

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

CU Application #3840C

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

This conditional use application filed by Bryn Mawr College seeks to transfer approximately 1.2-acres of land from 321 Caversham Road to 719 New Gulph Road. Conditional use approval is required to create a rear lot at 321 Caversham Road located in the R2 zoning district. A Conditional Use Hearing was held on September 17, 2019 before the Conditional Use Hearing Officer pursuant to Code §155-141.2.A.5.

I. FINDINGS OF FACT

1. The Applicant is Bryn Mawr College (“BMC”) c/o Nina Bisbee, Director of Facilities Services, 101 N. Merion Avenue, Bryn Mawr, PA 19010.
2. BMC is represented by George Broseman, Esq., a partner in the law firm of Kaplin Stewart.
3. BMC is the owner of property known as 321 Caversham Road, an irregularly shaped lot containing 121,534 sq. feet (2.8 acres) located in the R2 residence district. The lot has frontage on Caversham Road and Morris Avenue, with vehicular access from a “leg” on Caversham Road which does not meet the minimum lot width at the street line required in the R2 District. There is no vehicular access from 321 Caversham Road to Morris Avenue because of the terrain and trees. It has been improved with a single family dwelling sited near Caversham Road and a large yard between the house and Morris Avenue.
4. BMC is also the owner of 719 New Gulph Road, a 7-acre property located adjacent to 321 Caversham Road in the R2 residence district. A class II historic resource,

“Arnecliffe,” is sited on 719 New Gulph Road, as well as the Perry Garden, gravel areas and access drives. “Arnecliffe” is used as the Bryn Mawr Art Studio and faculty housing. The Perry Garden opened in 2017 on the site of the former Perry House, home of the first African-American Cultural Center at BMC. The garden is dedicated to diversity and inclusion. 719 New Gulph Road has frontage on New Gulph Road and Morris Avenue.

5. On June 15, 2018, the former owner of 321 Caversham Road donated the property to BMC. Since it has no use for the residence, BMC would like to subdivide 321 Caversham Road, sell the house and consolidate the open space with 719 New Gulph Road.

6. BMC proposes to transfer 51,288 square feet (1.2 acres) from 321 Caversham Road to 719 New Gulph Road which will change the lot line and create a rear lot. 321 Caversham Road will no longer have frontage on Morris Avenue.

7. BMC filed a proposed lot line change plan and submitted a conditional use application dated July 25, 2019 seeking conditional use relief from zoning code §155-128 regarding rear lot development. (“CU Application”).

8. The Montgomery County Planning Commission reviewed the proposed subdivision plan and recommended approval subject to minor typographic corrections on the plan, as detailed in a letter dated September 3, 2019. (Ex. T-2(c)). The Applicant has agreed to these typographic corrections on its engineering plan.

9. On September 3, 2019, the Lower Merion Township Engineer reviewed the proposed lot line change plan and conditional use plan and recommended approval. (Ex. T-2(b)).

10. The Lower Merion Planning Commission reviewed the proposed lot line change plan and conditional use application in September 2019 and recommended approval subject to conditions, as described in Ex. T-3.

11. A conditional use hearing was held on September 17, 2019.

12. Andrea Campisi, Senior Planner in the Department of Building and Planning, stated the Applicant has proposed a preliminary lot line change plan and seeks conditional use approval for rear lot development. Campisi offered the following exhibits into evidence:

T-1 Notice of publication of Conditional Use hearing in the Times Herald;

T-2(a) Staff Memo to Lower Merion Planning Commission dated 9/6/19;

(b) Lower Merion Township Engineer's review letter dated 9/3/19 regarding preliminary lot line change plan;

(c) Montgomery County Planning Commission's review letter regarding preliminary lot line change plan dated 9/3/19;

T-3 Lower Merion Township Planning Commission's recommended conditions of approval.

13. Attorney Broseman stated the Applicant seeks to create a rear lot as part of proposed lot line change plan whereby 321 Caversham Road conveys 1.2 acres to 719 New Gulph Road. Conditional Use approval is sought for rear lot development pursuant to §155-128 because 321 Caversham Road will have 20.1-feet of frontage at the street line, if the transfer is approved, and 95-feet is required in the R2 district.

14. The Applicant offered the following exhibit into the record at the hearing:

A-1 Conditional Use Application;

A-2 Deed for 321 Caversham Road;

A-3 CV of Robert Lambert, P.E.;

A-4 Proposed Lot Line Change Plan and Conditional Use Plan dated 7/16/19 rev 8/22/19 prepared by CMC Engineering.

15. The Applicant's witness, Nina Bisbee ("Bisbee"), is the Director of Facilities Services at Bryn Mawr College. She is trained as a landscape architect and has been employed by BMC for three ears. She was previously employed as a planning consultant.

16. Bisbee testified 321 Caversham Road was previously owned by BMC. The property was transferred to Frank and Sally Mallory in 1988. Frank Mallory was a professor in the Chemistry Department at BMC for many years. In 2018, after Frank Mallory passed away, his widow donated 321 Caversham Road to BMC. Since BMC has no use for the house at 321 Caversham Road, the donor requested BMC subdivide the land to increase the lot size of 719 New Gulph Road. A Class II historic resource, “Arnecliffe,” and the newly created Perry Garden are located at 719 New Gulph Road. The Perry Garden is dedicated to diversity and inclusion at BMC, and open to the public as a place for reflection and healing. No approval is sought to expand the use of 719 New Gulph Road beyond its current use.

17. Robert Lambert, P.E., (“Lambert”) an engineer licensed in the Commonwealth of Pennsylvania and employed by Site Engineering Concepts testified as an expert witness for the Applicant. Lambert prepared the Proposed Lot Line Change Plan and Conditional Use Plan (Ex. A-4). He testified that transferring 51,288 sq. ft from 321 Caversham Road to 719 New Gulph Road will create a rear lot. In fact, 321 Caversham Road already effectively functions as a rear lot because the frontage along Morris Avenue does not have vehicular access. Lambert testified the Conditional Use Application complies with all conditional use requirements for rear lots found in Code§155-128 including minimum lot width at the building line [§155-128(A)]; no new lot is being proposed by the subdivision [§155-128(B)]; there are 20.1 continuous feet along the street line at Caversham Road [§155-128(C)]; the lot area exceeds Code’s minimum requirements [§155-128(D)]; the front yard shall face Caversham Road as recommended to the Board of Commissioners [§155-128(E)]; the proposed land transfer and subdivision are in accordance with the land use goals and requirements contained in Chapters 135 and 155 [§155-128(F)]; there will be a sewer easement across the property to be transferred [§155-128(G)].

II. APPLICABLE ORDINANCES

18. “Rear Lot” is defined by Code §155-4 as follows:

A narrow lot which shall have less than the required width at the street line and at the building line but which meets the minimum lot width at the point of the proposed building closest to the street and extending the full depth of the building plus 25 feet.

19. Code § 155-128 Rear Lot Development

In any residential subdivision made under the provisions of Chapter 135 of the Code of the Township of Lower Merion or with respect to any presently existing residentially zoned lot, the Board of Commissioners may authorize the creation of narrow lots as a conditional use subject to the following regulations:

- A. The minimum lot width of the lot at the building line shall be the minimum lot width required at the street line for lots in the zoning district in which the lot is located. Minimum lot width shall be measured parallel to the street at the point of the proposed building closest to the street and shall extend the full depth of the building, plus an additional 25 feet.
- B. An applicant shall not be permitted to increase the number of conforming lots permitted in a subdivision through the use of narrow lots.
- C. Every narrow lot shall include at least 20 continuous feet along the street line, and such connection to the street shall extend at no less than that width to the point at which the narrow lot reaches the lot width required by the zoning district in which the lot is located. The area between the street line and the point at which the narrow line reaches the required lot width shall be capable of providing driveway and utility access to the lot (i.e., shall not be blocked by natural barriers, such as lakes, or slopes in excess of 25%) and shall not be excessively irregular in shape.
- D. In calculating the lot area of a rear lot, the area between the street line and a line drawn radial thereto at the point where the lot attains the minimum lot width required in its zoning district shall not be included in applying the requirements of this chapter, except those requirements relating to impervious surfaces.
- E. The Board of Commissioners shall designate which of the required yards shall be the front yard for rear lots.
- F. The Board of Commissioners shall find that the creation of a narrow lot or narrow lots shall be in accordance with the land use goals and

requirements contained in this chapter and in Chapter **135** of the Code of the Township of Lower Merion.

- G. Any rear lot approved by conditional use shall connect to the adjacent sanitary sewer, when and if it is installed, even though the building may be more than 200 feet away.

20. Zoning is regulated by Chapter 155 of Code. Its purpose and community development objectives are found in Code §155-1:

- A. This chapter is enacted for the following purposes:
 - (1) To protect and promote safety, health and morals.
 - (2) To accomplish a coordinated development of this Township and adjacent municipalities.
 - (3) To provide for the general welfare by guiding and protecting amenity, convenience and future governmental, economic, practical, social and cultural facilities, development and growth, as well as the improvement of governmental processes and functions.
 - (4) To guide uses of land and structures and the type and location of streets, public grounds and other facilities.
 - (5) To permit this Township and adjacent municipalities to minimize such problems as may presently exist or as may be foreseen.
- B. Further, this chapter is designed and intended:
 - (1) To promote, protect and facilitate one or more of the following: the public health, safety, morals, general welfare, coordinated and practical community development, proper density of population, the provisions of adequate light and air, police protection, vehicle parking and loading space, transportation, water, sewerage, schools, public grounds and other public requirements; as well as
 - (2) To prevent one or more of the following: overcrowding of land, blight, danger and congestion in travel and transportation, and loss of health, life or property from fire, flood, panic or other dangers.
 - (3) This chapter and all amendments thereto have been made in accordance with an overall program and with consideration for the character of the Township and its various parts and the suitability of the various parts for particular uses and structures.

68. Subdivision and Land Development is regulated by Chapter 135 of Code. Its purposes are defined by Code §135-1:

- A. To promote and protect the public health, safety, morals and welfare.
- B. To promote orderly, efficient, integrated and harmonious development in the Township.

- C. To require sites suitable for building purposes and human habitation in keeping with the standards of quality existing in the Township and to alleviate peril from fire, flood, erosion, excessive noise, smoke or other menace.
- D. To coordinate proposed streets with existing or proposed streets, parks or other features of the Comprehensive Plan and to provide for drainage, water supply, sewage disposal and other appropriate utility services.
- E. To encourage preservation of adequate open spaces for recreation, light and air and maintenance of the natural amenities characteristic of the Township and its residential, commercial and public areas.
- F. To ensure conformance of subdivision and land development plans with the Comprehensive Plan and public improvement plans and to ensure coordination of intergovernmental public improvement plans and programs.
- G. To secure equitable treatment of all subdivision and land development plans by providing uniform procedures and standards.
- H. To ensure that developments are environmentally sound by requiring preservation of the natural features of the areas to be developed to the greatest extent practicable, to maintain the economic well-being of the Township and to prevent unnecessary or undesirable blight, runoff and pollution.

69. The Applicant must also comply with general standards for conditional use approval found in Code §155-141.2.

III. CONCLUSIONS OF LAW/DISCUSSION

69. The Applicant has requested conditional use relief to create a rear lot in compliance with Code §155-128, in conjunction with its proposed lot line change plan.

70. BMC has met the specific requirements for conditional use approval of a rear lot through the testimony of Nina Bisbee and Robert Lambert, PE (*supra* at para. 15-17) and the lot line change plan by Site Engineering Concepts (Ex. A-4). Although 95-feet of frontage is required in the R2 district, approving 20.1 feet of frontage at 321 Caversham Road recognizes how the parcel has been accessed for many years without incident or bad effect. The Lower Merion Building and Planning Department, Lower Merion Township Engineer, Lower Merion Planning Commission and the Montgomery County Planning Commission have recommended approval with conditions. BMC is willing to accept conditions of approval.

71. The general goals and objectives of Chapters 155 and 135 have been met because transferring approximately 1.2 acres to 719 New Gulph Road will increase the amount of open space adjacent to the Perry Garden at BMC. The Perry Garden is dedicated to diversity and inclusion at BMC. It is open to the BMC community and the general public. The public health, welfare, morals and welfare will be promoted by increasing open space adjacent to the Perry Garden, Code §135-1(E); *see generally* §155-1.

72. The Applicant has complied with general requirements for conditional use approval, pursuant to Code §155-141.2, through the testimony of Nina Bisbee and Robert Lambert (*supra* at para. 15-17) and the lot line change plan by Site Engineering Concepts (Ex. A-4). Some requirements are not applicable because only a lot line change is proposed by BMC, but not land development.

73. Approval of this conditional use application will have no discernable impact on the Lower Merion community because 321 Caversham Road has been a *de facto* rear lot for many years. Vehicular access to the parcel is provided by a narrow leg onto Caversham Road despite frontage on Morris Avenue. The grade of the land and mature trees prevent vehicular access to and from Morris Avenue. An officially approved rear lot at 321 Caversham Road will recognize an arrangement that already exists. The property's lot size will be smaller, but a new lot will not be created.

74. Subdividing 321 Caversham Road and transferring 1.2-acres to 719 New Gulph Road will enlarge Bryn Mawr College's existing campus and open space adjacent to the Perry Garden in particular. Bryn Mawr College is not seeking to add additional uses at 719 New Gulph Road beyond those already in existence. The Perry Garden is dedicated to diversity and inclusion, providing a natural setting for reflection. It is open to the general public as well as the Bryn Mawr College community. Residents of Lower Merion Township will benefit from an

additional 1.2-acres of open space at 719 New Gulph Road and enhanced enjoyment of the Perry Garden. Preserving open space for recreation, light and air is one specific purpose of Lower Merion Township Code, 135-1E. The conditional use plan and related lot line change plan will enhance the public health, safety, morals and welfare in Lower Merion Township.

75. As a result of the foregoing, the Applicant's request for conditional use approval to create a rear lot at 321 Caversham Road is recommended to the Board of Commissioners.

IV. Order

AND NOW on this the ____ day of October 2019, the application of Bryn Mawr College for conditional use approval to create a rear lot pursuant to Code §155-128 of the Zoning Code of the Township of Lower Merion is granted subject to the following conditions:

1. The front yard setback shall abut Caversham Road.

This grant of conditional use approval is based on the documents and plans submitted in support of the application, together with testimony at the Conditional Use Hearing, all of which are specifically incorporated herein by reference thereto.

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