

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

Application CU 3751

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

This is a conditional use application filed by David Hoffman seeking approval to subdivide property at 1010 Spring Mill Road to the requirements of the underlying RA zoning provisions, rather than the Open Space Preservation District (“OSPD”) provisions, pursuant to Lower Merion Township Zoning Code § 155-144. A Conditional Use Hearing was held on May 29, 2018 before the Conditional Use Hearing Officer.¹

I. FINDINGS OF FACT

1. The Applicant is David Hoffman (“Applicant”) residing at 1022 N. Spring Mill Road, also known as 1300 Mt. Pleasant Road, Villanova.

2. The Applicant is represented by George Broseman, Esq. (“Broseman,”) a member of Kaplin Stewart.

3. The Applicant is the title owner of properties known as 1010 Spring Mill Road, Lower Merion Township, Montgomery County, Pennsylvania.

4. 1010 Spring Mill Road contains 12.8 acres and is in the RA Residential Zoning District and the overlay Open Space Preservation Zoning District (“OSPD”). It has been improved with a Manor House, detached garage, Carriage House, spring house, Caretaker’s House/Coachman’s Inn, swimming pool, and a partially lined creek bed and pond. Most improvements are in the southern half of the Property. The Property is bound

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

on the west side by a private extension of Morris Avenue providing access to residential properties to the north; by Spring Mill Road to the south; by a driveway to the east that leads north to provide access to adjacent residential properties; and single family detached residences to the north. The Property is lightly wooded with mature trees around the perimeter and contains woodlands in the northern portion. A tributary of the Arrowmink Creek runs through the Property and collects in three small brooks. An area of wetlands is located in the north central portion of the Property. ²

5. The Manor House, known as “Meadowbrook” was constructed in approximately 1913. The Caretaker’s House, said to have been constructed in 1776, was originally a farmhouse on the Green Bush Farm. The Coachman’s Inn housed coachmen for nearby Red Rose Farm (1300 Mount Pleasant Road) and became part of the Meadowbrook estate around 1900. ³

6. On January 18, 2018, the Applicant filed a conditional use application (“Application”) pursuant to Lower Merion Township Zoning Code § 155-141.2.A. seeking approval to develop the Property to the requirements of the underlying RA zoning provisions, rather than the Open Space Preservation District (“OSPD”) provisions pursuant to Zoning Code §155-144. The Applicant also seeks to subdivide the Property into four (4) lots.

Prior Land Development Approval

7. The Applicant sought land development and subdivision approvals for several adjoining properties in October 2015. The Board of Commissioners granted

² Detailed information about the property and historical development is found in the memo by Christopher Leswing to the Planning Commission dated May 4, 2018, attached hereto at Tab A.

³ Id.

Tentative Sketch approval for the subdivision of 1010 Spring Mill Road into six (6) lots. The Manor House was on Lot 5, and the existing Carriage House and garage were on Lot 6. Lots 1-4 were newly created lots for the possible construction of new single-family dwellings. A preservation area of 7.7 acres was also proposed. (Ex. A-3). At the same time, Tentative Sketch approval to subdivide 1401 Morris Avenue into two (2) lots was granted.

8. After receiving Tentative Sketch approvals for subdivision and development, the Applicant donated a conservation easement totaling 43 acres spanning eight separate properties to the Lower Merion Conservancy. The conservation easement covers portions of 1010 Spring Mill Road, 1401 Morris Avenue, 1300 Mount Pleasant Road and other adjacent properties. The Applicant subsequently amended his land development application to create only four (4) lots rather than six (6) lots. The approved Tentative Sketch Plan demonstrates the development potential of the properties for the purposes of the conservation easement. (*See*, Ex. T-2, Memo of Christopher Leswing to the Planning Commission.)

9. On September 25, 2017 the Historical Commission reviewed the subdivision plan for 1010 Spring Mill Road and recommended approval, with a few exceptions to proposed renovations to the Caretaker's Cottage. (*See*, Leswing Memo at Tab A, p. 2-3.)

10. In November 2017, the Planning Commission reviewed a Preliminary Open Space Preservation Plan for the subdivision of 1010 Spring Mill Road. It recommended that the Applicant pursue conditional use approval to subdivide the property to the requirements of the underlying RA district rather than the OSPD district, given the

conservation easement and unique circumstances, such as fewer subdivided lots being preferable to the Applicant. The same recommendation from the Planning Commission applies to 1401 Morris Avenue.

Conditional Use Application and Hearing

11. As previously stated, in January 2018, the Applicant filed a conditional use application (“Application”) pursuant to Lower Merion Township Zoning Code §155-141.2.A. seeking approval to develop the Property to the requirements of the underlying RA zoning provisions, rather than the Open Space Preservation District (“OSPD”) provisions pursuant to Zoning Code §155-144. The Applicant also seeks to subdivide the Property into four (4) lots.

12. The Lower Merion Township Engineer, Kevin J. Bowers, reviewed the Preliminary Plan and Lot Line Change Plan on April 27, 2018. He recommended approval subject to conditions (Ex. T-2).

13. The Montgomery County Planning Commission reviewed the subdivision plan for compliance with the Pennsylvania Municipalities Planning Code and recommended approval on April 30, 2018 (Ex. T-2).

14. The Lower Merion Planning Commission reviewed the conditional use applications for 1010 Spring Mill Road 1401 Morris Avenue and on May 8, 2018 and recommended approval subject to conditions, (Ex. T-3).

15. On May 29, 2018, a Conditional Use hearing was held.

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

- a. Kevin R. Momenee, PE, PLS, Vice President of Momenee, Inc.;

b. George Broseman, Esq.

17. The Applicant offered documentary exhibits, marked A-1 to A-8, for identification, all of which were subsequently admitted into the record:

- A-1 C.V. of Kevin R. Momenee, PE, PLS;
- A-2 Plan Set for 1010 Spring Mill Road dated 4/20/15 last revised 12/5/17 prepared by Momenee Inc.;
- A-3 Tentative Sketch Approval Letter dated August 11, 2015 from Christopher Leswing, Assistant Director of the Lower Merion Township Building and Planning Department to George Broseman;
- A-4 Grant of Conservation Easement and Declaration of Covenants between David F. Hoffman and the Lower Merion Conservancy recorded 1/6/2017;
- A-5 Amendment of Conservation Easement recorded 5/23/2017;
- A-6 Conservation Plan for Hoffman Properties prepared by Momenee Engineering dated 12/20/2016;
- A-7 Preliminary Plan set for 1010 Spring Mill Road dated 4/20/15
- A-8 Comparison of Approved OSPD plans and Pending Conventional Plans in terms of number of lots, new building lots and open space.

18. Andrea Campisi, Senior Planner of the Lower Merion Township Building & Planning Department was present at the hearing. Campisi offered three documents marked T-1 to T-3 and they were admitted into evidence:

- T-1 Legal Advertisement of Conditional Use Hearing;
- T-2 Memos from Christopher Leswing, Director, Department of Building and Planning to the Planning Commission dated May 4, 2018 attaching Montgomery County Planning Commission's review and Township Engineer's review;
- T-3 Recommended Conditions of Approval from the Planning Commission

19. There was an opportunity to cross examine the Applicant's witnesses, present additional witnesses and submit documents into evidence at the hearing. No one attended the hearing to ask questions or comment on the Application.

20. The hearing subsequently was closed with no further evidence or testimony and all documents were moved into evidence without objection.

21. The Applicant proposes to subdivide 1010 Spring Mill Road into four (4)

lots pursuant to the requirements of the underlying residential zoning district (RA) rather than the OSPD pursuant to Zoning Code 155-144. A parallel conditional use application is pending for a lot line change plan to transfer four (4) acres from 1401 Morris Avenue to 1300 Mt. Pleasant Road pursuant to the OSPD (CU #3806).

22. The Applicant's Conditional Use Plan set prepared by Momenee Inc. dated April 20, 2015, last revised December 5, 2017, ("Plans") have received numerous reviews from Township Staff, the Township Engineer, the Historical Commission, the Planning Commission and the Montgomery County Planning Commission.

23. Kevin R. Momenee, PE, PLS is the Vice President of Momenee, Inc. ("Momenee"). He has a Bachelor of Science in Civil Engineering and a Master of Civil Engineer and Water Resources Engineering. Momenee has worked as a professional engineer for more than 45 years and has previously testified as an expert witness on zoning and land development matters in Lower Merion Township. He was accepted as an expert in civil engineering, subdivision and site development at the Conditional Use hearing. See Exhibit A-1.

24. Momenee is the primary engineering professional for the Proposed Subdivision of 1010 Spring Mill Road into four (4) lots. He testified that the Proposed Subdivision complies with the conditional use criteria in the OSPD and the underlying RA zoning district. Additionally, Momenee testified the Proposed Subdivision meets the required goals and objectives of OSPD and the Township Code.

25. Momenee testified that 1010 Spring Mill Road contains 12.6 acres and has a net lot area of 549,684 square feet. This site is located within the OSPD overlay district and the underlying RA zoning district.

26. Subdividing 1010 Spring Mill Road into four (4) lots will result in:

- Lot 1 retaining the existing Carriage House and garage and vehicular access via a proposed driveway extending from existing common driveway located on 1024 Spring Mill Road;
- Lot 2 retaining the existing single-family dwelling (Manor House) and current North Spring Mill Road access;
- Lot 3 will contain seven (7) acres of conserved land;
- Lot 4 will contain one (1) acre of conserved land and will retain the existing single-family dwelling (Caretaker's House/Coachman's Inn) and construction of a driveway extending from the existing common driveway, which is an extension of Morris Avenue, and a private right of way that serves three other properties. A 368-sq. f. addition to the existing dwelling is also shown.

See, Plans, Ex, A-2 and A-7; see also Leswing Memo dated May 4, 2018, Ex. T-2.

27. Momenee testified that conventional development will preserve natural and scenic features, historic sites and historic resources to a greater degree than development under the OSPD would permit. Moreover, conventional development will result in four (4) lots, rather than the six (6) lots previously approved under OSPD and no new residences. More specifically, 8.1 acres or 64% of the total land area of the property will be preserved under conventional RA zoning, with open space consolidated at the center of the property. A minimum of 7.7 acres or 50% is required under OSPD zoning.

28. He further testified the Applicant has achieved the open space preservation goals set forth in §155-142 by deed restriction, conveyance of a perpetual conservation easement to a recognized nonprofit corporation, the Lower Merion Conservancy, established for that purpose. Ex. A-4 & 5.

29. The engineering aspects of the Proposed Subdivision and Land Transfer comply with all applicable codes and ordinances, according to Momenee's testimony.

II. LEGAL AUTHORITY FOR USE

30. The Open Space Preservation District is intended to:

- A. Provide an effective means of responding to site conditions for the preservation of floodplains, wetlands, streams, valleys, woodlands and other natural and scenic features and historic resources in a manner consistent with Township policy.
- B. Provide for the creation, retention and protection of historic sites and open space areas within the Township.
- C. Provide an opportunity to attain the objectives of the Township's Open Space Study, Historic Sites Comprehensive Mapping Project and Comprehensive Plan with regard to open space preservation, orderly growth and enhancement of environmental resources.
- D. Encourage innovation and to promote flexibility, economy and ingenuity in the residential development of large tracts, including subdivisions and land developments.

Lower Merion Township Code §155-142.

31. The Open Space Preservation District is defined and established to include and be an overlay upon all parcels five acres or larger within any residential district designated on the Lower Merion Township Zoning Map, pursuant to Code §155-143.

32. Pursuant to Code §155-144, authorization to develop a tract pursuant to the requirements of the underlying residential district (conventional development), rather than the OSPD, may be granted by the Board of Commissioners as a conditional use pursuant to §155-141.2, provided that the applicant proves compliance with the standards and criteria set forth in § 155-141.2 and, in addition thereto, establishes the following:

- A. That conventional development will preserve natural and scenic features, historic sites and historic resources to a degree equal to or greater than development under the Open Space Preservation District would permit. The applicant may be required to protect such features, sites and resources from further development with appropriate covenants running with the land. Where development of less than the entire parcel is intended or where the parcel is intended to be developed at less density than conventional development would permit, the applicant may be required to file a

development plan for the entire parcel pursuant to § 135-17C(12) or may be required to restrict further subdivision and/or development on the remainder of the tract by recorded covenant or agreement.

- B. That the applicant has achieved the open space preservation goals set forth in § 155-142 by deed restriction, conveyance of a perpetual conservation easement to a recognized nonprofit corporation established for that purpose or by any other means of facility ownership set forth in § 155-148.

33. Conditional use standards are set forth in Code §155-141.2 (general requirements) and §155-160 (specific documentary requirements).

Compliance with Section 155-144: Purpose and Applicability of OSPD

34. Section 155-144 of the Zoning Code describes the applicability of the overlay district and the conditional use procedure for reverting to underlying zoning regulations.

35. The Applicant has adequately demonstrated that the Proposed Subdivision pursuant to RA zoning satisfies the goals and objectives of the OSPD overlay district through the testimony of Kevin Monene and engineering plans. Ex. A-2 and A-7.

36. The Proposed Subdivision satisfies the requirements of §155-144.A because conventional development will preserve natural and scenic features, historic sites and historic resources to a greater degree than development under the Open Space Preservation District would permit. Engineer Momeny also testified that two fewer lots will be created under the OSPD zoning and no new houses, then under conventional zoning, *see* Ex. A-8.

37. The Proposed Subdivision satisfies the requirements of §155- 144.B and achieves the open space preservation goals set forth in §155-142 by deed restriction and conveyance of a perpetual conservation easement to the Lower Merion Conservancy, Ex.

A-4 & 5.

Conditional Use Application Procedure & Standards pursuant Code §155-141.2

38. The Applicant has complied with the requirements found in Code 155-141.2(B), discussed in pertinent part, below.

39. The Applicant has established that the Proposed Subdivision complies with the community development objectives as stated in Article I of Chapter 155, pursuant to §155-141.2(B)(1), through the testimony of Momenee and Broseman.

40. The Applicant has demonstrated compliance with conditions for the grant of conditional uses enumerated in that section which gives the Applicant the right to seek a conditional use, pursuant to §155-141.2(B)(2). Momenee testified that the Proposed Development complies with the procedures and requirements for conditional use approval set forth in OSPD.

41. The Applicant has adequately shown that the Proposed Subdivision shall preserve the character of the neighborhood, pursuant to 155-141.2(B)(3). Momenee testified that fewer lots will be created through conventional zoning, than under OSPD zoning, no new residential structures will be constructed, and the conservation land will be located on one lot, all of which preserves the character of the existing neighborhood.

42. The Applicant has established through credible evidence that the Proposed Subdivision shall be properly serviced by all existing public service systems because no new residential structures will be constructed.

43. The Applicant has shown through the testimony of Momenee and engineering site plans that the Proposed Subdivision is properly designed with regard to internal circulation, parking, buffering and all other elements of proper land planning,

pursuant to 155-141.2(B)(5). Moreover, this application has been reviewed by several municipal bodies (the Building and Planning Department, Township Engineer and Planning Commission,) as well as the Montgomery County Planning Commission.

44. The Applicant has provided 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, pursuant to 155-141.2(B)(6). The Applicant has provided engineering site plans to support its application.

III. DISCUSSION/CONCLUSIONS OF LAW

45. The Applicant's proposal to subdivide 1010 Spring Mill Road into four (4) lots under conventional zoning meets and exceeds the goals and objectives of the OSPD. More than eight acres of woodlands, meadows, and wetlands will be preserved in perpetuity by the Lower Merion Conservancy, as opposed to only 7.7 acres under conventional zoning. This generously sized, broad swath of conservation land cannot be disturbed even if adjacent smaller lots containing historic structures are transferred to new owners. Moreover, no new homes will be constructed on the four lots even though six buildable lots were approved under conventional zoning a few years ago. Adjacent conservation land donated by the Applicant preserves natural and scenic features of the land. The interests of the Township are clearly better served with conventional zoning of 1010 Spring Mill Road. The Applicant should be commended for voluntarily foregoing viable land development and creating a permanently protected green oasis in its place.

46. It is recommended that the Board permit the Applicant to develop the property to the requirements of the underlying RA zoning provisions, rather than the OSPD provisions, pursuant to Lower Merion Township Zoning Code § 155-144 provided that its

land development application and associated plans comply with all specific requirements stated therein and comply with the attached conditions of approval,

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

ORDER

AND NOW on this ____ day of June 2018, the application of David Hoffman for conditional use approval of conventional RA zoning pursuant to Zoning Code §155-144 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.

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