

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

Application CU#3436

RECOMMENDATIONS FOR FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This conditional use application was filed by Core States Group seeking approval to deviate from architectural design standards of the Mixed Use Special Transportation District pursuant to Code §155-87.25.C.2.d and §155-87.25.C.2.f.2. A Conditional Use Hearing was held on February 12, 2019 before the Conditional Use Hearing Officer.

1. The Applicant is Jonathan Baske on behalf of McDonald's Corporation ("Applicant").
2. The Applicant's attorney is Leslie M. Gerstein, Esq. of Klehr, Harrison, Harvey, Branzburg, LLP ("Gerstein").
3. The Applicant represents the title owner of 111 W. Lancaster Avenue, Lower Merion Township ("Property"). It is located in the Ardmore commercial district, across from the intersection of West Lancaster and Ardmore Avenues. It is adjacent to Ardmore West Shopping Center (west) and traditional attached commercial buildings (east).
4. In terms of zoning, the Property is located in the Ardmore Special Development District ("ASDD-1") and is subject to the overlay Mixed Use Special Transit District ("MUST").
5. The property was renovated for McDonald's fast food restaurant ("McDonald's") approximately seventeen (17) years ago, prior to the enactment of the MUST district. Those renovations included a red mansard roof to screen rooftop equipment, windows on the primary front facade and a drive through lane.
6. The Applicant proposes façade renovations and a new roof to create a more contemporary roof. Similar façade renovations were recently completed at the McDonald's in

Rosemont which required conditional use approval to deviate from the Bryn Mawr Village Design Standards.

7. This conditional use application concerns the Applicant's request to deviate from the development design standards of the MUST, pursuant to Code 155§155-87.25.C.2 et seq., to provide less than 50% clear glass on the primary front façade and to have window head heights less than nine to twelve feet (9-12') above sidewalk level.

8. The Board of Commissioners may authorize deviations from the development design standards of the MUST by conditional use approval if the Applicant has met its burden of proof, pursuant to Code 155§155-87.25.C.3.

9. The Lower Merion Building and Planning Department reviewed the conditional use application and recommended approval, see Ex. T-2.

10. The Lower Merion Planning Commission reviewed the conditional use application on February 4, 2019 and recommends approval, see Ex. T-3.

11. The Conditional Use Hearing Officer conducted a public hearing on February 12, 2019 in the Lower Merion Township building.

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

- a. Letter from Applicant dated 11/16/18 (Ex. T-1);
- b. Campisi memo to Planning Commission dated 2/1/19 (Ex. T-2);
- c. Township Engineer's letter dated 1/28/19 (Ex. T-3);
- d. Planning Commission recommendations dated 2/4/19 (Ex. T-4);
- e. Proof of Advertisement of CU Hearing (Ex. T-5).

13. The Applicant offered three (3) documents in support of its conditional use application which were admitted into the record:

- a. Preliminary Land Development Plans (Ex A-1);
- b. Color Renderings (Ex. A-2)
- c. MRP Program showing existing floor plan (Ex. A-3).

14. Leslie M. Gerstein, Esq., representing the Applicant, testified that conditional use approval is sought for alternative designs which deviate from prescribed architectural standards and designs in the MUST. She explained that McDonald's is upgrading restaurants nationwide to achieve a sleek, modern design. Façade renovations at the Ardmore restaurant call for the existing windows to remain in place, although the surrounding façade is changing. The windows were originally installed as part of building renovations in the early 2000s before the enactment of the MUST district.

15. Martin Swaggard, P.E., a registered engineer in the Commonwealth of Pennsylvania, testified for the Applicant. Swaggard is the Senior Project Manager employed by Core States Group the company renovating the Property for the Applicant. He described the proposed replacement of the existing red mansard roof with a rectangular shape to achieve a contemporary design. Since the red mansard roof screens machinery on the rooftop, but the new rectangular roof will not, a new parapet wall is proposed. The existing red mansard roof is sixteen-feet, fifteen-inches (16'15") tall. The new rectangular roof with parapet will be eighteen-feet (18') tall. Increasing the height of the building also increases the surface area of the façade. Some existing materials will be reused for the new rectangular roof such as the trusses and joists. The primary front façade similarly will retain the existing windows and two doors. Swaggard noted the Ardmore McDonald's is not a high volume store and the franchise owner is obligated to repay McDonald's for renovation expenses. They have gone "above and beyond" to meet Lower Merion township's code requirements while trying to contain costs, he testified.

16. The existing windows currently comprise 27.2% of the primary front façade but after renovations are complete, they will be 24%. This reduction in percentage of glazing is the direct result of increasing the building height with a new parapet wall which also increases the surface area

of the façade. MUST requires 50% glazing on the primary front façade. Swaggard testified window size will not decrease and there is no reason to replace functional and attractive windows which were previously approved in 2000. Moreover, retaining the existing windows helps keep renovation costs down.

17. The existing window head heights on the primary front façade are eight-feet seven-inches (8'7") above the sidewalk. MUST requires a minimum window head height of nine-feet (9') above the sidewalk on the primary front façade. Swaggard explained there is a de minimus difference in window head height which should be acceptable because the building is being renovated, not completely replaced. Likewise, the existing widow head heights were previously approved in 2000.

18. Other improvements and renovations planned for McDonald's which are intended to meet the objectives of the MUST district include removing the pergola, adding benches, bicycle racks, street furniture, path lighting, improved ADA compliant parking, pedestrian signage to reduce conflicts with vehicles, a bypass lane and new landscaping.

APPLICABLE ORDINANCES

19. Lower Merion's Mixed Use Special Transit District ("MUST") was established as an overlay district to encourage the development of transit-supportive mixed-use neighborhoods that foster economic vitality, pedestrian activity and a sense of community. It recognizes the importance of public transit as a viable alternative to the automobile by permitting appropriate densities and a mix of land uses within walking distance of transit stops, while at the same time providing sufficient off-street parking to uses both within and adjacent to the MUST. Code §155-87.20.A.1.

20. The MUST is intended to allow development that decreases auto dependency and mitigates the effects of congestion and pollution. The regulations create accessible neighborhoods and promote the health, safety and general welfare of the citizens of Lower Merion Township. It is also intended to enhance the economic stability of the township by promoting the attractiveness,

convenience and stability of those areas of the Township to which the MUST applies. Code §155-87.20.A.2.

21. General goals and objectives of the MUST include “enhancing the visual character and physical comfort of the district by minimizing pedestrian and vehicular conflicts and encouraging the renovation and erection of buildings and storefronts that provide direct connections to the street and sidewalk.” Code §155-87.20.B.7.

22. Development design standards in the MUST codified in Code §155-87.25 require pedestrian oriented buildings and building entrances oriented toward streets, sidewalks and/or public accessways. Windows must facilitate views into and out of buildings, The statutory intent, in pertinent part, is to provide convenient, direct and accessible pedestrian access to and from public sidewalks and residential and commercial uses; to provide safe, pleasant and enjoyable pedestrian experiences by connecting activities between buildings in the MUST and within a structure to the adjacent sidewalk; and to promote the use of pedestrian and mass transit modes of transportation to access residential and commercial facilities.

23. Architectural design standards in the MUST ensure the size and proportions of new buildings relate to the scale of existing structures, especially at street level. Code §155-87.25.C.

24. The Board of Commissioners may, by conditional use, approve the use of architectural standards and designs that differ from those set forth in the Development Design Standards if the Applicant demonstrates to the satisfaction of the Board that such designs and standards are in furtherance of the legislative intent of the MUST. Code §155-87.25.C.3.

25. 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 a 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 and criteria 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 the 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 other 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 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.

- (b) Be in accordance with the Lower Merion Township Comprehensive Plan.
 - (c) Provide the required parking required under Article **XX** or as otherwise provided for in other applicable provisions of this chapter.
 - (d) Adversely affect the logical, efficient and economical extension or provision of public services and facilities such as public water, sewers, refuse collection, police and fire protection and public schools.
 - (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 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

26. The MUST requires 50% clear windows and doors on the ground floor of the primary front façade pursuant to Code §155-87.25.C.2.d.

27. The Applicant has demonstrated with sufficient evidence that allowing the existing windows to remain in place with 24% glazing coverage on the primary façade is an acceptable alternative which meets the objectives of the MUST, *see infra* testimony of Swaggard, para. 16; *see also* Ex. A-1 & A-2. The existing windows facilitate views into and out of the restaurant providing connections to the street and sidewalk. Moreover, the reduction in percentage of glazing is directly related to the increased height of the building and parapet. It is not an actual reduction the size of the existing windows, *see* Campisi memo, Ex. T-2 at 2, *see also* Ex. A-2.

28. The MUST requires window head heights between nine (9) and twelve (12) feet above sidewalk level, pursuant to Code §155-87.25.C.2.f.2.

29. The Applicant has established through credible evidence that existing window head heights of eight-feet seven-inches (8'7") above the sidewalk is an acceptable alternative architectural design, *see infra* testimony of Swaggard at para. 17; *see also* Ex. A-1 & A-2. Neither the Planning Commission nor the Lower Merion Building and Planning Department staff find this de minimus deviation objectionable. Campisi memo, Ex. T-2; Planning Commission recommendations Ex. A-4. Moreover, the restaurant is being renovated and not completely replaced.

30. The Applicant has adequately demonstrated that conditional use approval is consistent with and promotes the relevant purposes of the MUST. It has worked with Township staff to meet the requirements of the MUST except for minor deviations from architectural design standards. Retaining existing windows that provide views into and out of the building and a direct connection with the street and sidewalk meets the relevant purposes of the MUST. The scale and proportion of the existing windows likewise meets the intent of the MUST, even with slight variations from architectural design standards. Additional improvements will enhance the visual character of the neighborhood and provide a pleasant pedestrian experience in the MUST: such as new signage to reduce pedestrian and vehicle conflicts, improved ADA compliant parking, street furniture, benches, and bike racks

31. The Applicant has complied with the general standards for conditional use approval pursuant to Code §155-141.2.B.2, *supra*. Some of these general standards overlap with specific standards found in code requirements for the MUST found in §155-87.20 *et seq*. Compliance with all applicable ordinances have been confirmed through reviews with Township staff (Ex. T-2), the Township Engineer (Ex. T-3) and the Planning Commission (Ex. T-4).

32. The Applicant has demonstrated that granting conditional use approval shall preserve the character of the neighborhood through the testimony of witnesses and documentary evidence in

compliance with Code §155-141.B.3. The proposed renovations are consistent with the pedestrian oriented design and character of the MUST.

33. The proposed renovated restaurant shall be serviced by existing public service systems, pursuant to Code §155-141.B.4. The peak traffic generated by the proposed renovated restaurant shall remain the same as current conditions while providing new amenities to attract bicyclists and pedestrians. All modes of transportation shall be accommodated in a safe and efficient manner.

34. The proposed renovations have been properly designed with regard to internal circulation, parking, buffering, and other elements of proper land planning, pursuant to Code §155-141.B.5. The Applicant will install improved ADA compliant parking, pedestrian signage, a bypass lane for vehicles and new landscaping among other things.

35. Sufficient plans, studies, and other data showing compliance with regulations for the permitted use have been submitted to Township staff, the Township Engineer and the Planning Commission, pursuant to Code §155-141.B.6.

36. The Applicant has agreed to comply with any condition which may be imposed by the Lower Merion Township Board of Commissioners and accepted by the Applicant, in compliance with Code §155-141.B.7.

37. The Applicant has met all other Code requirements for conditional use approval to deviate from select architectural design standards in the MUST, as specified in its application.

DISCUSSION

38. The Applicant's request for conditional use approval arises from the planned renovation of McDonald's tired façade and replacement of its red mansard roof, while retaining the existing windows. One goal of the MUST is to provide for renovation of existing buildings providing direct connections to the street and sidewalk to enhance the visual character and physical comfort of the district. Code §155-87.20.B.7. If granted conditional use approval, McDonald's restaurant will

lose an outdated red mansard roof and gain a contemporary aesthetic with a new roof and parapet wall. The newly renovated façade is designed to respect the scale, proportion and character of existing structures within a five-hundred-foot radius of McDonald's. This is not an easy task because McDonald's lies between traditional commercial attached buildings and Ardmore West shopping center. The size and appearance of McDonald's existing windows will not change, rather the façade will be enlarged by the new parapet wall. Similarly, the placement of the windows will not change. Slight deviations in the percentage of glazing and window head height from the MUST's architectural design standards should be acceptable because the Applicant's project meets the goals and objectives of the MUST. The existing windows and doors provide direct connections to the street and sidewalk. New signage is intended to minimize pedestrian and vehicle conflicts. New benches, street furniture, path lights, landscaping and bike racks will enhance the visual character and physical comfort of the district and create a pleasant pedestrian experience. For the reasons set forth above, the following order is recommended to the Board of Commissioners.

ORDER

AND NOW on this the ____ day of March, 2019, the application of Core States Group for conditional use approval to deviate from architectural design standards of the Mixed Use Special Transportation District found in Code §155-87.25.C.2.d and §155-87.25.C.2.f.2 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.

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