

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

Application CU# 3806

**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 1401 Morris Avenue 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. He further seeks to transfer four (4) acres of conserved land from 1401 Morris Avenue to 1300 Mount Pleasant Road. 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 1300 Mt. Pleasant Road, also known as 1022 N. Spring Mill Road, Villanova.
2. The Applicant is represented by George Broseman, Esq. a member of Kaplin Stewart.
3. The Applicant is the title owner of properties known as 1401 Morris Avenue and 1300 Mount Pleasant Road, Lower Merion Township, Montgomery County, Pennsylvania.

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

4. 1401 Morris Avenue contains 5.6 acres and is in the RA Residential Zoning District and the Open Space Preservation Overlay Zoning District (OSPD). It has been improved with a residence, swimming pool, patio, man-made pond, shed and tennis court. Morris Avenue Extension, an unimproved road, essentially functions as a driveway and provides vehicular access. The property is bound with single family detached houses to the north and east; 1010 Spring Mill Road to the south (also owned by the Applicant); and Morris Avenue Extension, single family residences and the Wrenfeld development to the west. The property contains mature trees and woods. A tributary of the Arrowmink Creek forks into two sections: one that flows west under the bridge along Morris Avenue and another section that appears to go underground. There are steep slopes and a floodplain.

5. 1300 Mount Pleasant Road, also known as 1022 Spring Mill Road, is a Class II historic property called “Red Rose Farm.” It contains 13.88 acres and is in the RA Residential Zoning District and the OSPD. The property is an interior lot with merely 53 feet of frontage along Mount Pleasant Road. Vehicular access is provided by three separate driveways winding along Mount Pleasant Road, Spring Mill Road and the Morris Avenue Extension. The property has been improved with a two-story stone residence built in the late 18th century, as well as a pool, tennis court, gardens and outbuildings including a stable and dairy. A small stream with associated wetland and floodplain and a meadow bordered by mature trees are also located on this property. 1300 Mount Pleasant Road is bordered by single family uses.

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 OSPD provisions pursuant to Zoning Code §155-144. The Applicant also seeks to transfer four acres of conserved land from 1401 Morris Avenue to 1300 Mt Pleasant Road.

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 Tentative Sketch Plan approval for the subdivision of 1401 Morris Avenue into two lots; conveyance of 24,226 square feet to 1300 Mount Pleasant Road and construction of a new single family detached residence on Lot 2 which also contained 2.9 acres of preservation area. At the same time, Tentative Sketch Plan approval to subdivide 1010 Spring Mill Road into six lots was granted.

8. After receiving Tentative Sketch Plan approvals for subdivision, the Applicant donated a conservation easement totaling 43 acres spanning eight separate properties to the Lower Merion Conservancy. The conservation easement covers portions of both properties, as well as 1300 Mount Pleasant Road and other adjacent properties. The Applicant subsequently amended his land development application to create only four lots because the homes shown on the approved Tentative Sketch Plan are no longer proposed. 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. 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.

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

11. 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).

12. The Lower Merion Planning Commission reviewed the conditional use applications for 1401 Morris Avenue and 1010 Spring Mill Road on May 8, 2018 and recommended approval subject to thirty-six (36) conditions, (Ex. T-3).

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

14. 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.

15. 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 Existing Conditions Plan dated 4/20/15 last revised 12/5/17 prepared by Momenee, Inc.;
- A-3 Letter dated October 28, 2015 from Christopher Leswing, Assistant Director of the Lower Merion Township Building and Planning Department;

- 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 Momen Engineering dated 12/20/2016;
- A-7 Existing Conditions Plan set for 1401 Morris Avenue 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.

16. 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

17. 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.

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

19. The Applicant proposes to subdivide 1401 Morris Avenue pursuant to the requirements of the underling residential zoning district (RA) rather than the open space preservation district (OSPD) pursuant to Zoning Code 155-144. He further proposes to transfer four acres of conserved land from 1401 Morris Avenue to 1300 Mount Pleasant Road. ("Proposed Subdivision and Transfer"). A parallel conditional use application is pending to subdivide 1010 Spring Mill Road into four lots pursuant to the OSPD (CU #3751).

20. The Applicant's Conditional Use Plan set prepared by Momenee Inc. dated June 20, 2015 were last revised on August 10, 2017 ("Plans") have received numerous reviews from Township Staff, the Township Engineer, the Planning Commission and the Montgomery County Planning Commission.

21. 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 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.

22. Momenee is the primary engineering professional for the Proposed Subdivision and Land Transfer of 1401 Morris Avenue. He testified that it complies with the conditional use criteria in the OSPD and the underlying RA zoning district. Additionally, Momenee testified to the Proposed Subdivision and Land Transfer meeting required goals and objectives of OSPD and the Township Code.

23. Momenee testified that 1401 Morris Avenue contains 5.6 acres and has a net lot area of 242,141 square feet not including the private road. It is located on the east side of the Morris Avenue Extension, near Spring Mill Road, in Lower Merion Township. This site is located within the OSPD overlay district and the underlying RA zoning district.

24. Existing conditions on the Property are sloping site to the east and floodplain covering a portion of the lot. It has been improved with a single-family

residence, tennis court, tennis shed and porch, tennis patio, swimming pool, additional patios, flagstone walls, and a private driveway. Total impervious surface coverage is 28,565 square feet or 11.8% of the lot.

25. Subdividing 1401 Morris Avenue into lots A & B, will result in the existing residence being located on lot A with a small portion of the floodplain. Lot B will contain most of the floodplain and the tennis court in the conservation area being transferred to 1300 Mount Pleasant Road. Open space will be consolidated on lot B. *See*, Record Plan, Ex, A-2.

26. Momenee testified 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 OSPD would permit. Moreover, conventional development will result in fewer lots than the OSPD would allow and no new residences.

27. 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, Lower Merion Conservancy, established for that purpose. Ex. A-4 & 5.

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

Legal Authority for Use

29. 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.

30. 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.

31. Pursuant to Code 155§144, authorization to develop a tract pursuant to the requirements of the underlying residential district (conventional development), rather than the Open Space Preservation District, 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.

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

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

33. 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.

34. The Applicant has adequately demonstrated that the Proposed Subdivision and Land Transfer 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.

35. The Proposed Subdivision and Land Transfer satisfies the requirements of § 155-144.A because 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. Engineer Monene also testified that fewer lots will be created under the OSPD zoning than under conventional zoning, *see* Ex. A-8.

36. The Proposed Subdivision and Land Transfer satisfies the requirements of § 155-144.B and achieved 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.

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

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

38. The Applicant has established that the Proposed Subdivision and Land Transfer 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.

39. 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.

40. The Applicant has adequately shown that the Proposed Subdivision and Land Transfer 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.

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

42. The Applicant has shown through the testimony of Momenee and engineering site plans that the Proposed Subdivision and Land Transfer 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.

43. 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.

DISCUSSION/CONCLUSIONS OF LAW

44. The Applicant's proposal to subdivide 1401 Morris Avenue into two lots and transfer four acres of conservation land to 1300 Mount Pleasant Road will facilitate woodlands, meadows, and wetlands being preserved in perpetuity by the Lower Merion Conservancy. Adjacent conservation land donated by the Applicant preserves natural and scenic features of the land with fewer lots and no new residential homes. Concentrating preserved open space on 1300 Mount Pleasant Road will also facilitate on-going care and maintenance by the Lower Merion Conservancy. The interests of the Township are better served with conventional zoning than development under OSPD zoning.

45. 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.

46. 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