

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

CU Application #3780C

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

This conditional use application was filed by Lancaster Western Properties, L.P. seeking approval to deviate from architectural concepts and designs which differ from the design and architectural design standards of the Mixed Use Special Transportation District pursuant to Code §155-87.25.C.3. A Conditional Use Hearing was held on September 18, 2017 before the Conditional Use Hearing Officer.¹

1. The Applicant is Lancaster Western Properties, LP by its member Justin Hopkins (“Applicant”).
2. The Applicant’s attorney is George W. Broseman, Esq. (“Broseman”) of Kaplin Stewart.
3. The Applicant is the title owner of five contiguous parcels of land: 104, 108, 114 & 120 W. Lancaster Avenue, Lower Merion Township comprising a total of 0.84 acres (collectively referred to as the “Property”). It is located at the intersection of West Lancaster and Ardmore Avenues.
4. The Property is in the Ardmore Special Development District (“ASDD-1”) and is subject to the overlay Mixed Use Special Transportation District (“MUST”) Code §155-87.20 *et seq.*

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

5. The Property has had many uses and structures in the past, but one lot is currently improved with a building used as a car wash. The greater portion of the lots is vacant land used as a surface parking lot.

6. The Applicant proposes a five-story mixed use building with a footprint of 27,268 square feet and containing retail and residential uses. Retail uses will be located on the ground floor and second floor, and 35 apartment units will be located on the third, fourth and fifth floors. It is currently undergoing the land development approval process.

7. This conditional use application concerns the Applicant's request to deviate from the development design standards of the MUST District, pursuant to Code §155-87.25.c.3. In lieu of the required façade elements, the Applicant proposes modifications that take elevation differentials into account and complement the adjacent district.

8. The Board of Commissioners may authorize deviations from the development design standards of the MUST by conditional use approval, pursuant to Code §155-87.25.c.3.

9. The Lower Merion Planning Commission reviewed the conditional use application on September 11, 2017 and recommended approval with conditions.

10. The Conditional Use Hearing Officer conducted a public hearing on September 18, 2017.

11. Andrea Campisi ("Campisi,") Senior Planner at the Lower Merion Township Building and Planning Department, offered five (5) documents into evidence that were admitted into the record:

- a. Proof of publication of the hearing notice (Exhibit T-1);
- b. Lower Merion Township staff memo dated 9/8/17 (Exhibit T-2);

- c. Lower Merion Planning Commission recommendations and conditions of approval dated 9/11/17 (Exhibit T-3);
- d. Map of Exterior Brick Facades by Color (Exhibit T-4);
- e. Architectural renderings labeled A2.1 and A2.2 (Exhibit A-5).

12. The Applicant offered ten (10) documents in support of its conditional use application that were admitted into the record:

- a. Conditional Use application (Exhibit A-1);
- b. Tentative Sketch Land Development Approval Letter (Exhibit A-2);
- c. Preliminary Land Development Cover Letter (Exhibit A-3);
- d. Preliminary Land Development Plans (Exhibit A-4);
- e. Kevin Kaminski, R.A. CV (Exhibit A-5);
- f. Photographs of Site and Surrounding Areas (Exhibit A-6);
- g. Elevations (Exhibit A-7);
- h. Memo Summarizing Code Compliance (Exhibit A-8);
- i. Material Matrix (Exhibit A-9);
- j. Brick samples in Township (Exhibit A-10).

13. Broseman, representing the Applicant, testified that conditional use approval is sought for alternative designs which deviate from the prescribed architectural design standards in the MUST District and then he presented one witness for testimony.

14. Kevin Kaminski (“Kaminski,”) a principal of Kaminski + Pew and a registered architect in the Commonwealth of Pennsylvania, testified for the Applicant. He has a bachelor of architecture degree and has practiced architecture for thirteen (13) years. Kaminski is the project architect and prepared plans and elevations for the proposed mixed-use building, (Ex. A-4 and A-7.)

15. Kaminski described existing site conditions as a flag shaped parking lot with W. Lancaster Avenue at the north end and the Ardmore Post Office and Tired Hands Brewery at south end. The highest point is the west side of the Property near the carwash and IHOP. The grade slopes downward 1'6" toward the south (Tired Hands) and 3' toward the east (Bryn Mawr Trust). Surrounding buildings may be characterized as traditional downtown toward the east and as strip mall structures toward the west. Proposed improvements include a five-story mixed-use building with two floors of retail, three floors of residential and 87 parking spaces².

16. Kaminski testified the proposed building design is targeted to meet a wide array of concerns. It has a harmonious façade and two retail “piers” to lift the façade. Cast stone will be used on lower floors with retail uses. The upper floors with residential units will have cast stone piers interspersed with dark and light brick. The dark brick will connect with the glazing. Awnings over windows on the first floor will visually lower window head heights. The building includes community space, a green roof and uses stormwater management practices.

17. Some architectural concepts and designs in the proposed building differ from development design standards for the MUST because of site conditions, according to Kaminski, but nonetheless meet the legislative intent of the district.

18. Proposed window head heights are 14.6 and 17.9 feet above the sidewalk along West Lancaster and Ardmore Avenue, whereas MUST architectural design standards prescribe window heads at nine to twelve feet above sidewalk level, *see* Code §155-87.25.C.2.f. Kaminski explained that higher window head heights are necessary because the building needs to maintain consistent window head height even though the site slopes downward toward the east (toward Bryn Mawr Trust) and south (toward Tired Hands). The parking entrance from W. Lancaster

² 28 surface parking spaces; 56 underground parking spaces and 3 on street parallel parking spaces.

Avenue, near the IHOP, establishes the ground floor window head height, which is carried horizontally across the building going east with declining grade. Awnings over windows will give the appearance of lower window head heights. The MUST architectural design standard specifying 50% clear windows on the ground floor, Code §155-87.25.C.2.d, also creates a need for higher window head heights, Kaminski testified. Additionally, retail tenants prefer light and space from higher window head heights. Moreover, the truck loading area on the south side of the building requires access higher than the prescribed height of nine to twelve feet.

19. Light-colored brick appears on the facade of the proposed building, however tan brick is specifically prohibited as an exterior wall material in the MUST District, Code §155-87.25.C.2.j. Kaminski described the light-colored brick as “buff” rather than tan, and pointed out buff brick is limited to small parts of the upper residential floors within cast stone piers (See, Ex. A-9 and A-7, sheet A2.1). It will be used on five sections of the façade facing Lancaster Avenue and one section of the facade facing Ardmore Avenue. (Ex. A-9). Kaminski also testified that light-colored, tan brick, stone and stucco has been frequently used as a finish material on buildings in the adjacent districts, as shown in a chart of finish materials in the neighborhood, Ex. A-10. He explained that buff brick is complimentary to the color of cast stone on the lower floors and piers. He selected a light/dark contrast to dematerialize the building and add depth to the façade.

20. Campisi testified that red-orange brick is most prevalent in the adjacent neighborhoods, but tan brick is also prevalent. Tan limestone/terracotta/stucco is also common. She submitted into the record a map of the surrounding neighborhood by exterior brick colors (Exhibit A-4). She testified code states “exterior wall material may include (...) brick of a shape, color or texture as found within the adjacent district” see, Code §155-87.C.2.j.

21. Two proposed façades do not articulate walls with less than 25% clear windows with details in masonry courses and/or frames, sills and lintels, as required by Code §155-87.25.C.2.e. Kaminski testified these are non-primary facades facing west and south which will be largely obscured from public view if new structures are built on adjoining lots. Cast stone piers mirror the primary facades and contain different types of masonry and granite bases. This design is similar to the façade of the Bryn Mawr Trust building, *see* Ex. A-6. It has been recommended by the Planning Commission, *see* Ex. T-3.

22. Kaminski testified that proposed alternative designs are in furtherance of the legislative intent of the MUST district. The facades on W. Lancaster and Ardmore Avenues will complement the walkable street front with awnings and plantings contextually suitable to the neighborhood. Buff and charcoal brick materials will be reflective of the time when the building was built and also a reference to the past. Large windows with clear glass at street level will enhance the pedestrian experience while meeting retail tenant needs for large window heights.

23. Julia Foster, co-owner of 16 Ardmore Avenue where Tired Hands Brewery is located, asked questions about the location, size and width of the south facing exterior wall. Kaminski responded that the wall is 18 inches thick. She asked about truck access areas and Kaminski pointed out where trucks will load and unload next to the south facing exterior wall, Ex. A-7. Foster asked why red brick wasn't chosen for the building facades. Kaminski responded that red brick isn't contextually appropriate and the surrounding neighborhood has several limestone facades, a similar light color. Looking at Exhibit A-7, A0.0, Foster asked what building is shown in the lower left side of the drawing. Kaminski answered it depicts the apartments next to the Bryn Mawr Trust building, across Ardmore Avenue. Broseman showed Foster a photo marked Ex A-6k and asked what it depicts. Foster testified the photo shows the

Tired Hands Building. Broseman asked Foster if the façade contains painted brick to which she responded yes, but that the brick was painted prior to her ownership of the property.

24. Broseman gave concluding remarks that minor deviations from architectural design standards are permitted by conditional use in furtherance of the legislative intent of the MUST District. He also noted that mixed use real estate development is preferred and encouraged in this district pursuant to the MUST District general goals and objectives. The south elevation of the proposed building needs car and truck clearance for practical reasons, necessitating higher window head heights and less ornamentation. Broseman concluded that façade materials break up massing and contain themes from the adjacent district.

APPLICABLE ORDINANCES

25. Lower Merion Township’s MUST District was established as an overlay district to encourage the development of transit-supportive mixed-use neighborhoods that foster economic viability, pedestrian activity and a sense of community. It recognizes the importance of public transit as a viable alternative to the automobile by permitting appropriate densities and a mix of land uses within walking distance of transit stops, while at the same time, providing sufficient off-street parking to uses both within and adjacent to the MUST.” Code §155-87.20.A.1

26. Lower Merion Township’s MUST District is intended to “allow development that decreases auto dependency and mitigates the effects of congestion and pollution. The regulations create accessible neighborhoods and promote and protect the health, safety and general welfare of the citizens of Lower Merion Township.” Code §155-87.20.A.2.

27. General goals and objectives of the MUST District, enumerated in Code §155-87.20.B include the following special purposes:

- (1) Encourage mixed-use real estate development oriented to rail station, transit stops and that promote transit ridership;
- (2) Promote well-integrated residential, commercial, office and civic development in close proximity to local and regional transit stations that have an urban scale development pattern;
- (3) Support new development that include diverse pedestrian-compatible, higher density, transit-friendly designs and expands economic development opportunities and minimizes distances between destinations by requiring linked sidewalks and pedestrian-oriented access;
- (4) Provide incentives for the creation of mixed uses in keeping with the character, scale and architecture of the neighborhood, while using development guidelines to promote compatibility of uses and stimulate pedestrian activity.
(...)

28. Development design standards for the MUST District codified in Code §155-87.25

have the explicit purpose of requiring pedestrian oriented buildings and requiring building entrances to be oriented toward streets, sidewalks and/or public accessways. Windows must facilitate views into and out of buildings. The statutory intent is to:

- (a) Provide convenient, direct and accessible pedestrian access to and from public sidewalks and residential and commercial uses;
- (b) Provide safe, pleasant and enjoyable pedestrian experience by connecting activities between buildings in the MUST District and within a structure to the adjacent sidewalk;
- (c) Promote the use of pedestrian and mass transit modes of transportation to access residential and commercial facilities.

Code §155-87.20.A.1.a,b,c.

28. New buildings in the MUST District “may be either traditional in their architectural character or be a contemporary expression of traditional styles and forms, thus respecting the scale, proportion, character and materials of structures within a five-hundred-foot radius,” Code §155-87.20.A.2.

29. Architectural design standards in the MUST District ensure the size and proportions of new buildings relate to the scale of the existing structures, especially at street level. The first three stories of new buildings must relate to the street level heights of existing buildings. The architectural features of the vertical and horizontal façade character of new

buildings must relate to the setback established by the surrounding existing buildings, Code §155-87.25.C

30. The Board of Commissioners may, by conditional use, approve the use of architectural concepts and designs that differ from those set forth in the Design Development Standards if the Applicant demonstrates to the satisfaction of the Board that such designs and standards are in furtherance of the legislative intent of this article and this subsection, Code § 155-87.25.C.3.

31. 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.
3. In all cases the applicant's burden of proof shall include the burden of persuading the Board by credible evidence that the applicant has satisfied the criteria set forth in Subsection C(1)(a) of this subsection. In any case where the Board requests that the applicant produce evidence relating to the criteria set forth in Subsection C(2) of this subsection or where any other party opposing the application shall claim that an allowance of the application will have any of the effects listed in Subsection C(2) of this subsection, the applicant's burden of proof shall include the burden of persuading the Board by credible evidence that the allowance of a conditional use will not be contrary to the public interest with respect to the criteria so placed in issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

32. The Applicant seeks to install window heads heights that exceed the nine to twelve-foot maximum above sidewalk level allowed by Code §155-87.25.C.f.2.

33. The Applicant has established through credible evidence that compliance with this section of the Code would result in disjointed, uneven appearance of window head heights given the property's varied topography. Window heads varying heights between 14 and 17'9" will take the slope of the land into account and result in better aesthetics, pedestrian experience and light in retail spaces. Moreover, evidence was presenting showing there is a preference in today's retail environment for more spacious first floor heights. Taller window head heights are also tied to the MUST District requirement for a minimum of 50% clear glass area on the ground floor façade and the change in grade. Moreover, awnings will make the window head heights appear lower. Lastly, the proposed building's window head heights are similar in scale, proportion, character and materials of the Bryn Mawr Trust building located across Ardmore Avenue, meeting the design development standard set forth in Code §155-87.25.A.2.

34. The Applicant proposes to use "buff" colored brick with conditional use approval, if necessary, because tan brick is specifically prohibited as an exterior wall material in the MUST District by Code §155-87.25.C.2.j. Buff brick depicted in Ex. A-9 appears similar to tan brick, although lighter in tone. The Applicant's Architect testified buff brick will be used in small areas of the upper floors combined with charcoal brick to aesthetically "dematerialize" the upper floors so they appear less bulky, *see* Code 155-87.25.C.2.c.(the massing of all buildings shall be deemphasized in a variety of ways (...) to reduce their apparent overall bulk and volume (...)). Kaminski also presented evidence of similar light-colored brick, stone and stucco finishes being prevalent on buildings in adjacent districts as shown in chart Ex. A-10, which accords with Campisi's testimony and Exhibit T-4. It is recommended that the Board find that buff brick is acceptable as it is used as a secondary material and should be permitted to be used as shown in plans.

35. The proposed design has exterior walls with less than 25% clear windows that the Applicant seeks to not articulate with two or more of the following: details in masonry courses; blank windows trimmed with frames, sills and lintels; or recessed or projecting display case windows, as required per Code §155-87.25.C.2.e. The Applicant presented evidence showing the non-primary west façade (facing IHOP) will be largely obscured from public view if new infill development occurs in the future. The non-primary south façade (facing Tired Hands Brewery) will have some visibility. The Planning Commission approved the alternative design proposed by the Applicant. Lower Merion Township Staff recommends “cast stone material be carried along all four elevations rather than transitioning to stucco so as to provide a unified design since all elevations will be visible from portions of the right of way,” *see* Ex. T-2 at p. 3. Staff also recommends that the “stucco inset portions include lintels, similar to those utilized on the faux window,” *Id.* Staff’s recommendation is based on “assisting the proposed building to relate to adjacent structures (especially at street level) which is an intent of MUST design standards.” Conditional use approval with the applicable conditions noted in the staff memo is recommended, *see* Ex. T-2.

36. The Applicant has adequately demonstrated that approval of the conditional use is consistent with and promotes the relevant purposes of the MUST District contained in Code Section 155-87.20 *et seq.* The Applicant has worked with its Architect and Township Staff, to provide a coordinated development that meets the requirements for the MUST District except for minor deviations from a few design standards. Moreover, relief from development design standards will not adversely affect the public health, safety and welfare specifically with respect to drainage, light, noise, air quality, natural features of the land and neighborhood aesthetic characteristics.

37. The Applicant has complied with the general standards for conditional use approval contained in Code §155-141.2 (B)(2), *supra*. Some of these general standards overlap with specific standards found in Code §155-87.25 *et seq.* while compliance with all general standards has been assured through reviews by Township Staff (Ex. T-2) and the Lower Merion Planning Commission (Ex. T-3).

38. The Applicant has demonstrated granting the conditional use shall preserve the character of the neighborhood through the testimony and documentary exhibits in compliance with Code §155-141(B)(3). The proposed development is in keeping with pedestrian oriented design and respects the scale, proportion, character and materials of structures within a five-hundred-foot radius, see Code §155-87.25.A.2.

39. The proposed development shall be serviced by existing public service systems, pursuant to Code §155-141(B)(4). The peak traffic generated by the proposed development shall be accommodated in a safe and efficient manner. The Township Engineer has reviewed the Applicant's traffic study and the Applicant has agreed to comply with his recommendations. Moreover, the proposed development is designed to encourage people to park their cars and walk in the MUST district rather than drive.

40. The proposed development 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), see Preliminary Land Development Plans (Ex. A-4).

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

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

DISCUSSION

43. The south-west corner of West Lancaster Avenue and Ardmore Avenue is an important location in the MUST District and Ardmore in general. It is a prominent spot at the intersection of two major thoroughfares improved by Lower Merion Township a few years ago. It is also the transition point on W. Lancaster Avenue from a car-oriented strip mall to the west along Lancaster Avenue to traditional downtown architecture to the east. To fulfill the goals of the MUST District, the structure built on this site should fit into a transit-supportive mixed-use neighborhood and foster economic viability, pedestrian activity and foster a sense of community. Moreover, a new contemporary building, such as the one proposed by the Applicant, should contain an “expression of traditional styles and forms, thus respecting the scale, proportion, character and materials of structures within a five-hundred-foot radius,” Code §155-87.20.A.2. T

44. The proposed building provides an aesthetic and functional bridge between vastly different neighborhoods on opposite sides of the site, while also meeting standards for new development incentivized in the MUST District. It is well-integrated, mixed-use development in keeping with the character, scale and architecture of the neighborhood. It will stimulate pedestrian activity, provide transit-friendly design, expand economic development opportunities and introduce higher density, which are specific goals and objectives of the MUST District, Code §155-87.20.B.

45. A few architectural features differ from development and architectural design standards contained in Code, but the Applicant has shown the legislative intent of the MUST District is respected by the proposed alternatives. The declining slope of the topography, for

example, will not permit an aesthetically pleasing façade if windows head heights are no more than twelve-feet tall to strictly comply with Code. Delivery truck bays necessitate relief from Code with regard to the south facing, non-primary façade's window head height and articulation. Small sections of buff brick in the exterior walls are harmonious with larger sections of cast stone on lower floors and help deemphasize the mass of the upper floors. It also visually relates to the immediate neighborhood and adjacent district. In light of these benefits, it seems reasonable to approve a small amount of buff brick even though tan brick is prohibited by Code.

46. Granting conditional use approval to deviate from select design standards will result in better appearance and function than if Code were rigorously required. Overall, this proposed land development appears to correspond with the legislative intent of the MUST District. For the reasons set forth above, the following Order is recommended to the Board of Commissioners.

ORDER

AND NOW on this ____ day of November , 2017, the application of Lancaster Western Properties, LP for conditional use approval to XXX of the Zoning Code of the Township of Lower Merion is granted, subject to the following conditions:

1. The applicant shall provide awnings and control glare from the windows as presented in the elevations at the hearing.
2. The applicant may use charcoal brick as presented in the elevations at the hearing provided that the piers on the southern and western elevations are constructed of cast stone rather than stucco.
3. The applicant may use buff brick as presented in the elevations at the hearing.
4. The applicant shall remove the lintels and faux windows from the southern and western elevations.
5. The applicant shall provide foundation plantings to soften the transition between the sidewalk and the building and to reinforce the human scale of the design.

6. The applicant shall carry the proposed cast stone along all four elevations rather than transitioning to stucco to provide a unified design since all elevations will be visible from portions of the public way.
7. The inset portions of stucco shall include lintels.

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