

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

CU Application #3851C  
130 Avon Road, Haverford

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

This conditional use application seeks conditional use relief to allow the construction of a two-story, detached two-car garage on a property containing a Class II Historic Resource located in the R-1 zoning district pursuant to Code §155-152.B & C. The Applicant specifically seeks to decrease the minimum front yard setback and to increase the maximum impervious surface coverage and building area to an extent greater than 50% of the building area of the Historic Resource. A Conditional Use Hearing was held on March 3, 2020 before the Conditional Use Hearing Officer.<sup>1</sup>

1. The Applicant is Tracy Davidson (“Applicant”).
2. The Applicant’s attorney is Jamie Jun, Esq. (“Jun”) of Fromhold & Jaffee.
3. The Applicant is the title owner of a 24,102 sq. ft. property known as 130 Avon Road, Haverford (“Property”). It is an irregular rear lot which is wedge-shaped with frontage on Avon Road.
4. The Property contains a single-family dwelling with a 1,110 sq. ft. footprint. It was constructed as a carriage house sometime between 1887 and 1896 for a home called “Robin’s Nest” designed by William A. Fischer. The carriage house was subsequently converted to use as a single family home and designated a Class II Historic Resource.

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

5. The Property is situated in the R-1 zoning district and is also subject to the Historic Resource Overlay District (“HROD”) Code §155-87.20 *et seq.*

6. The Applicant filed a conditional use application dated October 22, 2019. Ex. T-1. The Applicant offers to place permanent façade covenants on the carriage house (“Historic Resource”) in consideration for conditional use approval.

7. The Applicant initially proposed an addition to the Historic Resource with garage bays and living space. The proposal was revised to construct a two-story, two-bay detached garage with a 1,120 sq. ft. footprint, rather than an addition, requiring the following conditional use relief:

- a. reduce the minimum 15-foot side yard setback to 10 feet;
- b. reduce the minimum 50-foot front yard setback to -55 feet;
- c. increase the maximum impervious surface coverage from 21% to 23.54%; and,
- d. increase the maximum building area from 15% to 18.27%.

Following a meeting with the Historical Commission, the orientation of the proposed garage was rotated to maximize views of the Historic Resource and prevent garage bay doors from facing the street. A portion of the façade was stepped back to minimize the perception of massing of the proposed garage and reduce the height of the ridge in this section. After meeting with the Planning Commission, the building area of the garage was reduced 1,120 to 940 sq. ft. *See*, Architectural Site Plan rev. 3/3/20, Ex. A-4. As currently proposed, the detached garage requires conditional use approval to:

- a. increase the maximum impervious surface coverage from 21% to 22.63% (total increase in square footage of 370.93 sq. ft.);
- b. increase the maximum building area from 15% to 16.79% (total increase in square footage 218.89 sq. ft.); and,
- c. reduce the minimum 50-foot front yard setback to -55 feet.

*See*, Ex. A-7.

8. The Board of Commissioners may authorize deviations from bulk, area and setback requirements by conditional use approval, pursuant to Code §155-152.

9. The Lower Merion Township Engineer, Kevin J. Bowers, P.E., reviewed the conditional use plan on January 3, 2020. He found a major engineering issue with stormwater and erosion control arising from constructing a garage within the setback area and associated driveway modifications resulting in increased impervious surface coverage. The Township Engineer recommended approval of the conditional use application subject to his recommendation for a stormwater seepage bed sized to recharge direct runoff from the new garage roof area for the 100 year storm event, *inter alia*. Ex. T-3; *see also*, Lower Merion Township Staff memo, Ex. T-4 at p. 5.

10. The Lower Merion Historical Commission reviewed the conditional use application on February 24, 2020. It recommended approval, citing the Secretary of the Interior's Standards 1, 9 & 10, and directed "the south end of the garage façade shall be set back a minimum of one-foot to minimize the massing of the proposed garage on the end closest to the Historic Resource, with a subcommittee to review revisions to the design." Historical Commission Meeting Minutes, Ex. T-2 at p. 2. The Historical Commission also recommended approval of the requested conditional use relief, stating "the Commission believes that this relief, which would allow for the expansion of the proposed garage in lieu of an addition onto the Historic Resource, is better for the long term preservation of the resource." *Ibid*; *see also*, Lower Merion Township Staff memo, Ex. T-4 at p. 3.

11. The Lower Merion Environmental Advisory Council reviewed the conditional use application on February 25, 2020 and commented on the potential impact to the 34-ft Tulip Poplar tree located adjacent to the proposed detached garage. Lower Merion Staff subsequently

evaluated the tree and found it in a state of decline. Lower Merion Township Staff memo, Ex. T-4 at p. 3.

12. The Lower Merion Planning Commission reviewed the conditional use application on March 2, 2020. It questioned the size and scale of the proposed garage, as well as whether the Applicant could meet the higher burden of proof for relief for impervious surface and building area imposed by Code §155-152.C:

Where the requested relief is determined by the Board of Commissioners to be essential to the preservation of the historic resource because without such relief it would not be physically or economically possible to maintain the historic resource, the Board of Commissioners may, by conditional use, reduce such requirements to a greater degree than permitted by this section to protect the historic resource.

The Applicant's attorney orally withdrew one of the four requests for conditional use relief and stated her client was willing to decrease the garage's building area to comply with the required 15-foot side yard setback. Adjacent property owners of 128 Avon Road, Julia and Victor Raczkowski, appeared at the Planning Commission meeting to oppose the size of the proposed garage and stated it would devalue their property and have a negative effect on the neighborhood. The Planning Commission did not recommend approval of the conditional use application based on Applicant's failure to show that the proposed relief for building areas is essential to the preservation of the historic resource, because without such relief it would not be economically possible to maintain the historic resource, pursuant to Code §155-152.C. Meeting minutes also state:

The Planning Commission would *recommend approval* of the conditional use if the Applicant stayed within the building area permitted by §155-152.A as their primary concern is the size and scale of the proposed new building and the encroachment into the side yard setback.

Ex. T-4, emphasis added.

13. A Conditional Use hearing was conducted on March 3, 2020.

14. Jillian Dierks, (“Dierks”) Planner at the Lower Merion Township Building and Planning Department, offered six (6) documents into evidence that were admitted into the record:

- Ex. T-1 Conditional Use application dated 10/11/19;
- Ex. T-2 Historical Commission meeting notes dated 2/24/20;
- Ex. T-3 Township Engineer’s review dated 1/3/20;
- Ex. T-4 Dierks’ memo to Planning Commission dated 2/27/20;
- Ex. T-5 Planning Commission recommendations dated 3/2/20;
- Ex. T-6 Proof of publication of the hearing notice.

15. The Applicant offered eight (8) documents in support of her conditional use application that were subsequently admitted into the record:

- Ex. A-1 Arial photograph of Property and surrounding homes;
- Ex. A-2 Architectural Site Plan, Floor Plan & Roof Plan last rev. 2/7/20 with side loaded garage requested by Historical Commission;
- Ex. A-3. Floor Plans and Roof Plans last rev. 2/7/20 with step back in façade requested by Historical Commission;
- Ex. A-4 Architectural Site Plan last rev. 3/3/20 with reduced garage footprint requested by Planning Commission;
- Ex. A-5 Photographs of Historic Resource dated 10/18/19;
- Ex. A-6 Code Compliance Analysis;
- Ex. A-7 Remaining Conditional Use Requests and Calculations;
- Ex. A-8 Resume of project architect Van M. Potteiger.

16. Victor Raczkowski, the co-owner of 128 Avon Road, appeared at the hearing and objected to the siting, orientation and scale of the proposed garage. He submitted nine (9) photographs and a 16-page PowerPoint presentation into the record:

- Ex. O-1 Photographs marked 1-9;
- Ex. O-2 PowerPoint presentation dated March 3, 2020.

17. Two witnesses testified in support of the Application:

- a. Tracy Davidson (Applicant);
- b. Van M. Potteiger (Architect);
- c. Jon Hamilton, resident at the Property.

18. Attorney Jun stated conditional use approval is sought because it is not physically possible to maintain the Historic Resource without conditional use relief. The Historic Resource is a small 1,600 sq. ft home with an 1,100 sq. ft. footprint. It was originally built as a carriage

house in the 19<sup>th</sup> century The Applicant would like to modernize the Historic Resource with additional functional living space for closets and storage, a full bathroom sized for an adult and a garage. She originally proposed an addition to primary façade of Historic Resource because it is the only available area within the building envelope on the Property. The building envelope is small because the Property is a rear lot. Jun noted the net lot area of rear lot does not include area between street and place where minimum lot width is reached to calculate building area. The proposal was changed to a detached garage to preserve the primary façade of Historic Resource. The proposed garage would contain parking for two cars, storage for tools to maintain the yard and property and “flex space” on the second floor for additional storage space and living/exercise space. Conditional use relief is essential for the preservation of Historic Resource because the only other way to modernize the Property is an addition to primary façade of Historic Resource. As a result, the Applicant is requesting relief under §155-152.C for building area and impervious surface coverage greater than 50% of the building area of the Historic Resource, as well as, minimizing the required front yard setback.

19. Tracy Davidson testified she purchased the Property in July 2019 specifically for its historic home. She thinks of it as the “little cottage on the hill” and wants to preserve it, while updating amenities and increasing living space. The Historic Resource has 1,600 sq. ft. divided between two floors with three bedrooms and two bathrooms.<sup>2</sup> Davidson explained one bathroom has a small claw foot tub which is not large enough for an adult. Common areas are the living room and kitchen. She has stored winter coats and off season clothing in multiple locations throughout the house because there is little closet space. Davidson originally envisioned an addition to the Historic Resource, but meetings with Historical Commission led her to a decision

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<sup>2</sup> The Historic Resource’s footprint is 1,110 sq. ft.

to build a two-story detached garage with additional functional living space on the second floor. Stormwater management will be installed to improve the Property. Davidson will install landscaping to provide a “great view from the street,” soften the garage, and complement the Historic Resource. Davidson has spoken to and written letters to as many neighbors as possible to explain the project. Davidson testified there will be no adverse impact on public health, safety or welfare. She agrees to place permanent covenants on the façade of the Historic Resource.

20. Van M. Potteiger, principal of Van Potteiger Architects testified he was engaged to evaluate the site and design an addition to Historic Resource. The Property was once part of a larger lot belonging to Church of the Redeemer with frontage on Pennswood Road, but now it is a smaller rear lot with frontage on Avon Road. There isn’t a consistent building line or front yard setback among properties on Avon Road, despite Code requirements. The neighborhood has houses of varied styles and sizes, and lots of varied sizes and front yard setbacks.

21. The Applicant backed away from building an addition because it would impact the façade of Historic Resource and switched to a detached garage. The potential impact any future improvement on the Historic Resource was considered by Potteiger. The location of the proposed garage was chosen in relation to the site and the Historic Resource. The proposed plan replaces the existing shed with a 165 sq. ft footprint in the extended front yard area with a detached garage with a 940 sq. ft. footprint on the flattest area of property. The proposed garage doesn’t impact views of the Historic Resource from the street because it is on the edge of the property. The side loading detached garage and the Historic Resource will create a courtyard area in the front yard. Potteiger testified building area is essential to preservation of Historic Resource because of the nature of the small, nonconforming lot to minimum lot size. The desired uses of the proposed garage, to house two cars, lawn and yard equipment and provide functional

living space such as closets, storage space, full bathroom determined the size of its proposed building area.

22. The proposed garage aesthetically reproduces façade elements of Historic Resource with similar doors, windows and siding. The peak of the roofline is lower than the Historic Resource, but duplicates elements of its roof and façade. It is sited with the narrow side of garage facing the street, so there is less impact on the Historic Resource.

23. There will be no impact on the health, safety or welfare of the community from the proposed garage, Potteiger testified. The Applicant will install stormwater management which is not currently provided. The entire proposed garage is in accordance with the Lower Merion Comprehensive Plan which encourages maintenance of Historic Resources, adaptation to modern times, and encourages homeowners to take advantage of incentives to “make it work.” Required parking will be provided in the proposed garage. Measures to mitigate mass and bulk include siting the garage with narrow end toward Avon Road, the garage roofline lower than Historic Resource, breaking down mass with articulation through stepped back façade of garage, landscaping between proposed garage and side yard.

24. Victor Raczkowski, owner of 128 Avon Road, asked questions and testified at the hearing. He and his wife are the owners of a property immediately adjacent to 130 Avon Road which they have owned for approximately 15 years. Raczkowski asked the architect about the height of the proposed garage. Potteiger answered 28 feet to the roofline.

25. Raczkowski gave a brief power point presentation with 17 slides<sup>3</sup>. Ex. O-2. He described the neighborhood as quiet, safe and charming. Both properties are small, irregularly

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<sup>3</sup> The hand drawn map of 128 Avon Road and 130 Avon Road may not be accurate as to the location of improvements. Ex. O-2 at p. 4 *compare* Montgomery County Tax Assessor’s map with GIS data from the Montgomery County Planning Commission.

shaped lots with side yard boundary line that is diagonal (not perpendicular) to the street. The sloping topography of the properties creates storm water considerations.

26. Raczkowski testified he and his wife could support a garage of proportionate scale, depending on length, width, height and location. He supports modernization for a one story, two car garage sited within the building envelope. He believes allowing the garage in the front yard and leaving the building envelope open may allow sequential, incremental expansion by future owners. It would be wrong to make an already nonconforming building even more nonconforming, he stated. The carriage house is located outside of the building envelope and past decisions about the Property have consequences. No one considered a garage would be needed to maintain the Historic resource. Raczkowski testified the garage's footprint is disproportionately large on the lot and compared to the carriage house. It goes beyond modernizing the Property. He believes higher the garage, the greater the impact on his property. The second story would obstruct vision and light at 128 Avon Road. Raczkowski testified plumbing in the garage is unreasonable and creates risks for inappropriate uses such as multifamily dwelling or commercial use. Raczkowski admitted 128 Avon has a higher elevation than 130 Avon. He does not want to see the backside of garage. Raczkowski requests the Applicant build a smaller garage with a car lift or below grade doors as shown in photographs he provided. Ex. O-1.

27. Attorney Jun testified in summation the Applicant is willing to place permanent covenants on the façade to protect the future of the Historic Resource in exchange for garage space and more functional living space to modernize the property. The Applicant has had multiple meetings with Township Staff, Commissions and professional consultants affiliated with the Township which resulted in substantial modifications and significant changes to the proposed garage. She stated it is not possible to modernize the Historic Resource and physically

maintain it without conditional use relief. The only other viable location for a garage with some additional living space is an addition to the primary façade of the Historic Resource. Jun cautioned that a different owner might chose to teardown the Class II Historic Resource, but the Applicant wants to preserve it in perpetuity.

#### APPLICABLE CODES AND ORDINANCES

28. The Pennsylvania Municipalities Planning Code (Act 247 of 1968) (“MPC”) seeks to promote the preservation of historic resources, *inter alia*. MPC §105. It requires first class townships to enact municipal comprehensive plans including a housing element to meet the housing needs of residents through conservation of existing housing, rehabilitation of housing and accommodation of expected new housing in different dwelling types. MPC §301.a.201.

29. The MPC permits municipalities to adopt zoning ordinances to regulate the protection and preservation of historic resources. MPC §603b.5. Zoning ordinances may contain provisions for conditional uses:

to be allowed or denied by the governing body pursuant to public notice and hearing and recommendations by the planning agency and pursuant to express standards and criteria set forth in the zoning ordinances. In allowing a conditional use, the governing body may attach such reasonable conditions and safeguards, other than those related to offsite transportation or road improvement, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance.

MPC §603.c.2.

30. The Lower Merion Township Comprehensive Plan (“Comprehensive Plan”) states:

One-third of all housing units in the Township were constructed prior to 1939 and approximately two-thirds (63.6%) were constructed prior to 1960 making them potentially eligible for historic designation. The aging housing stock requires additional maintenance and modifications to meet evolving societal needs. The need to modernize the existing housing stock is a major challenge facing the community.

Lower Merion Township Comprehensive Plan p. 304. It predicts “existing residences will inevitably be updated and changed over time to meet society’s general needs.” *Id* at p.313. The Comprehensive Plan recommends “promoting the *logical modernization and expansion* of existing housing.” *Id* at p. 314, emphasis added.

31. The Lower Merion Zoning Code provides conditional use relief for Historic Resources pursuant to the Historic Resource Overlay District (“HROD”). Conditional use relief is a “mechanism to allow flexibility for Historic Resources to be modernized and continue to serve the community’s residential needs as the resource ages.” Ex. A-4 at p. 5.

32. Lower Merion Township’s HROD recognizes as a matter of public policy that the preservation and protection of buildings, structures and sites of historic, architectural, cultural, archeological educations and aesthetic merit are public necessities and are in the interests of the health, prosperity and welfare of the people of Lower Merion Township, Code §155-149.

33. The HROD is intended to meet the following objectives:

- A. Promote the general welfare by protecting the integrity of the historic resources of Lower Merion Township;
- B. Establish a clear and public process by which proposed land use changes affecting historic resources can be reviewed;
- C. Discourage the unnecessary demolition of historic resources;
- D. Provide incentives for the continued use of historic resources and to facilitate their appropriate reuse;
- E. Encourage the conservation of historic settings and landscapes;
- F. Promote the retention of historical integrity in the context of proposed land use and/or structural changes;

- G. Identify historic resources in the community and to create a Historic Resource Inventory, to the end that the portion of such resources available to the public view might be preserved.

34. “Historic resource” is defined as “all historic buildings, sites, objects and historic districts which are designated on the Historic Resource Inventory, Chapter 180.” Code §155-155-149.1.

35. “Accessory building” is defined as “a building subordinate to the principal building on a lot and used for purposes customarily incidental to those of the principal building. Code §155-4.b

36. The Lower Merion Historic Resource Inventory lists 130 Avon Road, Haverford, as a Class II Historic Resource. The Board of Commissioners may, by conditional use, grant relief from building area, impervious surface, front and side yard setbacks requirements applicable to Historic Resources, pursuant to Code § 155-152:

**Bulk, area and setback requirements**

Provided that the guarantee referenced in § 155-153.B.4 has first been submitted and approved, the requirements of the underlying zoning district relating to building area, impervious surfaces, and front, side and rear yard setbacks may be modified up to 15% with respect to Class I and Class II Historic resources, subject to obtaining a recommendation from either the Historical Commission or the Board of Historical Architectural Review, pursuant to Chapter 88, and to obtaining conditional use approval from the Board of Commissioners. These modifications shall apply to the area of the lot as it existed on March 15, 2000.

- A. Where the requirements are modified pursuant to this section, the applicant must demonstrate to the satisfaction of the Board of Commissioners that the degree of relief required to accommodate the reasonable development, use or enhancement of the historic resource;
- B. The additional building area and impervious surface coverages permitted by this section may not exceed 50% of the building area of the historic resource(s) subjected to the § 155-153(B) guarantee;
- C. Where the requested relief is determined by the Board of Commissioners to be essential to the preservation of the historic resource because without such relief it would not be physically or economically possible to maintain the

historic resource, the Board of Commissioners may, by conditional use, reduce such requirements to a greater degree than permitted by this section to protect the historic resource.

37. Specific requirements for conditional use approval are set forth in Code §155-153.

38. 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 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

39. The Property is located in the R-1 zoning district and is subject to the Historic Resources Overlay District (“HROD”).

40. The Property contains a Class II Historic Resource listed on the Lower Merion Historic Resource Inventory, specifically the carriage house residence constructed in the late 19<sup>th</sup> century. *See*, Ex. T-2 & T-4.

41. The Property is considered a “rear lot” because it measures 54.7-foot wide at Avon Road rather than the required minimum 125-foot lot width at the street line in the R-1 zoning district. “Rear Lot” is defined in Code §155-4.

Front Yard Setback Relief pursuant to Code§155-152

42. The R-1 residential district standards require a minimum 50 ft. front yard setback. Code §155-20.C.

43. The front yard setback of a rear lot is measured from the point on the lot where the minimum lot width is met. Code §155-4.

44. The Property reaches the minimum lot width 125-feet from Avon Road because it is wedge-shaped. *See*, Architectural Site Plan, Ex. T-4 at p. 2-3.

45. The Property's existing front yard setback is -35 feet because it reaches the minimum lot width 125-feet from Avon Road. *See*, Ex. T-4 at p. 2-3.

46. The Applicant seeks conditional use relief from R-1 zoning district standards to decrease the front yard setback from -35 feet to -55 feet and site the proposed garage in the front yard.

47. Code §155-152 provides relief from bulk, area and setback requirements set by the underlying zoning district by permitting modifications up to 15% for properties with historic resources. ("HROD bonus")

48. The Historical Commission recommended conditional use relief from the R-1 zoning district's front yard setback requirement, pursuant to Code §155-152, as requested by the Applicant. Ex. T-2.

49. The Lower Merion Township Engineer recommended approval of the Applicant's conditional use plan, including decreased front yard setback, with conditions. Ex. T-3.

50. The Lower Merion Planning Commission did not recommend approval of the conditional use relief, but "Commissioner France stated as guidance to the Applicant there was not a sense of concern with (...) the proposed encroachment into the front yard setback." Ex. T-5 at p.2.

51. The Applicant has adequately demonstrated that relief from minimum front yard setback is required to accommodate the reasonable use or enhancement of the Historic Resource. The Property is a rear lot which reaches the minimum lot width 125-feet from Avon Road. *See*,

Site Plan, Ex. A-2. The wedge-shape of the Property is an existing condition of the land which makes compliance with the minimum front yard setback difficult, as explained by expert testimony from architect Potteiger. If the 50-foot minimum front yard setback required by Code were followed, the only place to site the proposed garage in the building envelope would impact the primary façade of the Historic Resource. Testimony of Tracy Davidson, Van Potteiger and Jon Hamilton described how a detached garage with additional space on the second floor will modernize the Property to meet current living needs. In its present condition, the Historic Resource lacks garage space, sufficient closets and storage space and a second full bathroom sized for an adult. All witnesses testified the proposed improvements are directly related to sustaining and preserving the Historic Resource because without such relief the only alternative is an addition to the primary façade.

Impervious Surface Coverage Relief pursuant to Code §155-152

52. The R-1 residential district standards limit maximum impervious surface coverage to 21% of the lot. Code §155-20.F.

53. The Property's existing impervious surface coverage is 17.2% or 3,906 sq. ft.

54. The Applicant seeks conditional use relief from R-1 zoning district standards to increase the Property's impervious surface coverage from 17.2% (3,906 sq. ft.) to 22.63% (5,149 sq. ft.).

55. Code §155-152 provides relief from bulk, area and setback requirements set by the underlying zoning district by permitting modifications up to 15% for properties with historic resources. ("HROD bonus")

56. The HROD bonus permits 24.15% impervious surface coverage (5,495.81 sq. ft.) on the Property. *See* Ex. A-7.

57. The requested 22.63% impervious surface coverage (5,149 sq. ft.) is less than the permitted 24.15% with HROD bonus (5,495.81), but greater than 50% of the building area of the Historic Resource (555 sq. ft.), *see infra*.

58. The Historical Commission recommended conditional use relief from the R-1 zoning district's maximum impervious surface coverage limit, pursuant to Code §155-152.C, as requested by the Applicant, on February 24, 2020. Ex. T-2.

59. The Lower Merion Township Engineer recommended approval of the Applicant's conditional use plan, including increased impervious surface coverage, provided stormwater management is installed on the Property. Ex. T-3.

60. The Lower Merion Planning Commission did not recommend conditional use approval, but "Commissioner France stated as guidance to the Applicant there was not a sense of concern with impervious relief (...)." *See*, Ex. T-5 at p.2.

61. The Applicant has established through credible evidence that relief from the maximum impervious surface coverage limit is required to accommodate the reasonable use or enhancement of the Historic Resource. The site plan (Ex. A-2) shows the Property is a rear lot with nonconforming lot area. Expert testimony by architect Potteiger, described the need for a long driveway as a rear lot. Moreover, the Property's nonconforming lot size reduces the square footage of allowable impervious surface coverage compared to conforming R-1 properties. Testimony of Tracy Davidson, Van Potteiger and Jon Hamilton explained why construction of a detached garage will help modernize the Property with functional space such as a garage, closets, storage and a bathroom to meet current living needs. Siting of the proposed detached garage on the rear lot will require extra impervious surface for a long driveway on the Property. All witnesses testified the proposed improvements will accommodate the reasonable use or

enhancement of the Historic Resource, but will not negatively affect the health, safety or welfare of the community.

62. The additional impervious surface coverage will exceed 50% of the building area of the historic resource subjected to the § 155-153.B guarantee, which does not comply with Code §155-152.B.

63. Where the requested relief is determined by the Board of Commissioners to be essential to the preservation of the Historic Resource, because without such relief it would not be physically possible to maintain the Historic Resource, the Board of Commissioners may, by conditional use, modify such requirements to a greater degree than permitted by this section to protect the historic resource. Code §155-152.C.

64. The Applicant has demonstrated that greater relief from maximum impervious surface coverage is essential to the preservation of the historic resource, because without such relief it would not be physically possible to maintain the historic resource. Tracey Davidson, Van Potteiger and Jon Hamilton testified the Historic Resource lacks functional space and modern amenities such as a garage, sufficient closets, storage space and living space and a second full bathroom sized for an adult. These missing amenities arise from the Historic Resource's original construction as a small carriage house rather than a residence. The only other option to modernize the Property is an addition to the Historic Resource attached to the primary façade. Such an addition would negatively impact the historic building envelope. Moreover, an addition would necessitate a longer driveway and more impervious surface coverage than proposed by the detached garage. The Applicant's exhibits and testimony, together with the recommendations of the Historical Commission and Township Engineer, as well as guidance from the Planning Commission, suggest approval of impervious surface coverage to an extent

greater than 50% of the Historic Resource's building area is necessary to physically maintain the Historic Resource.

Building Area Relief pursuant to Code §155-152

65. The R-1 zoning district standards limit maximum building area to 15% of a lot. Code §155-20.B.

66. The Property's existing building area is 10.4% or 1,275 sq. ft. Once the existing shed (165 sq. ft) is removed, the remaining building area will consist of the Historic Resource (1,110 sq. ft.).

67. The Applicant seeks conditional use relief from R-1 zoning district standards to increase building area from 10.4% (1,110 sq. ft.) to 16.79% (2,050 sq. ft.), an increase of 940 sq. ft.

68. Code §155-152.A provides relief from bulk, area and setback requirements set by the underlying zoning district by permitting modifications up to 15% for properties with historic resources. ("HROD bonus")

69. The HROD bonus permits 17.25% building area on the Property. *See* Ex. A-7.

70. The Applicant's requested 16.79% building area (2,050 sq. ft.) is less than the allowable 17.25% with HROD bonus (2,106 sq. ft.), but greater than 50% of the building area of the Historic Resource (555 sq. ft.), *see infra*.

71. The Historical Commission recommended conditional use relief from the R-1 zoning district's maximum building area, pursuant to Code §155-152, as requested by the Applicant, on February 24, 2020. Ex. T-2.

72. The Lower Merion Township Engineer recommended approval of the Applicant's conditional use plan, including increased building area, provided stormwater management is installed on the Property. Ex. T-3.

73. The Lower Merion Planning Commission did not recommend relief for building area on the Property, but stated it “would recommend conditional use approval if the Applicant stayed within the building area allowed by Code §155-152.A as their primary concern is the size and scale of the proposed new building and the encroachment into the side yard area.” *See*, Ex. T-5 at p.2.

74. The Applicant has established through credible evidence that relief from maximum building area limits is necessary to accommodate the reasonable use or enhancement of the Historic Resource. The architectural site plan (Ex. A-2) shows the Property is a rear lot with nonconforming lot area for the R-1 district. Expert testimony by architect Potteiger explained the nonconforming lot size reduces the allowable square footage of building area coverage compared to conforming R-1 properties. Testimony of Tracy Davidson, Van Potteiger and Jon Hamilton described how construction of a detached garage will help modernize the Property to meet current living needs. All witnesses testified the proposed improvements will accommodate the reasonable use or enhancement of the Historic Resource and there will be no negative impact on the health, safety or welfare of the community

75. The additional building area coverage will exceed 50% of the building area of the Historic Resource subjected to the § 155-153(B) guarantee, which does not comply with Code §155-152.B.

76. Where the requested relief is determined by the Board of Commissioners to be essential to the preservation of the Historic Resource, because without such relief it would not be physically possible to maintain the Historic Resource, the Board of Commissioners may, by conditional use, modify such requirements to a greater degree than permitted by this section to protect the historic resource. Code §155-152.C.

77. The Applicant has demonstrated that greater relief from maximum building area coverage is essential to the preservation of the Historic Resource, because without such relief it would not be physically possible to maintain the Historic Resource. Tracey Davidson, Van Potteiger and Jon Hamilton testified the Historic Resource lacks modern amenities such as garage space, sufficient closets and storage space, and a second full bathroom sized for an adult. These missing amenities arise from the Historic Resource's small size because it was originally constructed as a carriage house, rather than a residence. The small footprint of the Historic Resource impacts the allowable building area of the proposed garage under Code §155-152. Moreover, the Property's nonconforming building area in the R-1 residence district reduces the allowable size of the proposed garage. Flexibility is needed to modernize the Historic Resource in a logical fashion. The only other option to modernize the Property is an addition attached to the primary façade of the Historic Resource, which would negatively affect the building envelope. The Applicant's exhibits and testimony, together with the recommendations of the Historical Commission and Township Engineer, and dicta in the Planning Commission's minutes suggest conditional use approval for a detached garage with a smaller footprint than that proposed by the Applicant may be warranted.

Compliance with Code § 155-153.A

78. The Applicant has provided an application, site plan, photographs, floor plans and all information required by Code § 155-153.A.2.a-f. *See*, Ex. A-1 to A-9.

79. The Applicant is not required to provide a historic resource impact study because land development or subdivision is not proposed in the application. *See*, Code § 155-153.A.3.

80. The Historical Commission has reviewed the conditional use application and forwarded recommendations to the Director of Planning as required by Code § 155-153.A.4.

81. The Building and Planning Committee has referred the conditional use application to a hearing officer to conduct a conditional use hearing and make recommendations to the Committee, pursuant to Code § 155-153.A.5.

82. Conditional use approval has not been granted yet, therefore the provisions of Code § 155-153.A.6 are inapplicable.

Compliance with Code § 155-153.B

83. The Applicant has shown that approval of the detached garage will not jeopardize the preservation of the Historic Resource, but rather will contribute to its preservation by preventing the need for an addition to the primary facade. The proposed garage has been sited and designed to blend harmoniously and sympathetically with the Historic Resource's architectural details in terms of texture and color. In addition to the foregoing, the Planning Commission's advice to reduce the size and scale of the proposed garage should be followed to avoid detracting from the principal building on the lot. The Applicant has demonstrated:

- a. The exact location of the area in which the work is to be done is shown on the Architectural Site Plan dated 10/14/19 last rev. 3/3/20, Ex. A-2.
- b. The exterior character of the proposed garage is shown on the Exterior Elevations, Notes & Details dated 10/14/19 last rev. 2/7/20, Ex. A-2.
- c. A list of the surrounding single family homes with varied exterior characteristics by testimony of architect Potteiger and photographs, Ex A-1.
- d. No exterior changes to the Historic Resource are proposed. The proposed garage will be in keeping with the general historic and architectural nature of the Property. It will complement the Historic Resource in detailing, but the scale and proportion of the proposed garage should be reduced.

- e. The exterior architectural features of the garage will be appropriate and harmonious with the Historic Resource as shown on Plans, Details & Notes, Ex. A-3.
- f. The proposed garage will be harmonious with the Historic Resource in general design, arrangement, texture, and color. The scale and mass of the proposed garage should be reduced.
- g. The rehabilitation work will not destroy the distinguishing qualities or character of the Historic Resource because no changes to it are proposed.
- h. No replacement of contributing architectural features of the Historic resource are proposed.
- i. No change to the distinctive features or examples of skilled craftsmanship of the Historic Resource are proposed.
- j. Any changes to the Historic Resource, which was built between 1887 and 1896, will be preserved.
- k. The Historic Resource will continue to be used as a single family dwelling with no changes to the defining characteristics of the building. Minor changes to its site and environment will occur when the existing shed is replaced with a detached garage.

84. The Secretary of the Interior's Standards for Rehabilitation of Historic Structures, particularly no. 1, 9 and 10, pursuant to Code §155-153.B.2, to use have been met according to the Historical Commission's recommendations on this application. Ex. T-2.

85. The requirements of Code §155-153.B.3 are not applicable to this application.

86. The Applicant has agreed to provide a guarantee to protect the historical integrity of the Historic Resource required by Code §155-153.B.4. In addition, her substantial investment

in the Property, together with the façade covenant, will facilitate preservation of the Historic Resource.

87. The historical integrity of the Historic Resource has been provided for through the design of the proposed garage, as well as through implementation of buffering, landscaping, lighting, storage, access and traffic management, interior circulation, loading, parking, fencing, signage, and all other land development features, in compliance with Code §155-153.B.5, subject to the remarks below about reducing the size and scale of the proposed garage. Landscaping will be provided to soften the views of the proposed garage and stormwater management exceeding Code requirements will be installed. The testimony, plans, studies and documentary evidence provided by architect Potteiger satisfy these requirements. The Planning Commission's advice, however, to reduce the size and scale of the proposed garage so it is appropriate for the Historic Resource should be heeded by the Applicant.

88. The Applicant has shown that the grant of the application will not be destructive of the integrity of the historic resource or detrimentally affect the value of surrounding properties, satisfying Code §155-153.B.6. The project will be protective of the Historic Resource, as determined by the Historical Commission, because an addition will not be attached to the primary façade. No change to the Historic Resource is proposed. The proposed garage will be screened by landscaping and fencing, and the entire property will be improved with stormwater management. These improvements will prevent any detrimental effect on the value of the Historic Resource or surrounding properties. The expert testimony of architect Potteiger, together with the site plan, architectural renderings and details, photographs and documentary evidence provided by Potteiger and recommendations of the Historical Commission and Township Engineer satisfy these requirements. The objecting neighbor's testimony that the proposed garage will harm their property value is speculative. Front yard setbacks along Avon

Road are varied, therefore the proposed garage encroaching into the front yard setback will not be out of character for the neighborhood. The Zoning Code permits accessory buildings up to 35-feet high, contrary to the neighbor's argument that the proposed garage should not exceed one story. Moreover, the proposed garage will sit at a lower elevation than the neighbor's house, minimizing its height when viewed from 128 Avon Road. The roofline will slope away from the side yard boundary, minimizing its mass when viewed from 128 Avon Road. Lastly, the Applicant recently changed her plans such that the proposed garage will not be constructed in the side yard setback, therefore it will not interfere with light and views from the neighbor's property.

89. The parking requirements for two off-street parking spaces will be provided, in compliance with Code §155-153.B.7.

90. Signage is not proposed for this project, therefore Code §155-153.B.8 is inapplicable.

91. The Applicant will comply with any conditions which may be imposed by the Board of Commissioners to achieve the objectives of Code and to promote the public health, safety and welfare, as set forth in Code §155-153.B.9, which the Applicant accepts.

92. The rate and volume of stormwater generated on the property will exceed requirements and improve current conditions according to the testimony of architect Potteiger, with reference to Code §155-153.B.10. *See*, Ex.T-3.

#### Compliance with General Conditional Use Standards and Criteria

93. The Applicant has complied with the general standards for procedure to obtain conditional use approval contained in Code §155-141.2.A. Some of these general standards overlap with specific standards found in Code §155-153, while compliance with all general

standards has been assured through multiple reviews by Township Staff, the Township Engineer, the Lower Merion Historical Commission and the Lower Merion Planning Commission.

94. The Applicant has established by credible evidence that conditional use relief to construct a detached garage complies with the community development objectives stated in Article I of this chapter and the declaration of legislative intent of the HROD district, pursuant to Code §155-141.2.B.1. The integrity of the Historic Resource will be preserved with permanent covenants, thereby promoting the general welfare pursuant to Code §155-149. The proposed garage will make the Property more suitable for contemporary living thus facilitating continued preservation of the Historic Resource. Conditional use relief from front yard setbacks, impervious surface coverage limitations and building area limitations provides incentives for continue use of the Historic Resource, pursuant to Code §155-149.

95. The Applicant has established by credible evidence compliance with the conditions for the grant of conditional uses enumerated in the HROD ordinances, pursuant to Code §155-141.2.B.2. The Applicant seeks to reduce the front yard setback from -35-feet to -55-feet which is acceptable because it is a rear lot which achieves minimum lot width 125-feet from Avon Road. The Applicant also seeks to exceed impervious surface and building area limitations in the R-1 residence district, but will fall within the HROD bonus for both measurements as provided by Code §155-152. Although additional impervious surface coverage will exceed 50% of the Historic Resource's building area, without such relief it is not physically possible to maintain the historic integrity of the Historic Resource. The alternative would be to construct an addition to the Historic Resource which would change the defining features and the historical integrity of the building envelope. The proposed garage is necessary for reasonable use and enjoyment of the Property. The proposed garage's additional building area will exceed 50% of the Historic Resource's building area. The Planning Commission has indicated concern with the

size and scale of the proposed garage in relation to the Historic Resource. It is recommended that the Applicant reduce the building area of the proposed garage to alleviate the Planning Commission's justifiable concern and obtain approval from the Board of Commissioners.

96. The Applicant has demonstrated granting the conditional use shall preserve the character of the neighborhood, in compliance with Code §155-141(B)(3), through testimony of the Applicant and architect Potteiger, as well as an aerial photograph (Ex. A-1) and proposed building elevations (Ex. A-2). The neighborhood was created from subdivided larger estates and property owned by the Church of the Redeemer, rather than one subdivision plan. As a result, properties along Avon Road do not have consistent front yard setbacks. Some properties are rear lots and nonconforming to minimum lot size in the R-1 residential district, such as the subject Property. *See* aerial photograph, Ex. A-1. The location of the proposed garage is consistent with the organically grown character of the neighborhood varying front yard setbacks along Avon Road. Moreover, preserving the integrity of the Historic Resource will also preserve the character of the neighborhood. Relief from impervious surface limitations is reasonable for a nonconforming rear lot to benefit a Historic Resource, as stated by the Historical Commission, Township Engineer and the Planning Commission. The size and scale of the proposed garage should be reduced, as advised by the Planning Commission, to obtain relief from maximum building area limitations.

97. The Property is currently used as a single family home and is properly serviced by existing public service systems, pursuant to Code §155-141(B)(4). The proposed garage will not change this arrangement according to the testimony of architect Potteiger.

98. The Property is currently used as a single family home and has 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 proposed garage will not change this arrangement according to the testimony of architect Potteiger.

99. Sufficient plans, studies, presentations and other data showing compliance with the regulations for the permitted use have been submitted to Township Staff, the Historical Commission, the Planning Commission, the Township Engineer and the Hearing Officer pursuant to Code §155-141(B)(6),

100. The Applicant has agreed to comply with any condition which may be imposed by the Board of Commissioners and is accepted by the Applicant in compliance with Code §155-141(B)(7).

### DISCUSSION

101. The historic carriage house at 130 Avon Road is a former accessory building in need of an accessory building for functional living space. It was built in the late 19<sup>th</sup> century as a stable for a residential home on Pennswood Road called “Robin’s Nest” designed by architect William A. Fischer. The land upon which the carriage house sits subsequently was subdivided into a rear lot with narrow frontage on Avon Road. The small accessory carriage house was converted to residential use and designated a Class II Historic Resource presently known as 130 Avon Road. A past addition slightly expanded the carriage house, but it still lacks a garage and sufficient functional space. The Applicant would like to update the carriage house’s amenities to accommodate reasonable modern needs such as garage space for two vehicles, lawn and yard equipment, extra closets and storage space, a second full bathroom sized for an adult<sup>4</sup>, and yoga/flex space. Most of these items are common to modern houses in the neighborhood. She

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<sup>4</sup> One of the two full bathrooms in the Historic Resource contains a child-sized claw foot tub which does not accommodate an adult according to testimony of the Applicant.

does not propose installing a kitchen and testified the second floor of the garage will not be used as an apartment.

102. The Applicant had planned an addition to the primary façade of the Historic Resource because it was the only available by space in the building envelope and required minimal zoning relief. The property has a small building envelope due to its wedge-shaped rear lot nonconforming to minimum lot size, which also impacts the amount of building area and impervious surface coverage permitted by right. When the Historical Commission pointed out an addition attached to the primary façade of the Historic Resource would detract from its historic integrity, the Applicant agreed to switch plans to preserve the historic fabric.

103. She now proposes a detached, two-car garage with additional living space on the second floor and has made additional changes at the suggestion of Township commissions. The Applicant rotated the siting of the proposed garage and partially stepped back the façade to minimize massing at the suggestion of the Historical Commission. A side loaded garage will not have garage doors facing the street, a design element required under the new zoning code which provides valuable comparative information, even though not applicable here. She further agreed to move the proposed garage out of the side yard setback upon advice from the Planning Commission, and reduced its building area from 1130 sq. ft to 940 sq. ft. The Applicant clearly has been flexible while collaborating with Lower Merion Township to preserve the historic façade of the carriage house, but at this point she requests flexibility from the zoning code to modernize the property.

104. The Lower Merion Comprehensive Plan recognizes the need to modify aging housing stock to meet evolving societal needs. It recommends promoting the logical modernization and expansion of existing housing in the Township's Zoning Code. The preservation of Historic Resources is regulated in the Historic Resources Overlay District

(“HROD,”) which also provides flexibility from zoning requirements by conditional use. The HROD provides relief from bulk, area and setback requirements to incentivize preservation of Historic Resources, pursuant to Code §155-152.

105. The Applicant requests relief from the front yard setback requirements in the R-1 residential district, as well as relief greater than 50% of the building area of the Historic Resource for impervious surface coverage and building area, pursuant to Code §155-152.C, to build the proposed detached garage and modernize the Property to current standards of living. Without such relief, the Applicant contends it is not possible to physically maintain the Historic Resource because an addition to the primary façade will be proposed. It is also possible for the Historic Resource to be demolished and a new principal building to be erected on the lot, but the Applicant is not making such a proposal. These alternative courses of action available to the Applicant should inform her requests for zoning relief, discussed *infra*.

106. The unusual shape and nonconforming lot size of the Property provide grounds to recommend relief from the minimum front yard setback of 50-feet. As a wedge-shaped rear lot with 54.7 linear feet of frontage, the Property’s minimum lot width of 125-feet is attained at the point where the lot meets the required lot width pursuant to Code §155-128. In this case, minimum lot width requirements would site the proposed garage 175-feet from the street without zoning relief. Permitting the proposed garage to encroach 55-feet into the front yard setback and 110-feet from the street (210% relief,) will site the garage on the flattest part of the lot, require less impervious surface coverage than an addition to the Historic Resource and preserve the facade. Moreover, a detached garage in the front yard will form a courtyard together with the Historic Resource.

107. The Applicant has presented a compelling case for impervious surface coverage relief greater than 50% of the building area of the Historic Resource, pursuant to Code §155-

152.C, because without such relief it would not be physically feasible to maintain the Historic Resource and modernize the Property to current standards of living. The Historic Resource's 1,110 sq. ft. footprint allows an additional 555 sq. ft. of impervious surface under Code §155-152.B. The Applicant requests an additional 1,243 sq. ft. of impervious surface, to the existing 3,906 sq. ft., for a total of 5,149 sq. ft. While 1,243 sq. ft. is more than double the allowable 555 sq. ft., additional impervious surface is necessary for a rear lot requiring a long driveway to reach the proposed detached garage sited 110-feet from the street. If the Applicant built an addition attached to the Historic Resource, greater amounts of impervious surface would be needed because it would sit further away from the street (at least 175-feet) than the proposed detached driveway.

108. Moreover, the Property's nonconforming lot size of 24,102 sq. ft. is directly related to the small amount of impervious surface permitted by right because it is calculated as 21% of the lot area. Other properties in the R-1 residence district with conforming lot sizes of 30,000 sq. ft. are permitted greater amounts of impervious surface by right.

109. The Applicant cannot physically maintain the Historic Resource and modernize her Property with a reasonable amount of functional living space, because the only other location for a garage in the building envelope would be an addition attached to the primary façade. Such an addition would detract from the historic integrity of the Historic Resource. Under these circumstances, the Applicant has demonstrated a need for relief greater than 50% of the building area of the Historic Resource. The Historical Commission recommended relief from maximum impervious surface coverage to the extent requested, as did the Township Engineer. The Planning Commission noted it was not concerned with the requested amount of impervious surface coverage when it denied a motion to recommend approval of the conditional use application on other grounds.

110. Additional building area of the proposed garage exceeding 50% of the building area of the Historic Resource, pursuant to Code §155-152.C, is a more difficult issue. The Historic Resource's building area is 1,110 sq. ft., of which 50% is 555 sq. ft. The proposed garage's building area is 940 sq. ft, which is 390 sq. ft. more than 555 sq. ft. and 84.68% of the Historic Resource's building area. The size and scale of the garage concerned the Planning Commission because the originally proposed 1,130 sq. ft footprint was slightly larger than the Historic Resource's 1,110 sq. ft. footprint. Although the Applicant subsequently reduced the footprint of the garage from 1,130 sq. ft. to 940 sq. ft., shaving off 190 sq. ft., the current proposed building area is only 15.32 % less than the Historic Resource's building area (1,110 sq. ft.).

111. By definition, an "accessory building" is subordinate to principal building. Code §155-4.b. A garage containing 84% of the principal structure's building area may not appear subordinate to it. The hierarchy of size and scale between principal structures and accessory buildings envisioned by Code's definition would be better met by the proposed garage measuring 70-75% of the Historic Resources' building area. This size has 25-30% less building area than the Historic Resource. In such a case, the garage's building area would fall between 777 sq. ft and 832 sq. ft.

112. The Applicant's architect testified the size of the proposed garage was determined by the uses needed for it: a two car garage, storage of lawn and yard equipment, additional closets and storage space, full bathroom and additional living space. While these amenities are functional items for a modern house commonly found in this neighborhood, a slightly smaller detached garage could include them.

113. The Property's nonconformity with regard to minimum lot size is directly related to its smaller building area by right. The minimum lot size in the R-1 residential district is 30,000

sq. ft. and 15% building area is permitted by right (4,500 sq. ft.) The Property's lot size is 24,102 sq. ft., therefore 15% building area is 3,615 sq. ft. In other words, the Property's nonconforming lot size reduces the permitted building area by 20% or 885 sq. ft. less than conforming lots. The nonconforming lot size is a characteristic of the land not created by the Applicant. The size and scale of the proposed garage, however, is within the Applicant's control.

114. Two owners of an adjacent property, who are not current residents, have objected to the size of the proposed garage and its potential use as an accessory apartment. Township Staff has recommended a condition of approval prohibiting use of the garage as an accessory apartment without the required approval to satisfy the latter concern. The neighbors also objected to the garage encroaching in the side yard setback and the Applicant revised her plan to entirely remove it from that setback. It should be noted that no other neighbors have objected. Moreover, the Historic resource is smaller than other houses in the neighborhood, including the larger house owned by the two objecting neighbors. The neighborhood contains houses of various sizes with varying front yard setbacks and the proposed garage would fit in.

115. The Planning Commission has stated the size and scale of the proposed garage is too large and requested a building scale more appropriate to the Historic Resource. This objective may be met reducing the building area of the proposed garage to something between 777 sq. ft and 832 sq. ft., which is 25-30% less building area than the Historic Resource. The Applicant surely can modernize the Property with a detached garage of slightly smaller size and scale to satisfy the understandable concerns of the Planning Commission and neighbors. Such a compromise would enable a recommendation to grant conditional use relief from maximum building area limitations greater than 50% of the Historic Resource's building area to allow the Applicant to physically maintain the Historic Resource. If such relief is not granted, an addition to primary façade of the Historic Resource within the building envelope may be physically

possible with smaller amounts of conditional use relief than required by the proposed detached garage. Such an addition, however, would not preserve the integrity of the Historic Resource and would not advance the objectives of the HROD and the Lower Merion Comprehensive Plan. It would also prevent potential tear down of the Historic Resource.

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

### ORDER

AND NOW on this \_\_\_\_ day of April, 2020, the application of Tracy Davidson for conditional use approval to reduce the minimum front yard setback Code §155-152.A; and to exceed the maximum impervious surface coverage and building area by more than 50% of the building area of the Historic Resource pursuant to Code §155-152.C of the Township of Lower Merion is granted, subject to the following conditions:

1. The Applicant shall reduce the building area of the proposed garage so it contains 25-30% less building area than the Historic Resource and contains no more than 777 sq. ft to 832 sq. ft. to reduce its size and scale.
2. The applicant shall provide a Landscape Plan that visually screens the proposed garage from the street.
3. An accessory apartment shall not be permitted in the proposed structure without the required approval.
4. The Township Engineer's review letter dated February 24, 2020 shall be incorporated by reference into conditional use order.
5. The south end of the garage façade shall be set back a minimum of one foot to minimize the massing of the proposed garage on the end closest to the historic resource.

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