

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

Application 3783C

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

This conditional use application seeks approval to hold twelve (12) required parking spaces in reserve, pursuant to Zoning Code §155-95.1, as part of a Waiver of Land Development plan at Bala Cynwyd Middle School (“BCMS”). A Conditional Use Hearing was conducted on March 31, 2017 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 located at 510 Bryn Mawr Avenue, Lower Merion Township (“Property”).
3. The Property is in the R-4 residence district and the Historic Resource Overlay District and consists of 14 acres with frontage on Bryn Mawr Avenue, West Levering Mill Road and Manayunk Road.
4. The Property is improved with a three-story structure known as the BCMS; a three-story structure listed as a Class II resource on the Township’s Historic Resource Inventory and known as Cynwyd Elementary School (“CES”); and the Academy Building, a Class I resource on the Township’s Historic Resource Inventory, used by the Lower Merion Historical Society.

5. The Property also “contains three tennis courts, a running track, playing fields and several surface parking lots. Access driveways are located on West Levering Mill Road, Bryn Mawr Avenue and Manayunk Road. The West Levering Mill Road driveway provides access to the front of the Bala Cynwyd Middle School and can accommodate approximately nine buses. This area also hosts morning parent drop-off activity and limited parking. A 64-space parking lot is also located along Bryn Mawr Avenue to the north of the school and provides additional parking for staff. The Manayunk Road driveways to the rear of the property primarily provide access for service vehicles.” (Leswing memo, Ex. T-2 at pp 1-2).

6. The Applicant’s enrollment projections show increased student enrollment at the BCMS over the next five years necessitating more staff and classroom space. To accommodate these future needs, the Applicant has submitted a Waiver of Land Development Plan showing a 6,780-square foot modular building containing six classrooms and bathrooms, as well as twelve parking spaces.

7. The Applicant obtained variances from the Zoning Hearing Board to exceed allowable impervious surface coverage by 1.1% for the installation of a temporary modular building and to exceed the impervious surface coverage by .09% for the construction of twelve parking spaces. It received approval on March 16, 2017.

8. The Lower Merion Historical Commission reviewed the application and recommended approval on March 2, 2017. It also recommended approval of the reserve parking area and the temporary waiver of a Historic Resource Impact Study, with the study to be completed when submission is made for the future permanent addition.

9. The Lower Merion Planning Commission reviewed the Conditional Use application and recommended approval on April 3, 2017. They also recommended approval of the associated Waiver of Land Development Plan subject to conditions on April 3, 2017.

10. The Conditional Use Hearing Officer conducted public hearings on March 30 and April 6, 2017.

11. On March 30, 2017, Christopher Leswing, PP, AICP, Assistant Director of the Lower Merion Township Building and Planning Department, testified and offered four (4) documents into evidence that were subsequently admitted into the record:

- a. Proof of Publication of Legal Notices (Exhibit T-1);
- b. Staff Memo to Planning Commission dated 3/31/17 (Exhibit T-2);
- c. Township Engineer's review of the Waiver of Land Development Application dated 3/24/17 (Exhibit T-3); and
- d. Merion Park Civic Association's letter dated 3/30/17 (Exhibit T-4).

12. At the continued hearing on April 6, 2017, Andrea Campisi, Senior Planner in the Lower Merion Township Building and Planning Department, testified and offered one (1) document into evidence, the Lower Merion Planning Commission's recommendation for approval of the Conditional Use application and approval of the Waiver of Land Development Plan subject to conditions (Exhibit T-5). The Planning Commission's Waiver of Land Development conditions are: pedestrian improvements; a landscape plan; traffic improvements; stormwater management; construction details; and a lighting plan.

13. The Applicant offered ten (10) 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 Site Plan/Conservation Plan (Ex. A-2);
- c. Grading and Drainage Plan (Ex. A-3);
- d. Diagram of Walking Distances for Street Parking (Ex. A-4);
- e. Transportation Impact Assessment (Ex. A-5);
- f. Code Compliance Analysis (Ex. A-6);
- g. Zoning Hearing Board Order in Appeal No. 44402 (Ex. A-7);
- h. C.V. of Patrick A. Guinnane, Director of Operations for LMSD (Ex. A-8);
- i. C.V. of Jeremy Maziarz, P.E., P.L.S. (Ex. A-9); and
- j. C.V. of Frank Tavani, P.E., PTOE (Ex. A-10).

14. The Applicant's Attorney, Jamie Jun, testified that LMSD seeks conditional use approval to hold twelve parking spaces and stormwater management facilities in reserve in connection with installing a temporary modular building at BCMS. Additional classroom space is needed because enrollment projections show an increase of 150 students over a five-year period, which will require six additional staff members. The Applicant proposes to install six temporary classrooms because plans for permanent improvements have not been made yet.

15. Patrick Guinnane testified on behalf of the LMSD. He has been Director of Operations for LMSD since 2001 and is licensed as a civil engineer. His job duties include overseeing support services, grounds maintenance, student transportation, custodial services and expansion plans. Guinnane explained that BCMS's current enrollment of 915 students is projected to increase by an additional 150 students over the next five years. Projected peak enrollment during the 2021-2022 school year is 1,175 students at BCMS. As a result, LMSD needs additional classroom space at BCMS and favors installing a temporary building for flexibility in planning for future growth. LMSD has submitted a Waiver of Land Development Plan to install a temporary modular building containing six additional classrooms and bathrooms, as well as construct twelve (12) parking spaces and stormwater management facilities, as shown on Ex. A-2 & 3.

16. The Property currently contains a parking lot accessed from Bryn Mawr Avenue containing 64 parking spaces, as well as a bus loop in front of BCMS with parking for nine buses and additional cars. Service vehicles park in the Manayunk Road driveways to the rear of BCMS. Street parking in the surrounding neighborhood is readily available and has traditionally met additional parking demand.

17. The proposed expansion of BCMS requires twelve (12) additional parking spaces for staff and visitors under Code, but they are not necessary yet according to Guinnane. Street parking is readily available within walking distance of BCMS, as shown on the Applicant's diagram, see Ex. A-4. Guinnane testified that there are multiple benefits to deferring the construction of twelve parking spaces: less impervious surface coverage on site; greater flexibility for LMSD to plan for future growth; preservation of existing green space and playing fields and no installation of stormwater management facilities that reduce existing green space and playing fields. The Lower Merion School Board might agree to a Covenant to install additional parking and stormwater management if the Zoning Officer determines it is necessary in the future. Guinnane further testified that holding twelve parking spaces and stormwater management facilities in reserve will not affect the health, safety morals or welfare of the public. Lastly, the Merion Park Civic Association supports deferring construction of twelve (12) parking spaces according to a letter dated March 30, 2017, see Ex. T-4.

18. Jeremy R. Maziarz, PE, an Engineer and Senior Project Manager employed by Chester Valley Engineers testified in support of the Application. He prepared the Overall Site Plan/Conservation Plan (Ex A-2) and the Grading and Drainage Plan (Ex. A-3). Maziarz described the 14-acre site and testified that land in the northwest

corner of the property, adjacent to Manayunk Road would be the best location to install additional parking spaces. There is no economic or practical benefit, however, to installing twelve (12) parking spaces given available street parking (see, Ex A-4). Moreover, unnecessary disturbances would result from installing additional parking. He does not believe there will be any adverse impacts as defined by Code to holding parking in reserve. Maziarz further testified stormwater management for a new parking lot can be designed and constructed in a way that satisfies the Township Engineer in the future. He concluded his testimony saying holding twelve (12) parking spaces in reserve will result in less impervious surface coverage and stormwater runoff at BCMS and will improve the health, safety and welfare of the community.

19. Frank Tavani PE, PTOE testified in support of the Application as the traffic engineer who prepared the Transportation Impact Assessment measuring traffic counts, levels of service and parking (Exhibit A-5). Tavani testified that he is well acquainted with traffic and parking at the location. BCMS is surrounded by a residential area and parking demand drops during the day when residents go to work and school is in session. The school day begins at 8:20 a.m. and ends at 3:05 p.m. The current total peak student population is 915 students with future projected growth to 1,175 students during the 2021-2022 school year, together with 154 staff members. An additional 150 students and six staff members¹ will necessitate six new classrooms at BCMS and twelve (12) on-site parking spaces per Code.

20. Tavani collected traffic data while school was in session in January 2017 between 7:00 and 9:00 am (school peak) and between 2:00 and 6:00 pm (commuter

¹ Tavani's report states 130 additional students are projected at BCMS, however the Applicant clarified that 150 additional students are projected which does not change the amount of required parking.

peak). Peak hours were found to be 7:30 to 9:30 am and 3:00 to 4:00 pm. Parking demand follows these peak periods. Existing parent pick up and drop off activity takes place in the main driveway loop along Bryn Mawr Avenue. Queues spill onto Bryn Mawr Avenue for eleven minutes during the morning from 8:02 to 8:13 am. Peak queue lengths are more challenging to quantify during afternoon because parental pick up activity occurs in a larger area compared to drop off. Peak activity occurs for approximately 16 minutes starting at 3:00 pm, according to Tavani's report (Ex. A-5 at p. 1-2).

21. Faculty, staff and visitors currently park in the existing on-site parking spaces and in the surrounding neighborhood where there are 176 street parking spaces along eight streets, as calculated by Tavani. The midday peak demand is 78 street parking spaces and there still remained nearly 100 available parking spaces according to Tavani's testimony. Of the nearly 100 available parking spaces, 33 are found along Bryn Mawr Avenue and Manayunk Road. Street parking reduces the cart way width, which reduces the speed of through motorists. Existing levels of service are "C" or better according to the traffic study. Level of service at the study area intersections and driveways will operate under future conditions no worse than level "C", also see Ex. A-5 at p. 2.

22. Tavani testified there is existing surplus parking supply which is several times greater than code requirements, which leads him to recommend that any additional parking be placed in reserve until such time as it is determined that new on-site parking is actually required. He further testified that holding twelve (12) additional parking spaces in reserve will not materially and adversely affect traffic, circulation or levels of service of adjacent intersections.

23. John Steinfeld, a twelve-year resident of 538 Manayunk Road, testified that he supports LMSD's application for reserve parking. He favors on-street parking and does not want to lose playing fields or green space. Moreover, a parking lot in the north-west corner of the property would alter the view and may include lighting which he would oppose. LMSD's proposed plan is a "win-win" according to his testimony.

APPLICABLE ORDINANCES

24. 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.

25. 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.

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 Patrick Guinnane, expert testimony of Jeremy R. Maziarz and Frank Tavani and documentary evidence adequately demonstrating that twelve (12) parking spaces are not currently needed. There are approximately 100 on-street parking spaces. Faculty and staff currently park in the surrounding neighborhood, however, only a portion of existing on-street parking is utilized. If an additional twelve vehicles were to park in the neighborhood, ample additional parking would still remain throughout the day and there would be no significant impact on traffic or parking in the area according to traffic engineer Frank Tavani.

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 Patrick Guinnane and Jeremy R. Maziarz and the Grading & Drainage Plan which adequately depicts the proposed location of twelve (12) parking spaces should they be required to be constructed. (*See Exhibit A-3*). Stormwater management facilities can be designed and installed pursuant to the Township Engineer's satisfaction should the reserve parking spaces be required to be constructed according to Maziarz's testimony.

30. The Applicant has complied with Code §155-95-1(D) by adequately demonstrating that additional stormwater management facilities are not necessary at this

time because new on-site parking is currently not needed and would disturb existing green space at the heavily utilized site. Moreover, the location of stormwater management facilities may change if LMSD makes permanent improvements at BCMS.

31. The Applicant has complied with Code §155-95-1(E) through testimony of Patrick Guinnane 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 and when the Zoning Officer determines that the reserve parking spaces are needed to accommodate BCMS's use of the property.

32. The Applicant has complied with Code §155-95-1(F) through testimony and the Grading & Drainage Plan prepared by Chester Valley Engineers (Ex A-3). The reserve parking area has been included in the impervious surface calculations. No changes are proposed to the reserve parking area, which is and will remain green space, until such time as the Zoning Officer determines the reserve parking spaces shall be installed or until necessary upon LMSD's finalization of its plan for improvements at BCMS.

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 twelve parking

spaces in reserve will allow it to plan for future growth in the district. Adequate vehicle parking exists in the surrounding neighborhood. LMSD's stated goal is to provide adequate facilities for the anticipated enrollment growth while not unnecessarily impacting existing improvements and green space until it has fully evaluated all of its needs and options. The Applicant has shown there will be no adverse effect on the health, safety, morals or general welfare of the public; to the contrary, holding twelve (12) parking spaces in reserve will preserve the existing 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 Patrick Guinnane and expert testimony of Jeremy R. Maziarz and Frank Tavani that holding twelve (12) parking spaces in reserve will preserve green space and playing fields, and not increase stormwater runoff until LMSD determines what permanent improvements are needed to accommodate the anticipated increase in enrollment and staff.

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). BCMS 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 BCMS will continue to be accommodated in a safe and efficient manner. (See Exhibit A-5).

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-5). Expert testimony by Jeremy R. Maziarz demonstrated that additional parking and stormwater management will be installed if permanent improvements are installed at the site. (See Exhibit A-2 & A-3)

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 10. The Applicants have submitted a Grading & Drainage Plan prepared by Chester Valley Engineers; Transportation Impact Assessment prepared by F. Tavani and Associates, Inc. as well as presentations provided to the Zoning Hearing Board, Historical Commission, 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

Bala Cynwyd Middle School's enrollment growth is expected to incrementally increase over the next five years, but the Applicant is not ready to move forward with permanent installations and needs time to assess the impact of predicted incremental enrollment growth. LMSD proposes temporary modular buildings to expand classroom space at BCMS and requests flexibility while assessing needs for permanent structures.

The Applicant has met its burden of proof for conditional use approval by demonstrating twelve (12) required parking spaces are not currently needed given readily available on-street parking and by providing adequate pedestrian infrastructure based on testimony at the conditional use hearing and the Planning Commission recommendation. Preserving the existing green space and playing fields at BCMS, which would otherwise be partially used for a new parking lot and stormwater management facilities, is preferable since it is heavily utilized by students. Credible expert testimony has demonstrated that expanded use at BCMS will not materially or adversely affect traffic, circulation or levels of service of adjacent intersections. The Applicant also demonstrated that there will be no adverse impact on the public health, safety, morals and general welfare. The Merion Park Civic Association supports LMSD's conditional use application, as does an adjacent neighbor who testified at the first conditional use hearing. Accordingly, it is in the public interest to allow twelve (12) parking spaces to be held in reserve. For the reasons set forth above, the following Order is recommended to the Board of Commissioners.

ORDER

AND NOW on this ____ day of April, 2017, the application of LMSD for conditional use approval to hold 12 parking spaces required for its expansion of use as reserve parking without paving the spaces and hold stormwater management facilities in reserve at 510 Bryn Mawr 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, to be approved by 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. The stormwater management system for the reserve parking spaces shall be installed when some or all the reserve parking spaces are installed.
3. A four-foot-wide sidewalk shall be installed along the Bryn Mawr Avenue frontage of Amherst Field with this application.
4. The applicant shall install a new crosswalk across the driveway on Bryn Mawr Avenue at the intersection of W. Amherst Road.
5. The applicant shall refurbish all existing crosswalks adjacent to school property and install additional crosswalks on Manayunk Road as determined by Township staff.

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.

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