

BEFORE THE CONDITIONAL USE HEARING OFFICER
LOWER MERION TOWNSHIP, MONTGOMERY COUNTY
PENNSYLVANIA

CU Application #3794C

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

This conditional use application was filed by the Merion Cricket Club seeking approval to increase impervious surface coverage on a property located in the R-2 and R-7 zoning district pursuant to Code §155-152.C. Conditional Use Hearings were held on December 19, 2017 and January 10, 2018 before the Conditional Use Hearing Officer.¹

1. The Applicant is the Merion Cricket Club (“Club”) by its general manager Caleb Tindall (“Applicant”).

2. The Applicant’s attorney is George W. Broseman, Esq. (“Broseman”) of Kaplin Stewart.

3. The Applicant is the title owner of approximately 13.3 acres with frontages along West Montgomery Avenue, Grays Lane and Cheswold Lane, Lower Merion Township (referred to as the “Property”). Other parcels, with frontage on Elbow Lane, have rear yards adjoining the Property to the north-east.

4. The Property is situated in the R-2 and R-7 zoning districts and is also subject to the Historic Resource Overlay District (“HROD”) Code §155-87.20 *et seq.*

5. The Property is listed as a Class I historic resource on the Historic Resource Inventory. The Inventory listing specifies contributing elements including the Clubhouse complex, designed by Frank Furness and constructed in 1896-97, and the cottage. The Township’s position is that the contributing elements of the Clubhouse complex include the

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

Furness Clubhouse, the men's locker room and the squash addition. It is disputed by the applicant whether the cottage and the men's locker room are contributing elements to the Class I historic resource. *See*, Historic Resource Impact Study, Ex. A-2. *See also*, Lower Merion Township staff memo from Greg Prichard to the Building and Planning Committee, Ex. T-3; Broseman Letter dated January 12, 2018, Ex. A-19. The applicant also claims that it is unclear whether the Inventory listing includes the Cassatt memorial and stone gateposts with electric lamps.

6. The Property has been used as a sports club for more than one hundred twenty (120) years. In addition to the historic clubhouse and cottage, its facilities currently include grass tennis courts, indoor tennis and squash courts, locker rooms, restaurant, maintenance complex, outbuildings, parking areas and driveways ("Campus").

7. The Applicant has acquired twelve (12) adjacent properties with an eye toward future expansion of the Campus. It is currently undergoing the land development approval process to enlarge the Property to more than eighteen (18) acres and install new facilities:

- a. Demolition of eight (8) single family detached houses on adjacent properties:
 - 141 Grays Lane;
 - 143 Grays Lane;
 - 147 Grays Lane;
 - 206 Elbow Lane;
 - 214 Elbow Lane;
 - 216 Elbow Lane;
 - 134 Cheswold Lane,
 - 140 Cheswold Lane;
- b. Demolition of two (2) detached maintenance garages located at 325 W. Montgomery Avenue;
- c. Consolidation of fourteen (14) properties:
 - 325 West Montgomery Avenue;
 - 135/139 Grays Lane;
 - 141 Grays Lane;
 - 143 Grays Lane;
 - 147 Grays Lane;

206 Elbow Lane;
210 Elbow Lane;
214 Elbow Lane;
216 Elbow Lane;
218 Elbow Lane;
222 Elbow Lane;
226 Elbow Lane;
134 Cheswold Lane;
140 Cheswold Lane;

- d. Redevelopment of a five (5) acre portion of the site, involving:
 - i. Reorientation of existing paddle tennis court;
 - ii. Replacement of an existing paddle hut;
 - iii. Relocation of the maintenance complex to an internal site;
 - iv. Elimination of an existing practice court;
 - v. Relocation of four outdoor tennis courts;
 - vi. Preservation and conversion of four existing dwellings facing Elbow Lane for club use;
 - vii. Construction of a new pool complex with auxiliary dining facilities;
 - viii. Installation of additional parking facilities;
 - ix. Relocation of one of the driveways onto Gray's Lane;
 - x. Construction of a small addition to the clubhouse to house additional squash courts;
 - xi. Removal of existing drive on Grays Lane and reconstruction of an expanded drive further down Grays Lane.

8. The Lower Merion Zoning Hearing Board recently granted a special exception and variance for expanded use of the Merion Cricket Club in connection with this land development project, Appeal No. 4407 (2017).

9. This conditional use application concerns the Applicant's request to exceed impervious surface limits applicable to the Property pursuant to Code §155-152C. The Applicant offers covenants on historic resources in consideration for approval of additional impervious surface coverage.

10. The Board of Commissioners may authorize deviations from bulk, area and setback requirements by conditional use approval, pursuant to Code §155-152.

11. The Lower Merion Historical Commission reviewed the land development plans and the conditional use application on October 23, 2017 and recommended approval of

impervious surface relief under the conditional use provisions of the HROD, Code §155-152.

The Historical Commission found that the new development will not have a significant negative impact on the Furness & Evans designed clubhouse building. It reviewed the overall site plan, the proposed pavilion structures, parking areas, and adaptive re-use of four homes on Elbow Lane. The Historical Commission does not have purview over the homes facing Elbow, Grays, and Cheswold Lanes which were designed between 1930 and 1960 by prominent local architect Walter Durham. While the Durham houses may qualify for designation as historic, in the opinion of the Historical Commission, the Applicant's proposed expansion will support the continued use and preservation of the clubhouse. It complimented the retention of four (4) Durham houses on the proposed site plan and asked the Applicant to consider voluntarily listing them on the Historic Resource Inventory as Class II structures; obtaining façade easements on the homes' front, sides and roof; allowing for exterior documentation of the residences slated for demolition; and salvaging materials and architectural elements from the demolished structures. *See*, Lower Merion Township staff memo, Ex. T-2 at p. 3.

12. The Lower Merion Planning Commission reviewed the conditional use application and the land development plans on December 4, 2017 and January 8, 2018. It recommended approval of the conditional use application without conditions. Moreover, it recommended approval of the land development plan with conditions. See Ex. T-4.

13. The Conditional Use Hearing Officer conducted public hearings on December 19, 2017 and January 10, 2018.

14. Andrea Campisi ("Campisi,") Senior Planner at the Lower Merion Township Building and Planning Department, offered five (5) documents into evidence that were admitted into the record:

- a. Proof of publication of the hearing notice (Exhibit T-1);
- b. Lower Merion Township staff memo from Christopher Leswing to Hearing Officer dated 12/19/17 (Exhibit T-2);
- c. Lower Merion Township staff memo from Greg Prichard to Building and Planning Committee date 12/19/17 (Exhibit T-3)(regarding the Class I historic resource, the 1895 clubhouse, and recommending recognizing additional elements contributing to the overall historic resource, including the 1928 locker room building, the stone gateposts and their ornamental electric lamps, and the Cassatt memorial);
- d. Lower Merion Planning Commission recommendations dated 1/9/2018 (Exhibit T-4);
- e. Lower Merion Township staff memo from Christopher Leswing to Planning Commission dated 1/5/18 (Exhibit T-5).

15. The Applicant offered twenty (20) documents in support of its conditional use application that were subsequently admitted into the record:

- a. Conditional Use Application (Exhibit A-1);
- b. Historic Resource Impact Study (Exhibit A-2);
- c. Zoning Hearing Board decision, Appeal No. 4407 (2017) (Exhibit A-3);
- d. Revised Tentative Sketch Land Development Plans (Exhibit A-4);
- e. Frank Vain, CV (Exhibit A-5);
- f. Frank Vain presentation “The Club of the Future” (Exhibit A-6);
- g. Caleb Tindall, CV (Exhibit A-7);
- h. Deeds (Exhibit A-8);
- i. Maarten Pesch, CV (Exhibit A-9);
- j. Maarten Pesch presentation “CUH: Project Overview” (Exhibit A-10);
- k. Robert Lambert, CV (Exhibit A-11);
- l. Historic Resource Inventory Listing of existing club property (Exhibit A-12);

- m. Impervious surface calculation chart (Exhibit A-13);
- n. Building footprints of Historic Clubhouse to be subject to Covenant (Exhibit A-14);
- o. Stormwater Management Report (calculations have been provided to Township staff and Township Engineer) (Exhibit A-15);
- p. Charles Neer, CV (Exhibit A-16);
- q. John Wichner, CV (Exhibit A-17);
- r. Traffic Impact Study (appendix C has been provided to Township staff and Township Engineer) (Exhibit A-18);
- s. Lower Merion Township Ordinance No, 3208 (Exhibit A-19);
- t. Broseman Letter dated 1/12/18 (Exhibit A-20).

16. Kenneth Aaron, Esq. and Carolyn C. Lindheim, Esq. of Weir & Partners, LLC entered appearances on behalf of individuals and entities group (“Neighbors”) listed on Ex. N-1. Counsel stated the Neighbors have come to an agreement with the Applicant regarding the proposed land development plan and presented no testimony at the conditional use hearings. The Neighbors submitted the following exhibits into the record:

- a. Entry of Appearance (Ex. N-1);
- b. Aaron Email dated 1/12/18 (Ex. N-2)

17. Six witnesses testified in support of the Application on behalf of the Merion Cricket Club:

- a. Frank Vain, President, McMahon Group (consultant on private clubs)
- b. Caleb Tindall, General Manager, Merion Cricket Club;
- c. Maarten Pesch, Principal, WRT (Architect and Planner)
- d. Robert Lambert, PE, Principal, Site Engineering Concepts (Engineer)
- e. Charles Neer, R.L.A., WRT (Landscape Architect)

f. John Wichner, P.E., McMahon Associates (Traffic Engineer)

18. Broseman testified that conditional use approval is sought to modify the impervious surface limits otherwise applicable to the Property in the R-2 and R-7 District, pursuant to the Historic Resource Overlay District (“HROD”). The requested relief is part of the proposed expansion of the Applicant’s facilities intended to support continued viability of the Merion Cricket Club (“Land Development Project” or “Project”). In preparation for the Project, the Applicant has had multiple meetings with Neighbors, Township staff and professional consultants affiliated with the Township. Feedback from the meetings resulted in substantial modifications to the Project and culminated with an agreement between the Applicant and many neighbors. The Applicant has previously received special exception and variance approval from the Lower Merion Zoning Hearing Board for the Project, Appeal No. 4407 (2017). *See*, Memo from Broseman to Leswing dated 1/5/2018 included in Ex. T-5.

19. Frank J. Vain (“Vain,”) President of the McMahon Group, Inc., is an internationally recognized consultant and expert on private clubs (Ex. A-5). He is a native of the Philadelphia area and has been the consultant for thousands of private clubs of all sizes and types. Vain has been retained by the Applicant and gave a presentation entitled “The Club of the Future” at the conditional use hearing. Vain testified that all clubs are currently facing major challenges because of demographic, economic and lifestyle changes. Over 2,000 private clubs have closed nation-wide since 1990. Natural attrition of club members arises from death, aging and lifestyle changes and clubs need new members to replace those lost to sustain itself. The target age group is 35-45 years old for replacement members. Membership dues provide the important income stream to sustain private clubs while other revenue sources are usually not profitable (*e.g.* food, retail, etc.). Clubs need facilities that appeal to all family members such as tennis, squash and swimming. Other clubs that are thriving have improved facilities and

offerings similar to those proposed by the Applicant. In contrast, other clubs which have failed have seen, in some instances, the clubhouse demolished (LuLu) and land sold for development (Philmont).

20. With regard to the Merion Cricket Club, Vain testified that it has a significant rate of declining membership particularly among young families defecting to more competitive offerings at other clubs. The current rate of attrition is not sustainable given declining membership dues. There is a demand for expanded facilities particularly among young families. Potential new members must be attracted from a wider geographic area by offering better facilities. The Club needs to upgrade and expand its facilities to stabilize and restore membership levels. Vain opined that the Merion Cricket Club will not be able to maintain and preserve the historic clubhouse without making these changes, leading to the land development plan and conditional use application.

21. Caleb Tindall (“Tindall,”) General Manager and Chief Operating Officer of the Merion Cricket Club, (Ex. A-7) testified about current facilities at the Property and declining membership for the past eight years averaging 42 memberships annually. Competitor clubs offering more amenities and offerings, as well as new competition in the local geographic area, are attracting Merion Cricket Club members and causing them to leave. The Merion Cricket Club needs to expand its facilities and provide new programs to sustain itself. The historic clubhouse is inefficient and has significant operational and maintenance costs arising from its age and original construction. Tindall agreed with Vain that the Club will not be able to maintain and preserve the historic clubhouse without the Project being approved and implemented.

22. Maarten I. Pesch (“Pesch,”) AIA, LEED AP, architect and urban planner, and principal of WRT (Ex. A-9) gave a presentation on proposed improvements to the Club (Ex. A-10). He described a balancing act between upgrading facilities and strengthening programs at the

Club and the existing space constraints on the Property and compatibility with the surrounding neighborhood. The Property has approximately 14 acres, a historic Clubhouse and four (4) entrances and exits. Phase One of the project, involving interior renovations, is currently underway. Phase Two improvements are detailed on the proposed land development plan (Ex. A-4, A-10). Overall, Pesch described a plan to increase the size of the campus by consolidating properties on Elbow Lane, demolishing eight structures, relocating some existing structures, building new facilities, creating an attractive buffer zone and decreasing driveways from four (4) to two (2). A new aquatics center located in the middle of the campus will minimize impact on the surrounding neighborhood. A swimming pool, locker rooms, dining facilities, open pavilion and courtyard are proposed for the aquatics center. Existing paddle courts will be moved in response to neighbors' requests and relocated in a slightly larger building with four (4) courts. The existing maintenance complex will no longer have access from Cheswold Lane, reducing the impact of delivery and trash trucks on neighbors, and one (1) driveway accessing Grays Lane will be used by maintenance vehicles. Four (4) existing houses on Elbow Lane will be converted to Club uses. They will have reverse access away from Elbow Lane with existing driveways removed. The back of the houses may change in the future, but not the facades facing Elbow Lane. An existing large Elm tree will be protected in the center of the campus. Pesch testified it isn't possible to make the proposed improvements without relief from impervious surface coverage limits. The proposed improvements are directly related to sustaining the Club and preserving the historic clubhouse in perpetuity

23. Robert M. Lambert, Jr. ("Lambert,") the Principal of Site Engineering Concepts and a registered engineer in the Commonwealth of Pennsylvania, testified for the Applicant. He has a master's of science in civil engineering and has practiced for twenty (20) years. Lambert is the project engineer and prepared plans for the land development project, (Ex. A-4.)

24. Lambert described the Property as split zoned in the R-2 and R-7 districts, and subject to the HROD. The R-7 district permits 40% impervious surface coverage and the R-2 allows 24% impervious surface coverage. Split zoned parcels are blended to calculate impervious surface coverage. Lambert testified that institutional uses require sufficient parking which adds to impervious surface coverage and create challenges to redevelop the Property. The Applicant's original plan set called for more impervious surface coverage, but walkways were modified to reduce the amount by approximately 10,000 sq. ft. The revised plans call for 48.4 % impervious surface, which is 4% more than permitted by Code. The percent of modification to underlying permitted impervious is 13.8%. Ex. A-13. The footprint of the historic resource is depicted on Ex. A-14.

25. Lambert's executive summary of compliance with stormwater management requirements of Code § 155-152 is provided in Ex. A-15. He testified that the existing properties have no stormwater management and all runoff is directed toward Cheswold Lane. The proposed plan includes stormwater management designed to control rate and volume of runoff and "dramatically exceeds requirements for infiltration." 13,000 cubic feet is required and 31,000 cubic feet is provided. Overall, Lambert testified that the proposed plan seeks a "relatively small increase in impervious surface coverage and provides a dramatic reduction in runoff." There will be no impact on health safety or welfare from the requested increase in impervious surface coverage.

26. Lambert testified that 69 parking spaces are required under Code §155-95(T) and 70 parking spaces are included in the proposed plan, which is part of the request for relief from impervious surface coverage requirements. The proposed plan complies with all applicable regulations and will enhance the health, safety and welfare of Lower Merion residents according to Lambert.

27. Charles B. Neer, ASLA, Landscape Architect and Senior Associate of WRT holds a Master of Landscape Architecture degree and has 18 years of experience in his field, *see* Ex A-16. WRT created the proposed landscape plans shown in Ex. A-4, sheets 13-19. They depict concentric screening, a berm and new plantings on consolidated Elbow Lane and Cheswold Lane properties, evergreen trees to screen courts, and preservation of the heritage Elm at the center of the Campus. Neer testified that the proposed landscaping will be compatible with the health, safety and welfare of Lower Merion residents.

28. John H. Wichner, PE, PTOE, is a registered Professional Engineer with a Master of Science in transportation engineering employed by McMahon Associates, Inc., Ex. A-17. He previously testified before the Zoning Hearing Board of Lower Merion Township about this project in 2017. McMahon Associates completed a Traffic Impact Study for the proposed land development project. Wichner testified that, assuming new facilities are built and there is a gradual increase to 6,000 members of the Merion Cricket Club, there will be 102 new trips during the weekday midday peak hour; 102 new trips during the weekday afternoon peak hour and 116 new trips during the Saturday midday peak hour. Site access will be provided via existing driveways along Montgomery Avenue and the exit-only driveway along Grays Lane. One new full movement driveway is proposed along Grays Lane to replace an existing full movement driveway slated for removal. The existing full movement driveway on Cheswold Lane will be decommissioned from regular use and serve as a controlled emergency access point that will also be available for limited maintenance use. Levels of service at intersections will operate LOS C or better during all peak periods, with the exception of a few individualized movements at two signalized intersections currently operating below that level under existing conditions. *See*, Ex. A-18. The Lower Merion Township Engineer has reviewed the Traffic

Impact Study and given feedback to McMahon Associates which has been incorporated into the proposed plan.

29. At the conclusion of the conditional use hearing on December 19, 2017, the Hearing Officer agreed to continue the hearing to January to allow time to receive the Planning Commission's recommendations.

30. On January 10, 2018 the conditional use hearing resumed, and Township staff submitted recommendations of the Planning Commission and an updated memo written by Leswing into the record (Ex. T-4 & 5). Testimony was concluded but the record was held open to allow the parties time to submit documentary evidence regarding the issues raised in the Prichard Memo (Ex. T-3) including defining the contributing structures to the historic resource in light of Code § 155-152.B.

31. On January 12, 2018, Broseman submitted a letter stating the Applicant "contends the qualifying building area under Code § 155-152.B is 16,419 s.f.," Ex. A-19 at p.1. In contrast, the Township indicates the qualifying building area is 26,014 s.f. because it includes the 1928 men's locker room addition, *see* Ex. A-19 at p. 2; *see also* Ex. T-3 at p. 1 (stating the "National Historic Landmark nomination for the club describes not only the 1895 Frank Furness-designed clubhouse, but the property as a whole," which includes the 1928 men's locker room addition.)

32. Aaron sent a message dated January 12, 2018 stating he "does not take a specific position as to which buildings are included within the purview of the 50% limitation calculation for §155-152.B," but requesting a determination of the extent of the historic resource that is to be subjected to the permanent protection guarantee of §155-153.B.4 . He further requested a determination of the calculation of the 50% of the building area for the historic resource, so that the degree of any reduction of the impervious surface limitation is clear. Ex. N-2.

APPLICABLE ORDINANCES

33. Lower Merion Township's Historic Resource Overlay District ("HROD") recognizes as a matter of public policy that the preservation and protection of buildings, structures and sites of historic, architectural, cultural, archeological education and aesthetic merit are public necessities and are in the interests of the health, prosperity and welfare of the people of Lower Merion Township, Code §155-149.

34. The HROD is intended to meet the following objectives:

- A. Promote the general welfare by protecting the integrity of the historic resources of Lower Merion Township;
- B. Establish a clear and public process by which proposed land use changes affecting historic resources can be reviewed;
- C. Discourage the unnecessary demolition of historic resources;
- D. Provide incentives for the continued use of historic resources and to facilitate their appropriate reuse;
- E. Encourage the conservation of historic settings and landscapes;
- F. Promote the retention of historical integrity in the context of proposed land use and/or structural changes;
- G. Identify historic resources in the community and to create a Historic Resource Inventory, to the end that the portion of such resources available to the public view might be preserved.

35. "Historic resource" is defined as "all historic buildings, sites, objects and historic districts which are designated on the Historic Resource Inventory, Chapter 180" Code §155-155-149.1.

36. "Noncontributing resource" is defined as "buildings, sites, structures, and objects located within historic districts, which have not been determined to support the district's

historical significance through location, design, setting, materials, workmanship, feeling, and/or association,” Code §155-155-149.1.

37. The Lower Merion Historic Resource Inventory lists 325 W. Montgomery Avenue, the subject Property. A “Description of the Resource” provides:

The Merion Cricket Club was designed by Furness, Evans & Co. in 1895. It replaced an early cricket club that was destroyed by fire. Allen Evans was a prominent member of this elite club. It is located near the northern perimeter of the property, along Grays Lane. To the south of the building are the cricket fields and tennis courts. The stable is located in the northeastern corner of the property and several additional outbuildings are located in the southeastern corner. The oldest part of the brick building is the western half of the building complex. It received several large additions to the east in 1905 and 1911. Designed in typical Furness style, the historic building showcases various Victorian design elements of the period. The complex roof system incorporates hipped roofs, gabled wall dormers, hipped and shed roofed dormers and various brick chimneys. The T-shaped massing is 2 ½ and 3 ½ stories tall and much of the first level on the southern interior façade is open for viewing the cricket fields behind the building. (10/2012)

Ex. A-12

28. The Board of Commissioners may, by conditional use, grant relief from impervious surface requirements pursuant to Code § 155-152:

Bulk, area and setback requirements

Provided that the guarantee referenced in § 155-153.B.4 has first been submitted and approved, the requirements of the underlying zoning district relating to building area, impervious surfaces, and front, side and rear yard setbacks may be modified up to 15% with respect to Class I and Class II Historic resources, subject to obtaining a recommendation from either the Historical Commission or the Board of Historical Architectural Review, pursuant to Chapter 88, and to obtaining conditional use approval from the Board of Commissioners. These modifications shall apply to the area of the lot as it existed on March 15, 2000.

- A. Where the requirements are modified pursuant to this section, the applicant must demonstrate to the satisfaction of the Board of Commissioners that the degree of relief required to accommodate the reasonable development, use or enhancement of the historic resource;
- B. The additional building area and impervious surface coverages permitted by this section may not exceed 50% of the building area of the historic resource(s) subjected to the § 155-153(B) guarantee;

- C. Where the requested relief is determined by the Board of Commissioners to be essential to the preservation of the historic resource because without such relief it would not be physically or economically possible to maintain the historic resource, the Board of Commissioners may, by conditional use, reduce such requirements to a greater degree than permitted by this section to protect the historic resource.
38. Specific requirements for conditional use approval are set forth in Code §155-153.
39. The Applicant for conditional use approval 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

40. The Applicant seeks relief from impervious surface limits pursuant to Code §155-152 to increase the existing non-conforming impervious surface coverage on the site from 43.6% to 48.4% for an increase of 38,324 square feet or 4.8% of the total lot area.

41. Code §155-152 provides relief from bulk, area and setback requirements for properties with historic resources in the HROD.

42. The Property contains a Class I historic resource listed on the Lower Merion Historic Resource Inventory, specifically the large brick clubhouse built in 1895 with additions to the east constructed in 1905 and 1911. *See*, Ex. A-12.

43. The Historical Commission recommended impervious surface coverage relief by conditional use pursuant to Code §155-152 on October 23, 2017. *See*, Ex. T-2, p. 2-3.

44. The Applicant has established through credible evidence that relief from impervious surface coverage limits is required to accommodate the reasonable development, use or enhancement of the historic resource. Testimony by Frank Vain and Caleb Tindall established that the Club is losing members at an unsustainable rate and must expand its facilities and offer new programs to become competitive and attract new members. Construction of an aquatics center with auxiliary dining facilities, relocated tennis courts, relocated maintenance complex, new parking spaces, driveway and other proposed improvements were described in testimony by Frank Vain, Caleb Tindall, Maarten Pesch, Robert Lambert and Charles Neer. All witnesses testified the proposed improvements are directly related to sustaining the Club and preserving the historic clubhouse in perpetuity.

45. The additional building area and impervious surface coverages exceed 50% of the building area of the historic resource(s) subjected to the § 155-153(B) guarantee, which does not comply with Code §155-152.B. The building area of the historic resource is 26,014 s.f. according to Township staff, and includes the Men's Locker Room addition. The Applicant, however, contends the building area of the historic resource is 16,419 s.f., and excludes the Men's Locker Room addition. *See*, Ex A-13; A-14; A-20. Both calculations exceed the 50% limitation, therefore this subsection of the ordinance does not apply, Ex. A-20.

46. Where the requested relief is determined by the Board of Commissioners to be essential to the preservation of the historic resource, because without such relief it would not be economically possible to maintain the historic resource, the Board of Commissioners may, by conditional use, reduce such requirements to a greater degree than permitted by this section to protect the historic resource. Code §155-152.C.

47. Here, the Applicant has demonstrated that greater relief is essential to the preservation of the historic resource, because without such relief it would not be economically

possible to maintain the historic resource. Caleb Tindall testified that the historic clubhouse is inefficient and has significant operational and maintenance costs arising from its age and original construction. The Merion Cricket Club is at a disadvantage compared to its competitors because it has significantly higher operational and maintenance costs. Frank Vain testified that the club must reverse its current rate of attrition to sustain itself and remain economically viable. He presented persuasive evidence that other similar clubs which failed to remain competitive have failed and their land has been sold for development. *See*, Ex. A-6 entitled “The Club of the Future.”

48. The application procedures for conditional use approval found in Code § 155-153.A were met by the Applicant providing an application and a historic resource impact study containing all required information, Ex. A-1; Ex. A-2.

49. The Applicant has shown that approval of the application will not jeopardize the preservation of the historic resources contained on the property through the Historic Resource Impact Study (Ex, A-2); the testimony of Maarten Pesch and his presentation of the Conditional Use Hearing Project Overview (Ex. A-10); and the testimony and plans prepared by Robert Lambert (Ex. A-4; A-12, 13,14 & 15) in compliance with Code §155-153.B.1.

50. The requirements of Code §155-153.B.2 have been met according to testimony of Maarten Pesch.

51. The requirements of Code §155-153.B.3 have also been met according to testimony of Maarten Pesch.

52. The Applicant has agreed to provide the guarantee required by Code §155-153.B.4 although the extent of the guarantee is not agreed upon. It is recommended that the guarantee include the stone driveway pillars with electrical lights, the Cassatt Memorial and the Men’s Locker Room addition, *see discussion infra*.

53. The historical integrity of the resources has been provided for through the design of all proposed 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, plans, studies and documentary evidence provided by Maarten Pesch, Robert Lambert, Charles Neer and John Wichner satisfy these requirements.

54. The Applicant has shown 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, satisfying Code §155-153.B.6. The Historic Resource Impact Study, together with the testimony, plans, studies and documentary evidence provided by Maarten Pesch, Robert Lambert, Charles Neer and John Wichner satisfy these requirements.

55. The parking requirements for the proposed use have been exceeded according to the testimony of Robert Lambert and John Wichner, as well as the Traffic Impact Study, in compliance with Code §155-153.B.7. Lambert testified that the proposed project requires 69 parking spaces and 70 will be provided.

56. The Applicant has agreed to comply with signage ordinances and any conditions set by the Board of Commissioners regarding signage, per Code §155-153.B.8.

57. The rate and volume of stormwater managed on the property will dramatically exceed requirements and improve current conditions according to the testimony of Robert Lambert and the Stormwater Management Report, with reference to Code §155-153.B.100. *See*, Ex A-15.

58. The Applicant has complied with the general standards for conditional use approval contained in Code §155-141.2 (B)(2), *supra*. Some of these general standards overlap with specific standards found in Code §155-87.25 *et seq.* while compliance with all general

standards has been assured through reviews by Township Staff, the Township Engineer, the Historical Commission and the Lower Merion Planning Commission.

59. The Applicant has demonstrated granting the conditional use shall preserve the character of the neighborhood through the testimony and documentary exhibits in compliance with Code §155-141(B)(3). The proposed development is in keeping with pedestrian oriented design and respects the scale, proportion, character and materials of structures within a five-hundred-foot radius, see Code §155-87.25.A.2.

60. The proposed development shall be serviced by existing public service systems, pursuant to Code §155-141(B)(4). The peak traffic generated by the proposed development shall be accommodated in a safe and efficient manner according to John Wichner, the traffic engineer and the Traffic Impact Study he conducted, Ex. A-18.

61. 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), according to testimony of Maarten Pesch, Robert Lambert, Charles Neer, and John Wichner, *see* Revised Tentative Sketch Land Development Plan Set, Ex. A-4.

62. 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),

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

DISCUSSION

64. The Merion Cricket Club is a significant historic resource in Lower Merion Township and a notable site in the annals of American sports. Architecturally, it is a fine

example of Colonial Revival design by Frank Furness dating to 1895, which has been expanded over the years with architecturally sympathetic additions. The property has been the site of the Davis Cup tennis championship and the Pennsylvania Lawn Tennis Championships in the past. Originally intended as a site to host cricket matches, the club has introduced tennis, squash, badminton, golf and bowling over its 120-year history.

65. Today, the Club is increasingly losing members as competitors with expanded programs and lower overhead enter the local market. The Club's long term viability is threatened by continually falling membership levels impacting its revenue streams from its membership dues. The Applicant's proposed improvements are directly related to sustaining the Club and preserving the historic clubhouse in perpetuity. Consolidating additional parcels to create enough room to build a swimming pool complex and redesigning part of the campus will allow the Club to expand its programming and attract new members, shoring up the financial condition of the Club. To the extent they require relief from impervious surface limitations in the applicable zoning districts, the Applicant has presented a compelling case for relief greater than 50% to be granted.

66. There is a disagreement between the Applicant and Township staff about the extent of the guarantee required by Code §155-153.B.4. At issue is whether the Men's Locker Room addition, stone gateposts with electrical lights and Cassatt memorial are historic resources or contributing historic resources which should be included in the covenant. The Lower Merion Historic Resource Inventory listing differs from its National Historic Landmark designation for reasons that are unclear. The Township contends that the Inventory listing should be the guiding document from which the resources upon which the covenant is placed are defined.

67. The stone gate posts with electrical lights are historic resources according to the Applicant's Historic Resource Impact Study, Ex. A-2, at p.12-13. It lists the "site wall" under the heading "Historic Resource on the site" and describes:

the most important feature of the site aimed at the public has been the low stone wall of quarry-faced coursed ashlar schist with half round capstone that has surrounded the perimeter of the property since its opening in 1892. (...) The wall is broken on Montgomery Avenue by a large gateway of the same rough-cut stone schist (...) The gate and the wall attest to the permanence of the vision of the club.

Ex. A-2 at p. 12.

68. The Cassatt Memorial is part of the site wall. It was created in the early twentieth century as a monument to A. J. Cassatt, the Merion Cricket Club's longtime president, neighbor and Lower Merion Township Road supervisor. A bronze plaque in bas relief depicts Cassatt on horseback in his civic role surveying the township roads. Ex. A-2 at p. 12-13. The Cassatt Memorial is either a historic resource or a contributing resource since it is part of the site wall, *see supra*.

69. The "principal historic resource is the main clubhouse that faces the lawn with its rear façade and port-cochere facing Grays Lane," according to the Historic Resource Impact Study, Ex. A-2 at p. 14. The "locker room" is categorized as one "portion of the clubhouse" in the study, Ex. A-2 at p. 23. It was designed in 1928 by Baily & Bassett, together with the squash wing and dormitory and "nearly doubled the length of the complex," *supra* at 17. Baily & Bassett's work complemented the original Furness design through choice of material and design inflection toward the Colonial Revival, *see supra* at 17. It is recommended that the guarantee include the locker room as an integral part of historic resource or contributing resource even though it is not specifically called out in the Lower Merion Township Historic Resource Inventory. *See*, Ex. T-3 *c.f.* Ex. A-12. While ambiguities should be interpreted in favor of the

Applicant, they should also comport with the Applicant's Historic Resource Impact Study. *See* Ex. T-20.

70. Calculation of 50% of the building area of the historic resource, so that the degree of any reduction of the impervious surface limitation is clear, is a matter for the Township to determine in light of defined historic resources and contributing resources.

71. There has been commendable negotiation and collaboration between the Club, its design professionals, and neighbors over the proposed improvements. The Club has made significant changes to its initial plan to satisfy concerns of neighbors and in return earned the support of its neighbors for this project. No opposition to this conditional use application was presented at the conditional use hearing.

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

ORDER

AND NOW on this ____ day of January, 2018, the application of the Merion Cricket Club for conditional use approval 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 clubhouse, the squash addition, the men's locker room building and the cottage in a form satisfactory to the Township Solicitor.

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.

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