

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

Application 3848C

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

This conditional use application seeks approval to hold 124 required parking spaces in reserve, pursuant to Zoning Code §155-95.1, as part of a land development plan at Harriton High School. A Conditional Use Hearing was conducted on December 10, 2019 and the following recommendations are made pursuant to Code §155-141.2.A.5.

FINDINGS OF FACT

1. The applicant is Lower Merion School District (“LMSD”) c/o, attorney Jamie Jun, Esq. (“Applicant”).
2. LMSD is the owner of real property known as 600 N. Ithan Avenue, Lower Merion Township (“Property”).
3. The Property is located in the R-1 residence district, but is regulated by Zoning Code §155-11.E as a public school use. It consists of approximately 50 acres with frontage on N. Ithan Avenue and bordered by residential properties on the north, east and west sides. Beaumont at Bryn Mawr, a retirement community, is located to the south across N. Ithan Avenue. Harriton Farm, a homeowners association with 34 properties, is located adjacent to the west side of the site.
4. The Property is improved with a two-story structure used as a high school, Harriton High School (“HHS”). The original school building had 304 parking spaces and was non-conforming to parking requirements. In 2006, the existing high school was demolished and a new high school for 1,250 students requiring 639 on-site parking

spaces was constructed. Conditional use approval to hold up to 173 parking spaces in reserve was granted by the Board of Commissioners. LMSD constructed 469 on-site parking spaces at HHS and 170 were held in reserve in 2006.

5. Enrollment has increased at HHS since 2006. There are 277 additional students and 56 additional staff members requiring 146 additional on-site parking spaces pursuant to Code and additional growth is anticipated in the future.

6. LMSD has submitted a Land Development Application to build additional classroom space. It also requests conditional use approval from the Board of Commissioners to allow 124 of the required 146 on-site parking spaces to be held in reserve, as well as stormwater management.

7. The Lower Merion Township Engineer reviewed the tentative sketch plan and proposed reserve parking on November 25, 2019.

8. Lower Merion Building and Planning Staff wrote a memo to the Planning Commission dated November 26, 2019 and reserved making a recommendation.

9. The Lower Merion Planning Commission reviewed the application and recommended approval on December 9, 2019 with conditions.

10. The Montgomery County Planning Commission reviewed the tentative sketch plan on December 9, 2019 and generally recommended approval with conditions regarding compensatory plantings and disturbance of steep slopes.

11. The Conditional Use Hearing Officer conducted a public hearing on December 10, 2019.

12. Andrea Campisi, Senior Planner for the Building and Planning

Department, offered four (4) documents into evidence that were subsequently admitted into the record:

- a. Proof of Publication of Legal Notices (Ex. T-1);
- b. Staff Memo to Planning Commission dated 11/26/19 (Ex. T-2a);
- c. Lower Merion Township Engineer's review letter dated 11/25/19 (Ex. T-2b);
- d. Montgomery County Planning Commission letter dated 12/9/19 (Ex. T-3);
- e. Planning Commission recommendations dated 12/9/19 (Ex. T-4).

13. Campisi stated HHS was approved for 1,250 students and 180 faculty and staff members in 2006, requiring 639 on-site parking spaces of which 469 spaces were constructed. Conditional use approval to place 170 in reserve was granted. Since 2006, the school's population has grown to 1,527 students and 236 faculty and staff members. LMSD's enrollment studies predict future growth in the student population which will require additional faculty and staff. The site requires an additional 146 parking spaces pursuant to Code. LMSD seeks to install 22 parking spaces in a newly constructed west parking lot; relocate seven parking spaces to the west parking lot; hold 124 parking spaces in reserve; and relocate 20 parking spaces being held in reserve along the west driveway to the lacrosse field. (*See also*, Ex T-2a at p. 2-3).

14. The Applicant offered twelve (12) exhibits in support of their Application.

All exhibits were subsequently admitted into the record:

- a. Aerial map of the Property (Ex.A-1);
- b. Overall Conservation Plan Inventory (Ex A-2);
- c. 50 Scale Conservation Plan Inventory (Ex A-3);
- d. Overall Site Plan (Ex A-4);
- e. 50 Scale Site Plan (Ex A-5);
- f. Parking Summary Table (Ex A-6);
- g. Parking Investigations Report(Ex A-7);
- h. Code Compliance Analysis (Ex A-8);

- i. C.V. of James K. Lill, Director of Operations (Ex A-9);
- j. C.V. of Thomas Ferguson, Athletics/Activities Director (Ex. A-10);
- k. C.V. of Jeremy R Maziarz, P.E., P.L.S. (Ex. A-11);
- l. C.V. of Frank Tavani, P.E., PTOE (Ex. A-12).

15. Applicant's Attorney, Jamie Jun, testified that LMSD seeks conditional use approval to hold 124 parking spaces and stormwater management facilities in reserve in connection with building a classroom addition at HHS. LMSD proposes to pave 22 parking spaces now and hold 124 in reserve. Additional classroom space is needed because the number of students and staff has grown and enrollment projections show gradual increases in the future.

16. James K. Lill, P.E. testified as the Director of Operations for Lower Merion School District and a licensed engineer. (*See*, Ex. A-9). He is familiar with HHS and the facilities and proposed expansion. The school houses grades 9-12, operates from 7:30 am to 2:40 pm and has 180 days in the academic calendar from early September to mid-June. Enrollment projections for the school district show gradually increasing student population from 1,250 to 1,527 and 56 additional staff members. LMSD has submitted a tentative sketch plan to build a three-story addition with a footprint of 4,865 sq. ft. and gross square footage of 12,000-15,000 square feet, construct 22 parking spaces and hold 124 in reserve. 146 additional parking spaces are not currently needed for the expansion because growth in enrollment is gradually increasing year by year. Every faculty member and staff person are currently provided with on-site parking and student parking is sufficient for seniors and some juniors. The benefits of not installing 124 parking spaces include the cost savings of not installing parking and stormwater management, retaining green space and less impervious surface coverage and not disturbing the lacrosse field. A

covenant to install reserve parking at any future time if determined by the zoning officer is agreeable if school board agrees.

16. Thomas Ferguson, the Athletic and Activities Director at HHS testified he is in charge of parking at the site. (*See* Ex. A-10). He is familiar with parking policy and practice at HHS. Every faculty and staff member have a parking pass and corresponding parking spot, although a few employees carpool or walk to school. There are 207 parking spaces near the tennis courts allocated for students. Seniors may sign up for parking passes and are assigned a parking space. Any additional parking passes are open to juniors by lottery. The HHS website and student handbook describe parking rules for students. Students occasionally are not compliant with parking rules and Ferguson identifies the car, speaks to the students and their parents, if necessary. On-site parking is sufficient for sports games and activities. Overflow parking occurs on back to school night and Welsh Valley Middle School graduation. (HHS graduation occurs at St. Joseph's University.) Ferguson contacts the Lower Merion Police Department in advance of overflow parking to ask for relaxed parking restrictions on N. Ithan Avenue. Student parking on neighborhood side streets occasionally occurs, but it has not been an ongoing problem. Side streets are a good distance from HHS and are zoned for two-hour parking. Ferguson believes 22 additional parking spaces will be sufficient to accommodate additional staff members and students at this time. The 46 additional faculty and staff members acquired since 2006 have been accommodated with on-site parking without increasing the number of parking spaces.

17. Jeremy Maziarz, PE, employed by Chester Valley Engineers testified in support of the Application. (*See*, Ex. A-11). He is a registered engineer who prepared the

Tentative Sketch Overall Conservation Plan (Ex A-2); 50 Scale Overall Conservation Plan (Ex A-3); Overall Site Plan (A-4) and 50 Scale Site Plan (A-5).

18. Maziarz testified existing conditions are approximately 49 acres containing the high school, multiple athletic fields, above ground stormwater facilities, below ground stormwater facilities, biofiltration stormwater areas within parking lots, 469 parking spaces and 170 reserve parking spaces. Proposed conditions are a building addition and 22 parking spaces on the western property line, with 124 parking spaces in reserve. Maziarz testified the lacrosse fields would be the best location to install additional parking spaces, but they are not needed at this time. He believes it is better to keep the lacrosse fields intact as green space and have less impervious surface coverage on the site. Stormwater management improvements would serve no economic or practical benefit at this time in his opinion. There will be no adverse planning effects if 124 parking spaces and stormwater management are held in reserve. Likewise, there will be no adverse effects on the health, safety and welfare of the community, according to Maziarz. No percolation testing has been conducted to date.

19. Frank Tavani PE, PTOE testified in support of the Application as the traffic engineer who prepared the Parking Investigations Report (Exhibit A-7) and Parking Summary (Exhibit A-6). Tavani testified he has been acquainted with traffic and parking at the location for fifteen years. Code requires 866 on-site parking spaces at present, but the school provides only 469 parking spaces with virtually no overflow into the surrounding community. Tavani testified parking is currently being accommodated by the site with no parking problems and 170 reserve parking spaces. He found little spillover into the community when looking at surrounding neighborhood and noted there

are transportation alternatives for students to get to school; buses, carpooling and being dropped off. HHS's expansion requires 146 new parking spaces and LMSD proposes to install 22 at this time. Tavani agrees with that plan and recommends placing 124 additional parking spaces in reserve until it is determined that additional on-site parking is actually required. He further testified that holding 124 parking spaces in reserve will not adversely affect health, safety or welfare of the community.

20. Township resident Alec Neilly, resident of 1439 Lane's End, testified as President of Harriton Farm home owners association ("HOA"). It consists of 34 properties located at Lane's End and Wooded Way adjacent to HHS. Neilly testified that the HOA has concerns about the HHS's building expansion and new parking. It would like additional landscape buffering adjacent to Harriton Farms to be installed to obscure the view.

APPLICABLE ORDINANCES

21. Specific criteria for conditional use approval to hold parking spaces in reserve are found in Code §155-95-1, stated in pertinent part as follows:

Reserve Parking

- A. Expansion of Use. Where a use regulated by §155-95 is being expanded and the Board determines that the additional number of spaces required by this expansion are not currently needed, it may authorize the applicant to hold in reserve the number of spaces that the Board determines are not currently required to meet the needs of the uses to which the property will be put.
- B. New or changed use. (Not applicable)
- C. The applicant must document that the full number of required spaces can be paved without violating any applicable provisions of this chapter. When constructed the reserve parking must meet all applicable provisions of this chapter as of the date the construction permit is sought.

- D. The applicant shall install stormwater management facilities, as required by the Township, for the total required number of parking spaces, including those held in reserve, unless the applicant demonstrated to the Board's satisfaction that the economic and practical benefit of currently installing such facilities for the reserve parking spaces is not significant when compared to the destruction that would be caused to natural features on the site.
- E. The applicant must agree in a recorded covenant, approved by the township Solicitor, to install the reserve spaces at any future time if and when the Zoning Officer determines that the reserve parking spaces are needed to accommodate the use of the property. The applicant may appeal such order to the Zoning Hearing Board.
- F. Regardless of the number of spaces actually developed, a parking area to accommodate the aggregate number of parking spaces required shall be fully designed, and the area held as reserve parking shall be clearly designated on the plan. The reserve parking area shall be considered in calculating the impervious surface ratio. The parking reserve area shall be planted with vegetative cover and integrated into the site's land development plan. Such area shall be required to be developed as designed if and when the Zoning Officer determines the need.

22. The Applicants must also comply with general requirements for conditional uses 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.

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 the 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

Compliance with Reserve Parking Criteria under Code §155-95-1

27. The Applicant has complied with Code §155-95-1(A) through testimony of James Lill, Thomas Ferguson, Jeremy Maziarz and Frank Tavani, as well as documentary evidence adequately demonstrating that 124 parking spaces are not currently needed (Ex. A-1 to A-7). A total of 146 parking spaces are required for the current and anticipated increase in enrollment in students, faculty and staff at HHS. The proposed increase in enrollment, from 1,250 to 1,527 students, requires an additional 78 parking spaces for the increase in students of driving age as well as 12 visitor parking spaces. The proposed increase in faculty and staff requires an additional ten (10) parking spaces. An additional 46 parking spaces are also required for the current increase in faculty and staff since the last land development approval in 2006. LMSD has adequately shown that all of the parking required by Code is not currently needed. Every faculty and staff member are

provided with an on-site parking space and sufficient visitor parking spaces are also available. The remaining on-site parking spaces are allocated to students who request parking permits. Those students who are not issued a parking permit may ride the bus, carpool or be driven to school and dropped off.

28. The Applicant is not required to comply with Code §155-95-1(B) because a new or changed use is not proposed.

29. The Applicant has complied with Code §155-95-1(C) through testimony of Jeremy E. Maziarz, PE and documentary evidence which adequately depict the proposed location of 124 parking spaces should they be required. (*See*, Exhibits A-1 to A-5). The Overall Site Plan shows that reserve parking spaces can be installed in compliance with all applicable provisions of Chapter 155.

30. The Applicant has complied with Code §155-95-1(D) because the Overall Site Plan depicts the location of stormwater management facilities that will also be installed should the reserve parking spaces be required to be constructed. (Ex. A-4 and A-5). LMSD has adequately demonstrated that additional stormwater management facilities are not necessary at this time because 124 new on-site parking spaces are currently not needed and construction would disturb existing green space and use of the lacrosse field at the heavily utilized site. The Applicant does not propose to install the stormwater management facility for the Lacrosse Reserve Lot depicted on the Overall Site Plan (Ex. A-4 and A-5).

31. The Applicant has complied with Code §155-95-1(E) through testimony of James Lill agreeing that LMSD's Board will record a covenant, in a form acceptable to the Township Solicitor, to install the reserve parking spaces at any future time if the

Zoning Officer determines that the reserve parking spaces are needed to accommodate HHS's use of the property.

32. The Applicant has complied with Code §155-95-1(F) through testimony and the Overall Site Plan (Ex. A-4 and A-5). The reserve parking area has been included in the impervious surface calculations. No changes are proposed to the reserve parking area, which will remain a lacrosse field, until such time as the Zoning Officer determines the reserve parking spaces shall be installed.

Compliance with General Conditional Use Procedures of §155-141

37. Testimony at the conditional use hearing and documentary evidence admitted into the record meets the burden of proof imposed by Code §155-141.2 (B)(1), specifically, the Applicants have demonstrated with credible evidence that holding the required parking spaces in reserve complies with community development standards stated in Article I. Some of the stated objectives are to promote, protect and facilitate coordinated and practical community development and provision of adequate vehicle parking, adequate schools and public grounds. Permitting LMSD to hold 124 parking spaces in reserve will allow it to maintain the lacrosse field and green space. Adequate vehicle parking will be provided through existing and proposed on-site parking spaces. LMSD seeks to provide adequate facilities for the anticipated enrollment growth while not unnecessarily impacting existing improvements and green space. It has shown there will be no adverse effect on the health, safety, morals or general welfare of the public; to the contrary, holding 124 parking spaces in reserve will preserve the existing lacrosse fields and green space.

38. The Applicant has demonstrated, pursuant to Code §155-141.2 (B)(2), that LMSD will comply with the requirements specified in Code §155-95-1.

39. The Applicants have demonstrated that the proposed improvements shall preserve the character of the neighborhood pursuant to Code 155-141.2(B)(3). This burden of proof was met through testimony of LMSD's witnesses that holding parking spaces in reserve will allow LMSD to maintain the existing lacrosse field and green space. The lacrosse field is an asset for both HHS and the community. Moreover, traffic engineer Frank Tavani's parking studies found little spillover parking on the surrounding streets.

40. The Applicant has demonstrated that the proposed improvements shall be serviced by existing public service systems pursuant to Code 155-141.2(B)(4). HHS is currently properly serviced by all existing public service systems and will continue to be so serviced. Expert testimony by Frank Tavani established that peak traffic generated by expansion of HHS will continue to be accommodated in a safe and efficient manner. (Exhibit A-6 and A-7).

41. The Applicants have demonstrated that the proposed improvements comply with internal circulation, parking, buffering and all other elements of proper land development planning pursuant to Code 155-141.2(B)(5). Expert testimony by Frank Tavani described proper internal circulation and parking. (*See* Exhibit A-6 and A-7). Expert testimony by Jeremy Mazairz, PE, demonstrated that additional parking and stormwater management will be installed if necessary. (*See* Exhibit A-2 to A- 5). The evidence shows there will be no issues with internal circulation and parking if 124 parking spaces are held in reserve.

42. The Applicants have submitted sufficient plans, studies and other data showing compliance with regulations to the Planning Commission, Township Staff and the Hearing Officer pursuant to Code §155-141.2(B)(6), specifically Exhibits A-1 to 12. LMSD has submitted Site Plans by Chester Valley Engineers; Parking Studies prepared by F. Tavani and Associates, Inc. as well as presentations provided to the Planning Commission and Conditional Use Hearing Officer.

43. The Applicants have agreed to comply with any condition which may be imposed by the Board of Commissioners and accepted by LMSD's Board of Directors in compliance with Code §155-141.2(B)(7).

DISCUSSION

Harriton High School's enrollment has been gradually increasing since land development approval was granted in 2006 and existing on-site parking has absorbed increased demand even with 170 parking spaces being held in reserve. Now, with a proposed classroom addition to HHS's existing building, LMSD has sufficiently demonstrated that 124 additional on-site parking spaces required by Code are not currently needed, despite its increasing student population and related additional faculty and staff. Installing 22 on-site parking spaces on the site is sufficient at this time. Preserving the existing green space at HHS, which would otherwise be partially used for a new parking lot and stormwater management facilities, and not disturbing the lacrosse field during construction heavily utilized by students and community groups is preferable. LMSD has also demonstrated that there will be no adverse impact on the public health, safety, morals and general welfare arising from holding 124 additional parking spaces in reserve. Accordingly, it is recommended that the Board of

Commissioners allow 124 parking spaces to be held in reserve at HHS so that existing green space and the lacrosse field are preserved.

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

ORDER

AND NOW on this ____ day of January, 2020, the application of Lower Merion School District for conditional use approval to hold parking spaces required for its expansion of use as reserve parking without paving the spaces and hold stormwater management facilities in reserve at 600 N. Ithan Avenue, pursuant to §155-95-1 of the Zoning Code of the Township of Lower Merion is granted, subject to the following conditions:

1. The applicant shall agree in a recorded covenant subject to the approval of the Township Solicitor to install the reserve parking spaces at any future time if and when the Zoning Officer determines that the reserve parking spaces are needed to accommodate the use of the property.
2. Additional landscape buffering shall be installed adjacent to Harriton Farm.

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