

## **TOWNSHIP OF LOWER MERION**

### ***Building and Planning Committee***

#### **Issue Briefing**

**Topic:** 1400 Mill Creek Road, Gladwyne, Barker's Mill, Gladwyne, Ward 2, 3634C, 3634AAA

**Prepared By:** Robert Duncan, Assistant Township Manager

**Date:** May 9, 2019

#### **I. Action To Be Considered By The Board:**

Applicant request to reconfirm a prior Conditional Use approval and amend the following condition of approval that was imposed on the Preliminary Land Development Plan:

- The Final Plan, complying with all applicable requirements, shall be filed with the Department of Building and Planning within twelve (12) months from the date of the Preliminary Plan approval.

If the reconfirmation of the Conditional Use approval and extension of the land development approval is granted, the plan would expire 12 months from the May 15, 2019 Board of Commissioners meeting.

In addition, the applicant also requested clarification of the height of the proposed building as part of this application to extend the prior approvals.

#### **II. Why This Issue Requires Board Consideration:**

The Board of Commissioners must review and render decisions on all requests to extend expired land development approvals and amend conditions of approval.

#### **III. Current Policy Or Practice (If Applicable):**

N/A

#### **IV. Other Relevant Background Information:**

In 2003 the Board of Commissioners adopted an ordinance amending the historic incentive section of the Zoning Code to allow a Class 1 historic building occupied by a nonconforming use to be converted to a multi-family dwelling, subject to conditional use approval. This amendment was intended to provide additional opportunities to preserve historic buildings while also reducing the number of nonconforming commercial uses in residential districts.

A conditional use hearing to reconfirm the prior expired conditional use approval was conducted by the Township's Hearing Officer on April 8, 2019. The Hearing Officer's recommendation is attached.

In addition, since this application has a long history of prior approvals, many of which occurred prior to the tenure of many of the Building and Committee members, staff has provided a detailed history of those approvals, a description of the property and the history of the site, on the attached document.

An issue was raised during the reconfirmation hearing on April 8, 2019 related to the height of the proposed building. The applicant's engineer indicated that in 2006 (the original application date was 2003) the architect calculated the height of the building at 35 feet measured from the mean grade to the midpoint of the roof. The mean grade was established based on the midpoint between the highest point of ground at the rear of the proposed building and the lowest point of ground along the front of the building. The mean grade elevation was established at 110 feet and the roof midpoint was shown as 145 feet. A 2006 rendering shows the front of the building with lines denoting a 35 foot height. Nothing was submitted by way of a plan or a memo that described how the "mean" was calculated.

At some point between the original application date and the plan approval, the Township Engineer and the Zoning Officer began using more specific criteria for measuring the mean grade by requiring grade level measurements at five foot intervals around the perimeter of the building to establish a more precise method for measuring mean grade. Using this more recent method, the mean grade would be at an elevation of 100 feet, which would make the building height 45 feet. It wasn't until the 2019 conditional use hearing that the applicant's engineer testified that, measured in this manner, the height of the building was approximately 45 feet high, 10 feet higher than the 35 foot height limit in the Zoning Code. He testified that the architect's methodology was "wrong." When asked to provide data on the building height to satisfy a condition of approval of the Preliminary Plan he responded that the Township approved the calculation previously provided. The only calculation previously provided was that of the architect.

The original Tentative Sketch Plan for this application was submitted on June 20, 2003. On March 19, 2004 the Board adopted Ordinance 3710, amending the definition of building height to establish the highest point of the roof as the point at which the maximum permissible building height is measured from mean grade level or 4.5 feet above the lowest ground level, which ever is lower. On December 21, 2005, the Board adopted Ordinance 3762 which allowed certain buildings in residential districts to exceed the maximum permitted height subject to additional setbacks. Although neither of these amendments changed how mean grade is determined, staff did at some point in this time frame begin to establish points every five to 10 feet around a building to establish the mean grade elevation. Prior to this change, it was never clear exactly how mean grade was measured since the code does not specify.

The applicant was entitled to use the definition of "height" to the midpoint of the roof as set forth in the Code in 2003, rather than the amendment to the definition adopted in 2005. If the 2005 definition of "height" is used along with the updated method for measuring mean grade, the plan would not comply with the building height limit in the code.

During the April 2019 hearing, the applicant requested confirmation that the 45 foot height was previously approved or, in the alternative, conditional use to extend the height to 45 feet.

The Hearing Officer does not recommend reconfirmation of the prior conditional use approval and defers to the Board of Commissioners. Staff has interpreted the previous extensions of the conditional use to extend the original approval based on the Code in effect (and the previous interpretation of mean grade) at the time of the original approval.

The Board of Commissioners can once again extend the previous approval based on the original submission showing a building with a 35' height based on the original calculation of the mean grade elevation of 110'. The Board of Commissioners has the right to continue to extend the approvals based on the Code in effect at the time of the original approval date. The Board may also take the position that the five year protection against changes to the Code in the Municipalities Planning Code has expired and apply the current interpretation of the mean grade calculation. Proceeding in this manner would result in a denial of the conditional use and the request to extend the land development plan.

Staff does have a concern about the impact of the denial of this request. The Class 1 historic buildings are in poor condition and if they remain vacant and are not redeveloped soon, it could very well result in the loss of the historic buildings due to ongoing deterioration. The buildings have shown significant additional deterioration as a result of remaining vacant for many years.

Staff will work with the Township Solicitor to prepare two resolutions for this application, one for approval and one for denial since it is unknown at this time how the Board of Commissioners will act on the application and the time period to render a decision on the conditional use application expires on May 23, 2019. A decision must be made by the Commissioners at their meeting on May 15<sup>th</sup> unless the applicant grants an extension of time to defer the decision.

#### **V. Impact On Township Finances:**

This application has no impact on Township finances.

#### **VI. Staff Recommendation:**

Since this project has been delayed numerous times in the past and the historic buildings continue to deteriorate as long as they are vacant, staff recommends that the Building and Planning Committee consider reconfirming the conditional use application subject to a condition that the height of the proposed building comply with the Code as of the date of the original application in 2003.

Staff also recommends the Board approve the Amendment to the condition of approval subject to the following additional conditions which were included on the Amendment when it was approved in 2018:

1. The applicant shall pay off all liens against the property including property maintenance violations, sanitary sewer extension and any other Township liens prior to recording the Final Plan.
2. The applicant shall continue to provide public access through the property to the existing ruins and trail on Township property until the public easement is recorded. The applicant shall ensure the maintenance of the Bridlewild Trail adjacent to the property.
3. The applicant shall document the need for a construction easement on Township property to the north of the site. The applicant shall submit a plan that demonstrates that the existing ruins on the Township's property will be protected from harm caused by construction vibrations and similar effects.
4. The applicant and any future owner of the property shall prevent demolition by neglect of the existing historic resources by stabilizing the property and submitting an annual inspection report and making repairs in a timely manner on an as needed basis. The applicant shall also post a financial guarantee with the Township to be used for stabilization of the historic resources until such time as the building permit is issued or construction has commenced.
5. The Applicant shall record the Final Plan and file for a building permit within one year of this approval.