

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

Application CU# 3796

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

This conditional use application was filed by Commerce Pursuit Capital, LP seeking approval for two curb cut/driveways to facilitate shared parking, pursuant to Code §155-217.D.1.d. A Conditional Use Hearing was held on April 16, 2018 before the Conditional Use Hearing Officer.<sup>1</sup>

1. The Applicant is Commerce Pursuit Capital, LP by its representative James Ettelson, Esq. of Royer, Cooper, Cohen, Braunfeld, LLC.

2. The Applicant is the equitable owner of property that is the subject of this conditional use application, 9 Presidential Boulevard, Lower Merion Township (“Property”). See, Ex. A-1.

3. The Property is in the City Avenue District-Regional Center Area (“RCA”) as defined by the Zoning Code of Lower Merion Township (“Code”), Code §155-217. It is also within the City Avenue Transportation Services Area (“TSA”), Code §135-64.A.2.

4. The Property contains approximately 2.75 acres. It has been improved with a three-story, 26,584 gross square foot office building, originally constructed in the 1950s. It has surface parking lots along the property frontage and on one side of the building. There are two separate driveways with ingress and egress from Presidential Boulevard.

5. Lower Merion Township enacted the City Avenue District (“CAD”) in 2011. CAD’s purpose is for LMT and the City of Philadelphia to encourage development and

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

redevelopment of the City Avenue District that combines residential, institutional and commercial uses in close proximity thus decreasing auto dependency, encouraging pedestrian access, transit use, shared parking and accessways and mitigating the effects of congestion, vehicular traffic and pollution. The regulations promote pedestrian friendly development and protect the health, safety and general welfare of citizens, Code §155-216.A.

6. The CAD was amended in 2014 to create three separate zoning districts: the Regional Center Area (“RCA”); the Bala Cynwyd Retail District (“BCR”) and the Bala Village (“BV”). Code §155-216.B.

7. The RCA district permits higher density than the BCR and BV districts.

8. The RCA district is intended to encourage pedestrian access, transit use and shared parking. The regulations promote pedestrian friendly design, as stated in Code §155-217A, which is an integral part of the ordinance.

9. The RCA envisions higher density, pedestrian friendly redevelopment and permits complete or partial redevelopment of existing structures or infill of surface parking lots. Infill development which displaces surface parking lots may be replaced with structured parking. The RCA ordinance incentivizes high quality design in exchange for an increase in permitted density.

10. On November 3, 2017, the Applicant submitted a Land Development Plan (Tentative Sketch Plan) seeking to demolish the existing office building; build a four-story mixed-use building containing 7,009 square feet of commercial space, 173 residential units and two levels of underground parking containing 256 parking spaces pursuant to the RCA zoning district. It also seeks approval for creating two curb cuts and installing two access driveways onto Presidential Boulevard, as well as a multipurpose public path, public walkway, linear public gathering space and related site amenities.

11. On March 26, 2018 the Applicant submitted a Conditional Use Application concerning the proposed driveways. It seeks permission to deviate from the parking, loading and

traffic requirements of the RCA specified in Code §155-217.D.1.d., specifically only one driveway/curb cut on each street frontage per lot. As previously stated, the Applicant seeks two curb cuts and access driveways onto Presidential Boulevard.

12. The Board of Commissioners may authorize two curb cuts/driveways onto Presidential Boulevard to facilitate shared parking access on adjacent lots, by conditional use approval pursuant to Code §155-217.D.1.d., Township of Lower Merion Ordinance No. 4128 enacted January 17, 2018. (Ex. T-2.)

13. The Montgomery County Planning Commission reviewed the Tentative Sketch Plan and stated it “generally supports the applicant’s proposal” in a letter dated December 14, 2017. (Ex. T-3.)

14. The Lower Merion Township Engineer, Kevin J. Bowers, P.E., reviewed the Tentative Sketch Plan prepared by BL Companies, offered comments, and recommended approval in correspondence dated March 22, 2018. (Ex. T-3)

15. The Lower Merion Planning Commission reviewed the Tentative Sketch Land Development Plan and Conditional Use Application on April 2, 2018 and recommended approval subject to conditions. (Ex. T-5.) With regard to the conditional use application, the Planning Commission directed “the applicant shall demonstrate how the proposed second curb cut facilitates a shared parking arrangement,” Ex. T-5 at p. 1.

16. The Conditional Use Hearing Officer conducted a public hearing at the Lower Merion Township building on April 16, 2018.

17. Andrea Campisi, Senior Planner with the Lower Merion Township Building and Planning Department, offered five (5) exhibits into evidence that were admitted into the record:

- a. Proof of publication of the hearing notice (Ex T-1);
- b. Ordinance Amendment (Ex T-2);
- c. Lower Merion Township staff memo dated 3/29/18 (Ex T-3);
- d. Planning Comm. Recommendations for Conditional Use (Ex T-4);
- e. Planning Comm. Recommendations for Tentative Sketch Plan (Ex T-5);

18. The Applicant offered three (3) exhibits in support of their conditional use application which were subsequently admitted into the record:

- a. Letter from Brandywine Realty Trust (Exhibit A-1);
- b. Site Plan (Exhibit A-2);
- c. Shared Driveway Easement plan (Exhibit A-3);

19. James Ettelson, Esq., (Ettelson”) testified the Applicant is the equitable owner of the property. (Ex. A-1). He believes the Applicant’s land development plans meet the goals and objectives of the RCA district because they discourage automobile dependency, encourage pedestrian activity, includes shared parking and accessway with an adjacent lot, and mitigates the effects of congestion, vehicular traffic and pollution, among other things.

20. John Tallman, (“Tallman,”) Vice President of Acquisition and Approvals for Westrum Development Company with 29 years of experience in real estate development is responsible for the project at this stage. The Tentative Sketch Plan (Ex. A-2) depicts the proposed plan to demolish the existing 1950’s office building and construct a four-story mixed-use building containing approximately 7,000 square feet of commercial space and 173 apartments in the upper floors. Two levels of below grade parking containing 250-260 parking spaces will exceed code requirements for 209 parking spaces. There are two existing curb cuts and the two proposed curb cuts are in slightly different locations. One of the proposed curb cuts near the south-east side of the property will provide shared parking access with the adjacent property, 1 Presidential Boulevard, via a twenty-four (24) foot wide access easement depicted on Ex. A-3. The access easement and shared parking were arranged between the Applicant and Keystone Property Group, the owner of 1 Presidential Boulevard. The Applicant met with the Neighborhood Club of Bala Cynwyd, Commissioner George Manos, and Terrence Foley of the City Avenue Special Services District.

21. Danilo R. Salameda, PE (“Salameda”) is a principal at BL Companies, a multidisciplinary architecture, engineering, environmental and surveying firm. He has 30 years

of experience in civil engineering and land development. Salameda is the senior project manager whose duties include oversight, finance, client care and technical aspects of the development. The Tentative Sketch Plan and shared driveway easement exhibit (Ex. A-2 & A-3) were drawn by Jose Lazo, P.E., senior engineer employed by BL Companies and supervised by Salameda. He has reviewed the Lower Merion Township Code, particularly Section 217 of the Zoning Code, and believes the proposed plans for 9 Presidential Boulevard meet requirements for a second curb cut because they include shared parking access on adjacent lots. Allowing a second curb cut is not contrary to the public interest, Salameda testified. The site will provide more than adequate parking but will not create any adverse effect on public services. The proposed land development is higher density than current conditions, provides for multiple uses, has direct connections to the street, is safe and inviting to the public.

22. Sara P. Schuh, RLA (“Schuh”) is a registered landscape architect and principal of Salt Design Studio. She has practiced landscape architecture for twenty-three years, operated Salt Design Studio for thirteen years, and has previously been accepted as an expert witness by Lower Merion Township. Schuh is familiar with the site and the proposed land development plans. They will have no adverse effect on the public health, safety or welfare and are in accord with the Lower Merion Comprehensive Plan, according to Schuh. The proposed development plans meet the goals and objectives of the RCA district by creating transitions in bulk and scale between higher density development and residential areas. It promotes creation and maintenance of landscape open areas among buildings for public gathering space. It also protects the character and quality of existing neighboring areas. In Schuh’s expert opinion, the requirements for conditional use approval for two curb cuts and driveways have been met.

23. Peter Spisszak, (“Spisszak,”) senior project manager employed by Traffic Planning and Design with eighteen years of experience in traffic, parking and transportation planning and engineering testified for the Applicant. He is familiar with Lower Merion’s Zoning

Code and Comprehensive Plan. Spisszak believes the Tentative Sketch Plan, if approved, will promote the safe flow of vehicular traffic and meet all other Code requirements. The Property is in the TSA, therefore the Applicant will pay a traffic impact fee toward road improvements necessary to accommodate development. The Applicant is not required to conduct a traffic study at the Tentative Sketch Plan stage and Spisszak has not yet conducted a traffic study, but he testified he “has the scope nailed down.” Spisszak also testified that the proposed land development is not expected to generate traffic resulting in nearby intersections having a level of service lower than “D” or create unsafe traffic conditions. Moreover, the shared parking arrangement with One Presidential Boulevard realizes one specific purpose of the RCA to reduce on-street congestion and facilitate vehicular and pedestrian circulation.

#### APPLICABLE CODE PROVISIONS

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

25. The RCA zoning is designed to complement the new zoning on the Philadelphia side of City Avenue, Code § 155-217.

26. The general goals and objectives of the RCA are to encourage higher density, multiple purpose, pedestrian oriented development and more economically productive use of land parcels in the vicinity of City Avenue, Code § 155-217.A.1.

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

- a. Enable the development of a mix of commercial, institutional and residential uses;

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

28. The placement and number of curb cuts and driveways in the RCA are governed by Code § 155-217.D.1.d:

Parking, Loading and Traffic Requirements

- 1. On-site parking
  - (...)
  - d. Only one curb cut/driveway is permitted on each street frontage of each lot. However, the Board of Commissioners may, by conditional use, approve a second curb cut/driveway in order to facilitate shared parking access on adjacent lots.

29. The Applicant for a conditional use must also comply with the 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 affect the same.
5. The applicant shall establish by credible evidence that the proposed use or other subject of consideration for approval is properly designed with regard to internal circulation, parking, buffering and all other elements of proper land planning.
6. The applicant shall provide sufficient plans studies or other data to demonstrate compliance with the regulations for the permitted use or such regulations as may be the subject of consideration for a conditional use approval.
7. The Board of Commissioners shall impose such conditions as are advisable to ensure compliance with the purpose and intent of this chapter which may include without limitation planting and buffers, harmonious design of buildings, protection of watercourses, environmental amenities, and the elimination of noxious, offensive or hazardous elements.

C. Standards of proof.

1. An applicant for a conditional use shall have the burden of establishing both:
  - a. That his application for a conditional use falls within the provision of this chapter which accords to the applicant the right to seek a conditional use;
  - and



- b. That allowance of the conditional use will not be contrary to the public interest.
- 2. In determining whether the allowance of a conditional use is contrary to the public interest, the Board shall consider whether the application, if granted, will:
  - a. Adversely affect the public health safety and welfare due to changes in traffic conditions, drainage, air quality, noise levels, natural features of the land, neighborhood property values and neighborhood aesthetic characteristics.
  - (...)
  - e. Otherwise adversely affect the public health, safety, morals or welfare.
- 3. In all cases the applicant's burden of proof shall include the burden of persuading the Board by credible evidence that the applicant has satisfied the criteria set forth in Subsection C(1)(a) of this subsection. In any case where the Board requests that the applicant produce evidence relating to the criteria set forth in Subsection C(2) of this subsection or where any other party opposing the application shall claim that an allowance of the application will have any of the effects listed in Subsection C(2) of this subsection, the applicant's burden of proof shall include the burden of persuading the Board by credible evidence that the allowance of a conditional use will not be contrary to the public interest with respect to the criteria so placed in issue.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

##### *A. Legal Authority For Use*

30. The Board of Commissioners of Lower Merion Township enacted Ordinances No. 3971 and No. 4030 which established the RCA.

31. The RCA has been codified through Code §155-216.A. and 155-217.

32. Conditional use standards are set forth in Code §155-141.2 (general requirements).

##### *B. Compliance With Requirements of Code Section 155-217.D.1.d*

33. The Applicant seeks conditional use approval to install two curb cuts and driveways on along the Property's frontage, per Code §155-217.D.1.d.

34. The Applicant has established that two curb cuts currently exist on the Property and, after land development, a second curb cut/driveway will facilitate shared parking access an adjacent lot, One Presidential Boulevard, through the testimony of Ettelson, Tallman, Salameda,

and Spisszak, as well as renderings of the Tentative Sketch Plan (Ex A-2) and shared driveway easement (Ex A-3).

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

35. The Applicant has adequately demonstrated that the proposed land development complies with community development objectives found in Article I and legislative intent of the City Avenue District, Regional Center Area, satisfying the requirements of Code §155-141.2 (B)(1), through the testimony of Ettelson, Tallman, Salameda, Schuh and Spisszak, as well as the Tentative Sketch Plan (Ex A-2) and shared driveway easement exhibit (Ex. A-3).

36. The Applicant has complied with the general standards for conditional use approval found in Code §155-141.2 (B)(2), as well as Code §155-217.D.1.d., *see supra*.

37. The Applicant has demonstrated that granting the conditional use shall preserve the character of the neighborhood in compliance with Code §155-141(B)(3), through the testimony of Tallman, Salameda, Schuh and Spisszak, as well as the Tentative Sketch Plan (Ex A-2) and shared driveway easement exhibit (Ex. A-3).

38. The proposed use shall be serviced by existing public service systems and peak traffic generated by the subject of approval shall be accommodated in a safe and efficient manner in compliance with Code §155-141(B)(4), according to the expert testimony of Spisszak. Moreover, the Applicant will submit a traffic study at the Preliminary Plan stage and, based on the traffic counts, the required traffic impact fee will be determined.

39. The proposed use 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), testimony of Tallman, Spisszak, and Schuh, as well as Tentative Sketch Plan (Ex. A-2) and shared driveway easement exhibit (Ex. A-3).

40. Sufficient plans, studies and other data showing compliance with the regulations for the permitted use at the Tentative Sketch stage have been submitted to Township Staff, the

Lower Merion Planning Commission, Lower Merion Township Engineer, Montgomery County Planning Commission and the Hearing Officer pursuant to Code §155-141(B)(6).

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

### DISCUSSION

42. The RCA is currently developed with low, mid and high-rise office buildings surrounded by surface parking lots which are typical of car-oriented planning dating to the mid-20<sup>th</sup> century. Lower Merion Township specifically sought to alleviate auto dependency when it enacted the CAD and RCA to encourage pedestrian oriented development. The general goals and objectives of the RCA ordinance are to encourage higher density, multiple use, pedestrian oriented development and more economically productive use of the land parcels in the vicinity of City Avenue, Code §155-217A. The RCA ordinance incentivizes high quality design in exchange for an increase in permitted density. It seeks to benefit the public health, safety and welfare by encouraging amenities such as adequate open space and public gathering space, efficient roadways, safe bicycle and pedestrian connections and transit facilities.

43. The Applicant's proposal to replace an existing office building with a larger mixed-use building is clearly intended to satisfy the objectives of the RCA. It calls for new public amenities such as public gathering spaces, a multipurpose path along the entire frontage on Presidential Boulevard, pedestrian and bicycle connections, and a dog park in exchange for higher density. It is also designed with excess parking spaces, shared parking with One Presidential Boulevard and a shared driveway to reduce on-street congestion and facilitate vehicular and pedestrian circulation. Any additional afternoon peak hour trips generated by the development will require the Applicant to pay a traffic impact fee to accommodate road improvements. The Applicant provided testimony and documentary evidence at the conditional

use hearing about shared parking with the adjoining lot, satisfying the directive of the Planning Commission and code requirements for conditional use approval of a second curb cut. The proposed amenities inure to the benefit of the public and roadway improvements will mitigate any increased traffic, as intended by Code. Conditional use approval for a second curb cut is reasonable to accomplish these objectives and the Applicant has met its burden of proof.

42. For the foregoing reasons, the following order is recommended to the Board of Commissioners:

ORDER

AND NOW on this \_\_\_\_ day of May, 2018, the application of Commerce Pursuit Capital, LP seeking approval for two curb cut/driveways to facilitate shared parking, pursuant to Code §155-217.D.1.d. of the Zoning Code of the Township of Lower Merion is granted.

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