

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

CU Application #3634C

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

This is a conditional use application filed by 1400 Mill Creek Associates, LP seeking permission to convert a Class I historic resource in a residential zoning district presently being put to a non-conforming residential use to a multi-family use and construct a new multifamily building. The Board of Commissioners previously granted conditional use approval for a similar adaptive re-use of the historic resource on December 16, 2009. That approval expired when a building permit to construct the project was not issued within one year from the date approval was granted. Prior thereto, the Board of Commissioners previously granted conditional use approval for a similar adaptive re-use of the historic resource on September 20, 2006. The original approval expired pursuant to 155-153(A)(6) of the Lower Merion Zoning Code when a building permit to construct the project was not issued within one year from the date approval was granted. A Conditional Use Hearing was held on April 12, 2018 before the Conditional Use Hearing Officer.¹

1. The Applicant is 1400 Mill Creek Associates, LP (“Applicant”).
2. The Applicant’s attorney is Steven T. Hanford, Esq. (“Hanford”).
3. The Applicant is the equitable owner of property known as 1400 Mill Creek (Property,) a single tract of ground approximately 2.6 acres in size on Mill Creek Road in Gladwyne.

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

4. The Property is located in Ward 2 and is subject to the R-AA District Code §155-11 *et seq.* It is also subject to the Historic Resource Overlay District (“HROD”) §155-149 *et seq.*

5. The Property is bound on three sides by Rolling Hill Park, owned and maintained by the Township of Lower Merion, and by Mill Creek on the fourth side.

6. The Property is accessed by a bridge spanning Mill Creek and connecting to Mill Creek Road.

7. The Property is currently improved with three buildings, two of which are linked together by an elevated crosswalk and a former worker’s cottage. The largest and most important structures are two linked buildings referred to as the “Old Mill,” a former grist and munitions mill dating back to the mid-1800s.

8. Both buildings used in conjunction with mill operations are Class I Historic Resources listed on the Township’s Historic Resource Inventory. The former worker’s cottage is not a contributing resource.

9. The Applicant proposes to renovate the two mill structures and convert them to multifamily use. In addition, a new building will be constructed to the rear of the Property as viewed from Mill Creek Road. In total 33 condominium units will be created with 72 parking spaces where the code requires only 66 parking spaces. Sixty-nine parking spaces will be constructed beneath the existing and proposed buildings and three surface parking spaces will be provided. Additionally, the Applicant seeks to increase the building area of the site by up to 15%.

10. In the renovation process, the two main mill buildings along the creek will be restored, preserving their industrial visual character. Architectural features will be replaced working from historic images of the buildings.

11. This conditional use application concerns the Applicant's request to reconfirm previous conditional use approvals for an identical land development project. The previous conditional use approvals were granted pursuant to Code §155-153 in 2005 and 2009 (See Ex. T-4). Following both approvals, the Applicant did not record the final land development plan within the required period of time, therefore the approvals expired and must be reconfirmed.

12. Andrea Campisi ("Campisi,") Senior Planner with the Lower Merion Township Building and Planning Department, offered six (6) 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 dated 12/4/09 (Exhibit T-2);
- c. Conditions of Approval dated 12/17/09 (Exhibit T-3);
- d. Prior Conditional Use Approval dated 12/16/09 (Exhibit T-4);
- e. Letter from Gladwyne Civic Association dated 4/9/18 (Exhibit A-5);
- f. Illustrative Site Plan dated 2/18/05, last revised 12/18/2017 by Michael J. Bowker, P.E. of Momenee, Inc. with changes in red ink. (Exhibit T-6).

13. The Applicant requested the entire files maintained by Lower Merion Township regarding conditional use approvals granted in 2005 and 2009 be incorporated by reference, and then offered two (2) documents in support of its current conditional use application:

- a. Conditional Use Approval dated 12/17/09 (Exhibit A-1);
- b. Existing Conditions Site Plan dated 2/18/05 last updated 12/18/17 by Michael J. Bowker, P.E. of Momenee, Inc. (Ex. A-2).

14. Attorney Hanford testified the Applicant intends to convert the two Historic Resources into thirteen (13) residential condominium units and construct a new residential building with twenty (20) units. The thirty-three (33) condominium units will contain at least

1,250 square feet of interior space to comply with Code. There will be 72 parking spaces. The Applicant wants to “go back to the approval as issued in 2009 and reset the clock on condition 53.” Condition 53 states:

The Final Plan, complying with all applicable requirements, shall be filed with the Department of Building and Planning within twelve (12) months from the date of Preliminary Plan approval.

(See, Ex. T-4.) Hanford explained that the downturn in the real estate market prevented the Applicant from filing the Final Plan within one year. Market conditions have improved, and the Applicant is ready to move forward with this project.

15. Michael J. Bowker, P.E., (“Bowker”) a civil engineer licensed in the Commonwealth of Pennsylvania and employed by Momenee, Inc. since 1996, testified for the Applicant. He explained that all changes shown in red ink on the Illustrative Site Plan (Ex. T-6) were intended to comply with the Township’s conditions of approval issued in 2009 (Ex. T-4). For example, aerial lines and painted lines on pavement are shown; the driveway was widened; adjustments to the retaining wall and location of the transformer are shown; minor revisions to walkway and grading and remnants of an old wall are depicted on Ex. T-4.

16. Bowker further testified that 66 parking spaces are required, but 72 parking spaces are shown on Ex. A-2. Grade level parking is shown on sheet 6 of Ex. A-2, and underground parking is shown on sheet 7 of Ex. A-2.

17. Several residents attended the conditional use hearing and had questions for Bowker. Emily Klebanoff, (“Klebanoff”) a resident of Gladwyne, asked what will happen to the caretaker’s cottage on the property. Bowker responded that the one-story residence was previously approved for demolition and is not a historic resource. Klebanoff asked whether parking will be handicapped accessible and Bowker responded that lower level parking in both buildings will be handicapped accessible. She asked how fire trucks will access the property.

Bowker answered fire trucks will cross the bridge and drive up the property to the corner of the building.

18. Another resident, Jerry Fox of Gladwyne, asked whether there will be stacked parking on site. There will not be stacked parking, said Bowker. Fox also asked about flood control on the property since it is next to Mill Creek. Bowker answered that the property is located outside the 100-year floodplain.

19. Miles Ladenheim (“Ladenheim,”) a resident of Wynnewood, stated he walks in Rolling Hill Park on a daily basis and he is concerned about access to public trails. Bowker testified that all public trails will remain open and accessible to the public, and a new trail connection will be installed.

20. Gabrielle, a resident of Narberth, asked whether the bridge over Mill Creek has a historic designation. Bowker responded no, it is a makeshift industrial bridge without a historic designation.

21. Wade Barrett, a resident of Lower Merion and frequent park visitor asked how the Applicant will provide both security for residents of the proposed units and public access for park users at the same time. He thinks it will be impossible to allow the public to use the trails. Bowker testified that public use of the trails will not be affected.

22. Kevin Kyle, consultant to the Applicant, answered questions about the current real estate market for the proposed condominiums. He said the condos are intended for high-end residential use. Thirty-three units will have two bedrooms and might be purchased by current homeowners looking to downsize. Kyle stated that the Applicant has conducted feasibility studies and is confident there is a market for these condos.

23. Victor Barr, the principal of VLBJR+, is a registered architect in Pennsylvania. He prepared the plans for the new building with twenty (20) units. He explained it will be two

(2) stories high and built into the side of a hill. The rear wall will be blank at the first floor and, therefore, have no views into Rolling Hill Park but the second floor will have windows and views into the park. Barr stated that the view, as one walks down the trail in Rolling Hill Park, will be partially blocked by the new building. Views of the two mill buildings from the right of way will remain the same. The two Historic Resources will contain four (4) units and nine (9) units.

24. In conclusion, Hanford urged approval of the conditional use application, as in 2005 and 2009. He stated the “intended use is the same, the number of units and parking spaces is the same, the treatment of both historic structures is the same.” Moreover, the Applicant has complied with all conditions of approval in the 2009 conditional use decision, except 53.

APPLICABLE CODE REQUIREMENTS

25. 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 educations 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.

26. 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.

27. “Historic resource” is defined as “all historic buildings, sites, objects and historic districts which are designated on the Historic Resource Inventory,” Code §155-149.1.

28. Properties subject to the Historic Resource Overlay District may be entitled to two specific benefits: additional uses pursuant to Code § 155-151; some relief from bulk, area and setback requirements as provided in Code § 155-152.

29. The Applicant requests relief under Code § 155-151, for use of the Property. The pertinent subsection (B)(1)(f)(2) states:

Code § 155-151. Permitted Uses

The following uses and no other shall be permitted in the Historic Resource Overlay District:

(...)

B. Uses permitted on properties designated as a Class I Historic Resource:

(1) Provided that the guarantee referenced in § 155-153(B)(4) has first been submitted and approved, a property on which a Class I Historic Resource is situated, excluding buildings and structures which do not contribute to the Historic Resource, which property obtains access from any street, may, in addition to the uses permitted in Subsection A above, be used for any of the following uses, subject to obtaining a recommendation from either the Board of Historical Architecture Review or the Historical Commission, pursuant to Chapter 88 and obtaining conditional use approval from the Board of Commissioners:

(...)

(f) A Class I building in a residential zoning district presently being put to a nonconforming, nonresidential use may be converted to a multifamily use, provided each dwelling unit shall have no fewer than 1,250 square feet of occupied area.

(...)

(2) The area within the perimeter of the building measured at grade level may be expanded by up to 50% in conjunction with a conversion to a multifamily use, provided there exists between multifamily use and the nearest adjacent use at least 500 feet.

30. Specific requirements for conditional use approval are set forth in Code §155-153:

A. Application procedures for conditional use approval

(...)

(2) An applicant seeking conditional use approval under the provisions of this article shall submit the appropriate application to the Director of Building and Planning in accordance with the provisions of § 155-141.2. The information to be provided shall include the following:

- (a) Name and address of the record owner and applicant (if different).
- (b) Site plan showing all buildings and structures on the property.
- (c) Recent photographs of the historic resource.
- (d) A detailed narrative description of the proposed use(s).
- (e) Any physical changes proposed for the affected historic resource(s) and their surrounding landscape.
- (f) Any proposed modifications to otherwise applicable area, bulk and parking regulations.

(3) The application shall be accompanied by an historic resource impact study where any land development or subdivision is proposed on:

- (a) Any property that contains any Class I or Class II Historic Resource(s).

B. Criteria for the grant of conditional use approval. Where a use is permitted in an Historic Resource Overlay District by conditional use, that use shall not be granted unless the following requirements have been satisfied in addition to those set forth at § 155-141.2:

(1) The applicant shall have the burden of demonstrating that approval of the application will not jeopardize the preservation of the Historic Resource(s) contained on the property subject to application. To sustain this burden the applicant shall present evidence demonstrating the following:

- (a) The exact location of the area in which the work is to be done.
- (b) The exterior changes to be made or the exterior character of the structure to be erected.
- (c) A list of the surrounding structures with their general exterior characteristics.
- (d) The effect of the proposed change upon the general historic and architectural nature of the property.
- (e) The appropriateness of exterior architectural features of structures involved with the proposed work.
- (f) The general design, arrangement, texture, material, scale, mass and color of any affected building, structure or site and the relation of such factors to similar features of other structures on the property.
- (g) That rehabilitation work will not destroy the distinguishing qualities or character of the historic resource and its environment.
- (h) In the event that replacement of contributing architectural features is necessary, the new material should, as closely as

possible, match the material being replaced in kind. At a minimum, the composition, design, color, texture and other aesthetic qualities shall be sympathetic to and in character with the historic resource. In instances where original materials are either unavailable or their use economically infeasible, the Board may approve the use of materials which are aesthetically consistent with, even if not completely duplicative of, the character of the historic resource.

(i) Distinctive stylistic features or examples of skilled craftsmanship shall be preserved.

(j) Changes which may have taken place in the course of time are evidence of the history and development of the building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

(k) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

(2) The most current version of the Secretary of the Interior's Standards for Rehabilitation of Historic Structures, as amended, shall be used as a guideline in carrying out any plans involving the rehabilitation, alteration or enlargement of historic resource(s).

(3) Where plans involving the rehabilitation, alteration or enlargement of historic resource(s) will result in all or portions of any such resource(s) remaining unoccupied, such unoccupied resources shall be securely sealed and barred off and the utilities turned off for safety, in a manner not jeopardizing historical integrity, as per the most current construction techniques for historic structures.

(4) A means to guarantee the permanent protection of the historical integrity of the subject resource(s), such as the establishment of conservation easement(s) or appropriate covenants in a form acceptable to the Township Solicitor, shall be provided.

(5) The applicant shall have the burden of proving that the historical integrity of the resource has been provided for through the design of the building improvements as well as through implementation of buffering, landscaping, lighting, storage, access and traffic management, interior circulation, loading, parking, fencing, signage and all other land development features.

(6) The applicant shall have the burden of proving that the grant of the application will not be destructive of the integrity of the historic resource or detrimentally affect the value of surrounding properties.

(7) The applicant must comply with the parking requirements for the proposed use as set forth in this article. The Board of Commissioners may prohibit any additional parking between the right-of-way and the façade of the building if the Board finds such parking would negatively impact the historical integrity of the resource.

(8) The applicant must comply with the requirements of this chapter with respect to signage. The Board of Commissioners may condition approval on a reduction in the size of the signage if it finds that the permitted signage will obstruct views required to assure the safety of the public or to retain the historic nature of the property.

(9) The Board of Commissioners may attach conditions to achieve the objectives set forth in this section and to promote the public health, safety and welfare, which conditions may relate to any aspect of the proposed use of the property, including but not limited to buffering, parking, signage, traffic volume and flow, hours of operation, noise and odor emission.

(10) Where the Board of Commissioners waives any requirement which thereby increases the rate or volume of stormwater generated on the property, the additional rate and/or volume of runoff caused by such waiver shall be controlled for the one-hundred-year storm.

31. 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

32. The Applicant seeks to convert Class I Historic Resources being used in a nonconforming, nonresidential way to multifamily use with condominium units having no fewer than 1,250 square feet of occupied area, pursuant to Code §155-151(B)(1)(f).

33. The Applicant has shown that the Board of Commissioners previously granted conditional use approval for this project, pursuant to Code §155-151(B)(1)(f), in 2009 and 2006. At the recent conditional use hearing, the Applicant provided credible evidence from an engineer, architect and consultant that the proposed conversion complies with applicable Codes and all previous conditions of approval set in 2009, except one. (*See supra*, para.14)

34. The Applicant seeks to expand the area within the perimeter of the building measured at grade level by up to 50% in conjunction with a conversion to a multifamily use, provided there exists between multifamily use and the nearest adjacent use at least 500 feet.

35. The Applicant has established, through testimony of engineer Michael Bowker and site plans, that more than 500 feet exists between multifamily use and the nearest adjacent use. (see, Ex. A-2). It has also shown that the Board of Commissioners previously granted conditional use approval for this conversion, pursuant to Code §155-151(B)(1)(f)(2), in 2009 and 2006.

36. The Applicant has met the requirements of Code §155-153, as evidenced by two prior approvals for the same project. The Township's files for the 2009 and 2006 conditional use approvals are incorporated by reference and made part of this application.

37. The Applicant has adequately demonstrated that approval of the conditional use is consistent with and promotes the relevant purposes of the HROD District contained in Code Section 155-149 *et seq.* The Applicant has worked with the Historical Commission and Township Staff, to create plans which meet HROD District requirements. The Gladwyne Civic Association submitted a letter expressing qualified support for the project, stating in pertinent part "Although we did not have a formal vote, the majority of the people in attendance would like to see this project move forward as the Barker's Mill site is an eyesore and has been in a

constant state of deterioration over the years.” (Ex. T-5). Moreover, granting the conditional use will not adversely affect the public health, safety and welfare.

38. The Applicant has complied with the general standards for conditional use approval contained in Code §155-141.2 (B)(2), *supra*.

39. 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 will encourage the conservation of historic settings and landscapes. It will also promote the retention of historical integrity in the context of proposed land use and/or structural changes, see Code §155-149.

40. 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 the testimony of engineer Michael Bowker (Ex. A-2).

41. 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 the testimony of engineer Michael Bowker and site plan (Ex. A-2).

42. 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). The entire contents of Township files related to conditional use approvals in 2009 and 2006 were incorporated by reference upon motion of the Applicant’s attorney.

43. 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

44. The proposed land development plan for 1400 Mill Creek Road is an opportunity to convert the historic mill buildings into residential condominiums and permanently preserve the structures as envisioned by the Historic Resources Overlay District. The Applicant has met its burden of proof regarding application procedures and lack of negative impact on the public health, safety and welfare. The Gladwyne Civic Association currently supports the project and past concerns about the sanitary sewer line have been satisfied. Members of the public who expressed concern at the conditional use hearing about access to public walking trails adjacent to the property were assured that all public trails will remain open and accessible to them. More than adequate parking will be provided at the property as shown on engineering site plans, alleviating reasonable concerns of the public. The fact that the Board of Commissioners has twice granted approval for the same project is strong evidence that the proposed conversion will promote the general welfare by protecting the integrity of the historic resources of Lower Merion Township.

45. For the reasons set forth above, it is recommended that the Board of Commissioners reconfirm the previous grants of conditional use approval for this project. The following Order is recommended to the Board of Commissioners.

ORDER

AND NOW on this ____ day of May, 2018, the application of 1400 Mill Creek Associates, LP for conditional use approval is granted.

This grant of Conditional Use approval is based on the documents and plans submitted in support of the current conditional use application, as well as the 2009 and 2006 conditional use applications, all of which are specifically incorporated herein by reference thereto.

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