce overall impervious coverage resulting from the development and will reduce the potential for traffic conflicts at Williamson Road. The four (4) lots will be accessed via a shared driveway from Williamson Road and will be served by public water and sewer.

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 Dr. Louis Plzak, Jr. for conditional use approval under Zoning Code §§155- 144 and 155-128 of the Zoning Code of the Township of Lower Merion is granted, subject to the following conditions:

1. Common open space shall be restricted in perpetuity from further subdivision and/or land development by deed restriction, conservation easement or other agreement in a form acceptable to the Township Solicitor and duly recorded in the Office of the Recorder of Deeds of Montgomery County.

2. Future owners of Lots 1 and 2 shall be restricted from constructing individual driveways in the future so as to not disturb the steeply sloped areas along their respective legs to Williamson Road.
3. The proposed shared driveway shall not be any wider than the currently existing driveway and dense plantings shall be installed around it.
4. Any new fencing along the outer perimeters of each lot shall consist only of split rail fencing.
5. Front yards for each lot shall be as depicted on the approved subdivision plan.
6. 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.

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