

Lower Merion Township
Comprehensive Update to the Zoning Code & Subdivision Regulations

White Paper:

*Assessment of Current Standards and
Suggestions for Revisions*

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Cooperation with
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INTRODUCTION

In August 2016, Lower Merion Township issued a Request for Proposals for a *Comprehensive Update to the Zoning Code and Subdivision Regulations*. The update follows the January 2016 adoption of a new Comprehensive Plan, which called for amendments to Zoning and Subdivision regulations as implementation steps. This Assessment offers the selected consultant team the Township's perspective on the most critical issues to address in the regulatory update. The Township wants to use the consultants' time as effectively and efficiently as possible, and hopes that this explanation adds clarity to the land use issues outlined in the Comprehensive Plan.

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This Assessment is divided into two sections. First, staff looked at the Key Objectives of the Comprehensive Plan and described the most problematic regulations noting their shortcomings, and suggestions for improvements. The Township encourages and expects the consultant team to offer innovative approaches beyond the suggestions and observations in this document.

The second section examines Zoning Hearing Board activity that merits particular scrutiny. Zoning Hearing Board appeals are often indicative of ordinance standards in need of updating. The Zoning Hearing Board Solicitor took a ten year snapshot of cases where relief could have been handled "a better way."

Relationship of Existing Zoning Code & Subdivision Regulations to new Zoning Code & Subdivision Regulations

The Township's Zoning Ordinance is a prototypical Euclidian Zoning Ordinance dating back to 1927 a few short years after the Euclid V. Ambler case was settled by the Supreme Court.

Being a Euclidian Code, the Township's Zoning Ordinance and Subdivision Regulations employs quantitative measurements to guide the bulk and area development on a lot by lot basis. Over years this approach has been gradually refined through the addition of environmental restrictions on development on sensitive floodplains and steep slopes, by the addition of design guidelines to control form and also through bulk, area and use incentives to promote larger public policies such as historic preservation or economic development.

The 2016 Comprehensive Plan reconfirmed and revised the Township's public policy objectives. The revised Zoning Ordinance and Subdivision Regulations should be aligned with these current policy objectives. Where the 1927 Zoning Ordinance was instrumental in ensuring the orderly development of virgin land, the 2018 Ordinance will be focused on promoting new development and redevelopment that is sustainable and attractive and that future development complements the best parts of the existing high quality land use pattern. Particularly in single-family residential neighborhoods which comprise the bulk

of Lower Merion **the established land use pattern will serve as the baseline for future development and infill.** Commercial areas which comprise a fraction of the Township's land area are envisioned to be redeveloped and infilled according to Commercial Area Typology Chart in the Land Use Element. Institutional Uses, which comprise three times the land area of commercial land uses will be defined and regulated as distinct land uses in order to allow their continued evolution without placing undue stress upon adjacent residential uses.

PART I: ADDRESSING KEY OBJECTIVES FROM THE COMPREHENSIVE PLAN

The Comprehensive Plan includes three broad themes – Preservation, Infill and Redevelopment, and a series of Key Objectives for each topic. A summary of current regulations, problematic standards and approaches the Township would like to see incorporated into the ordinance amendments follow.

Key Objectives for Preservation

1. Integrate Township’s existing body of Historic Preservation regulations with new Zoning Code.

Background: The Township regulates structures in local historic districts (Chapter 88), as authorized under PA Act 167, a practice first established in 1980 and one that works well. Beginning in the late 1990’s, “tear-downs” of smaller, historic homes to make way for large new ones; and, demolition of historic commercial and institutional buildings, threatened individual historic structures located outside historic districts. Several “stop-gap” measures, in both the Subdivision and Land Development Code and the Zoning Code, and the more comprehensive Zoning Article XXXVIA, Historic Resource Overlay District, address historic resource conservation outside local historic districts. The two most effective zoning incentives include the relief from underlying impervious cover limits (§155-141.5) and expansion into yard setbacks (§155-141.4). Permitting the footprint of historic buildings to count as open space has also resulted in preservation of historic homes on estates developed under the Open Space Preservation District (§155-146 G.)

Approaches: The Township recognizes that modernization and adaptation is necessary in order for historic structures to be preserved. Techniques such as conservation covenants in return for modernization of historic structures represent one consideration for balancing modernization with preservation of architectural integrity. In addition to relief from impervious cover and setbacks, the Township would like to discuss historic designation as justification for variances, especially dimensional variances; and expansions by-right for life safety purposes.

One of the more problematic aspects of Article XXXVIA involves a landowner’s ability to remove their structures from Class 1 designation, thereby removing the delay of demolition standards. The Township seeks the consultant’s counsel on how/whether to continue this practice.

Historic preservation restrictions and incentives are scattered throughout the Subdivision and Land Development Code and the Zoning Code, with this update calling for a fresh “eye” on consistency so that the standards work well together, or are amended to accomplish that purpose. Many Township institutions contain historic buildings and modernization and adaptive reuse can be problematic in those situations, (see Key Objective 4, under Infill). Revised Zoning standards should be drafted to ensure that institutional historic resources are permanently protected in exchange for more intensive campus development.

COMPREHENSIVE PLAN REFERENCES:

| INSTITUTIONAL LAND USE RECOMMENDATIONS | |
|---|---|
| LI4 | Protect valued resources, open space and scenic viewsheds under all future circumstances. |
| LI4.d | Encourage institutions to list eligible properties on the Historic Resources Inventory to preserve historic resources throughout the Township. Continue refining township codes to permit neighborhood oriented institutional properties under five-acres to convert to residential or potentially other low-intensity uses. |
| COMMERCIAL LAND USE RECOMMENDATIONS | |
| LC61 | Explore preservation strategies for the upper section of Bala Avenue, including historic district designation. If historic district designation is not practical, develop strategies for preservation of key assets historic resources, such as the Bala Theatre. |
| HISTORIC PRESERVATION RECOMMENDATIONS | |
| LH1 | Engage in affirmative measures designed to add properties eligible for Class I status to the local Historic Resource Inventory. |
| LH4 | Broaden the scope of the HRI to include resources, such as objects and historic sites, which contribute to the Township’s heritage. |
| LH5 | Refine and expand the Township’s existing incentives for historic preservation to reduce the number of historic resources unnecessarily lost to development, demolition, and neglect. |
| LH5.a | Develop specific historic preservation incentives for commercial and institutional properties. |
| LH6 | Continue to employ a broad set of regulatory and non-regulatory tools to promote the preservation of historic resources. |
| LH6.b | Create new land use regulation approaches in neighborhoods and business districts where historic designation may not be warranted. Traditional Neighborhood Development (TND) zoning, neighborhood conservation districts, design controls, and incentives could be used to promote development strategies that are consistent with the fabric of existing communities. |
| LH6.c | Evaluate the use of the transfer of development rights (TDR) as enabled by the Municipalities Planning Code to provide a means to compensate property owners for the development potential of their historic property thereby enhancing the appeal of historic designation. |
| LH7 | Strengthen the demolition review process, demolition permitting process, and enforceability by improving the application process, level of specificity, and predictability, as well as establishing penalties for non-compliance. |
| LH7.a | Delineate clear and reasonable criteria required by applicants to justify the demolition of an historic property. |

2. Ensure that new development, redevelopment and modernization is environmentally sustainable and sympathetic to the Township’s sensitive environmental areas.

Background: Environmental sustainability goals run throughout the Comprehensive Plan, updating and continuing decades of programs and policies designed to conserve natural areas. From the early 20th Century establishment of a Shade Tree Commission to recent raingarden installations at Township parks, conserving the natural environment remains central to residents’ quality of life. Because much of the Township’s remaining undeveloped land contains environmental constraints that should remain undisturbed as development occurs; and, opportunities exist to restore degraded landscapes as redevelopment occurs. A re-examination and update of the Subdivision and Land Development Code and the Zoning Code provisions to conserve sensitive environmental areas constitutes a key objective of the ordinance update.

Approaches: The Township’s freestanding Natural Features Conservation Code (Chapter 101) was one of the first of its kind in Pennsylvania, adopted in 1988. The Township believes it is time to

update this approach, considering: 1) integrating the standards into Zoning, with thresholds that makes the standards realistic to enforce, such as linking compliance to new development and construction activities that require stormwater permits, subdivision/land development approvals and Zoning Hearing Board approvals; 2) providing clearer guidance to developers than simply “minimizing” disturbance, such as percentage clearing standards; and 3) ensuring reasonable accommodations for development. For example, the current Natural Features standards for tree replacement do not function well for commercial development. Greening or commercial/mixed-use development remains a Township goal, but the current standards would more appropriately be handled with Subdivision and Land Development Code landscaping standards (see Key Objectives for Redevelopment). A sample of a more current Natural Features article is provided by Natural Lands Trust, as *Attachment A*.

The Township may also consider “net-outs”, an update to the current practice of requiring increased lot area when steep slopes occur. “Net-outs” or the deduction of environmentally constrained lands, have been supported by Pennsylvania Courts (Upper Mt. Bethel versus Reimer) and may be used to determine lot area, density and impervious cover.

The conservation subdivisions resulting from Article XXVI, Open Space Preservation District (OSPD) conserve open space in residential developments, thereby keeping site disturbance away from steep slopes, woodlands, streams and wetlands. The Township is interested in applying the conservation subdivision approach to non-residential land uses, thereby limiting environmental disturbance and providing areas for landscape restoration. Lower Merion Township adopted the first conservation subdivision ordinance in Pennsylvania (OSPD, December 1990) and updates to incorporate the latest practices (Growing Greener Version 2.0, Natural Lands Trust, 2009) would add additional environmental protection measures, such as riparian buffers, incentives for stormwater best management practices and a threshold that includes the number of new housing units, versus the current five acres. Those same practices would establish a design process for identifying open space first and would clarify the uses permitted on the common open space, such as how utility easements and stormwater management systems are credited towards open space requirements.

COMPREHENSIVE PLAN REFERENCES:

| RESIDENTIAL LAND USE RECOMMENDATIONS | |
|--------------------------------------|--|
| LR3 | Preserve and protect environmentally sensitive areas and historic resources. |
| LR3.b | Consider riparian corridor standards in impaired watersheds |
| LR3.c | Strengthen the Natural Features Code. |
| LR3.d | Create floodplain penalties similar to the steep slope averaging provisions to limit development near areas prone to flooding. |
| LR6 | Explore enhancements to the Open Space Preservation District by applying Conservation Design Principles. |
| LR6.a | Consider using a two-tiered system to preserve lands on properties between three and five acres in size. Provide a smaller percentage of open space preservation for the lower threshold of three acres. |
| LR6.b | Strengthen the Open Space Preservation Overlay District by adding active site review requirements and conservation design practices for future subdivisions. |
| LR6.c | The open space should be entirely contained on parcels not intended for development, instead of each lot having a portion of open space on their individual lot with multiple ownerships. |

Key Objectives for Infill

1. Promote logical evolution of existing residential housing stock.

Background. With little undeveloped land available for subdivision, redevelopment and infill characterize much of the residential development activity in Lower Merion Township. High land and housing values result in expansion of existing residential housing stock. Lots in low density zoning districts (RAA, RA and R1) can usually accommodate the additional impervious cover and building coverage associated with additions to existing dwelling units. However, neighbor complaints regarding scale and massing often accompany such requests. In denser neighborhoods, expansion may be unrealistic due to impervious cover and setback limitations.

Approach. The Township seeks Traditional Neighborhood Design standards that accommodate redevelopment and continued vitality of existing residential neighborhoods. In low density settings, build-to lines, scale and massing standards that reflect the context of the existing neighborhood fabric, appear in order. In certain situations, the Township has contemplated allowing vertical expansions to be handled administratively, by staff. The Township also seeks recommendations on whether the existing impervious and building coverage standards in higher density districts should be revised.

Revised zoning should recognize that future residential infill development will occur on a lot by lot basis and not trigger land development design standards. The revised zoning should be drafted to ensure that infill development/logical modernization is consistent with the desired form and scale.

COMPREHENSIVE PLAN REFERENCES:

| RESIDENTIAL LAND USE RECOMMENDATIONS | |
|--------------------------------------|---|
| LR1 | Maintain the character of established residential neighborhoods. |
| LR1.b | Create TND districts to ensure infill development is consistent with established community character. |
| LR2 | Preserve stable, developed, higher density neighborhoods from unnecessary, speculative redevelopment and preserve the supply of existing affordable housing. |
| LR2.b | The underlying zoning of areas designated R6A should be adjusted to reflect the established pattern and to ensure that infill construction is consistent in scale, mass, and pattern including: <ol style="list-style-type: none"> 1. Consider reducing the density of townhouses in R6, R6A and R7 Districts (Map L16). 2. Establish design standards to regulate the form, pattern, and relationship of apartments and townhouses to the existing neighborhood pattern. 3. Revise bulk and area standards to ensure that higher density infill development, including townhouses is of an appropriate density to match existing development. 4. Establish Traditional Neighborhood Districts to regulate mass, scale and pattern to ensure that new construction complements the established pattern. |
| LR5 | Consider establishing a procedure for applicants proposing large scale residential development, and subdivisions creating more than three (3) lots from one (1) lot, offer to present their development plans at a meeting of a recognized community organization with boundaries that include the applicant's property and if the community organization desires to hold a meeting, it must be completed before Township action on the applications. |

2. Reduce inappropriate residential subdivisions.

Background. The Comprehensive Plan update determined that some residential land use patterns appear lower density than the underlying zoning district minimum lot area. Neighborhoods where lot size is substantially larger [or smaller] than the underlying zoning, warrant consideration for rezoning. The Township seeks recommendations from the consultant regarding locations where the rezoning should be considered.

Approach. The Township seeks a reasonable approach to rezoning, acknowledging that large lot zoning, over the 90,000 square feet required in the RAA District, may be difficult to accomplish. The Township anticipates that selective rezoning, coupled with “net outs” of environmentally constrained land (see Preserve, Section 2), will be the primary tools to address this key objective. In addition, the Traditional Neighborhood Design standards listed in Section 1., above, will also help to address this issue.

A key approach to reducing inappropriate subdivisions will be to make the existing residential land use pattern the base for neighborhood density and development rather than the Township’s traditional Euclidian zoning districts which require a standard lot size and frontage.

COMPREHENSIVE PLAN REFERENCES:

| RESIDENTIAL LAND USE RECOMMENDATIONS | |
|--------------------------------------|--|
| LR1 | Maintain the character of established residential neighborhoods. |
| LR1.a | Consider alternatives, including but not limited to increasing the minimum lot width or the minimum lot size to manage further subdivision in the residential districts. |
| LR1.c | Consider rezoning areas susceptible to subdivision that are located outside the TND study areas to lower density. |
| LR2 | Preserve stable, developed, higher density neighborhoods from unnecessary, speculative redevelopment and preserve the supply of existing affordable housing. |
| LR2.a | Areas zoned R6A should be evaluated for rezoning to promote the established residential character of the Township. |

3. Ensure that new residential development is consistent in mass, scale and character with the established neighborhood fabric.

Background. Similar to promoting the logical evolution of existing housing stock, where new construction/infill occurs, the Comprehensive Plan identified the need to address the existing neighborhood context. Neighbors and Civic Associations routinely complain that such infill is out of scale (too large, too close) and character (out of scale rooflines, front-facing garages) with the existing neighborhood. In response to resident complaints in a neighborhood Zoned R6A, the Township eliminated townhouses as a permitted use. Infill townhouses were simply too large and out of character with the surrounding neighborhoods characterized by row, twin and small single-family dwellings.

On a positive note, a developer specializing in the conversion of churches to apartment dwellings has developed several parcels, thereby saving an historic structure while adding dwelling units without degrading the neighborhood character and natural environment.

Approach. While not requesting a pure “Form Based Code”, the Township is looking for infill standards that incorporate Traditional Neighborhood Development standards to ensure that infill development respects the mass, scale and character of the surrounding neighborhood. “Build-to” lines, garage orientation, scale and massing standards, should be revisited or established where absent.

COMPREHENSIVE PLAN REFERENCES: (SEE ABOVE, SECTION 2)

4. Develop clear and balanced regulations to manage the evolution of and changes made to long-standing, established institutional uses surrounded by developed residential neighborhoods.

Background. Lower Merion is home to some of the nation’s finest educational institutions, several of which pre-date the incorporation of the Township, such as Bryn Mawr College, founded in 1885. Colleges, universities, private schools and other institutional uses exist in a delicate balance with surrounding residential neighborhoods. On the one hand, institutions offer residents access to open space, walking trails and cultural events/facilities. On the other hand, institutions may produce more traffic congestion, noise, stormwater and parking problems than neighbors expect to encounter. Institutions must modernize to meet evolving programmatic needs, whether new state-of-the art classrooms, improved sports facilities, or attractive campus housing. The greatest zoning challenge of this update involves retaining distinguished institutions in a manner that accommodates their needs to evolve while conserving the high quality of life in adjoining residential neighborhoods.

In 2004 and 2005, the Township created two medical overlay zoning districts, but the remainder of the Township institutions exist by Special Exception and carry the underlying zoning district designation, primarily residential. In general, institutions larger than five acres (typically universities, colleges and private schools) tend to present controversy, as redevelopment occurs. One of the most controversial issues is the acquisition of residential properties for institutional expansion.

Approach. The Township expects the consultant team to provide and to draw upon national examples of successful institutional zoning approaches, adapted to a scale appropriate for Lower Merion institutions and the surrounding neighborhoods. The current Special Exception process appears inadequate, with neighbors frustrated by the Zoning Hearing Board’s narrow purview of use, versus the building size, appearance, noise, etc. that they wish to see addressed. For the institutions larger than five acres, the Township would like to evaluate an institutional district or a zoning overlay district, with detailed standards that protect the surrounding residential neighborhoods. The smaller institutions, occupying less than five acres, might continue by Special Exception, with the addition of more rigorous Special Exception criteria.

Institutional Uses often contain National Register eligible historic structures and the Township wishes to encourage continued preservation and adaptive reuse of historic structures (see historic preservation discussion). The Comprehensive Plan also recommends considering innovative approaches such as Transfer of Development Rights options, or provision of community benefits, such as playing field access for the public, as a means to counter the impact of institutional expansion.

COMPREHENSIVE PLAN REFERENCES:

| RESIDENTIAL LAND USE RECOMMENDATIONS | |
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| LR7 | Preserve institutional uses (over 5 acres) that contribute to open space and discourage conversion to underlying residential use. |
| LR7.a | Refer to institutional land use chapter for corresponding recommendations and strategies. |
| INSTITUTIONAL LAND USE RECOMMENDATIONS | |
| LI1 | Establish Institutional Zoning Districts/Overlay Districts for institutional uses five-acres and larger to maintain large institutional properties within the Township and to guide future evolution of institutional campuses. |
| LI1.a | Require ‘concept visualization tools’ to promote improved public understanding of complex land development projects over five-acres in size in all zoning districts. |
| LI1.b | Develop impact standards for parking, noise, light, hours of operation, stormwater management, traffic generation and views into the property. |
| LI1.c | Manage the external impacts of institutional development on residential neighborhoods by providing flexibility in bulk, height, coverage and density standards to enable greater concentrations in more appropriate portions of a site. |
| LI2 | Establish specific regulations for institutional uses five-acres and larger, particularly private educational uses to ensure that future growth is compatible with its surroundings. |
| LI3 | Review and refine special exception standards governing small scale institutional uses under five-acres in size to ensure that future growth is compatible with its surroundings. |
| LI3.b | Review and refine off-street parking requirements for all uses, not just institutional uses, to ensure that off street parking required by zoning is actually provided and that operational barriers such as user fees for off street parking are appropriately considered. |
| LI4 | Protect valued resources, open space and scenic viewsheds under all future circumstances. |
| LI4.b | Consider use of the transfer of development rights (TDR) provisions of the MPC to permit the transfer of development rights between institutional properties in order to preserve institutional open spaces determined to be important to the broader community. |
| LI4.c | Modify the Open Space Preservation District (OSPD) to apply to all institutional properties five-acres and larger regardless of their zoning designation if they are developed residentially and expand the permitted use of common open space/preservation areas to include active recreation on institutional properties over five-acres subsequently developed for a residential use. |
| LI4.e | Update the Township’s 1993 Scenic Corridor and Viewsheds Study identifying landscapes and features visible from the public right of way for prioritized protection. Develop regulatory incentives or other strategies to preserve priority landscapes on institutional properties. |

Key Objectives for Redevelopment

- 1. Provide regulations that encourage revitalization and (re)investment in mixed-use/commercial districts while protecting the quality and character of adjacent residential neighborhoods.**

Background. The Township has planned for and created new zoning districts and zoning overlay districts for areas around train stations, the City Avenue Corridor and the two hospital sites, reflecting transit-oriented and mixed-use development goals. However, the C1 and C2 Districts, little

changed since the 1970's, merit amendment to realize redevelopment to mixed-use commercial centers envisioned in the Comprehensive Plan.

Approach. Considering access, scale, traffic generation and design, the Township seeks standards that allow the outdated commercial “strip” centers to evolve into vibrant mixed-use communities that can both accommodate a growing population and meet neighborhood commercial needs. Equally as important as the standards for the built form, the Township expects the amendments to address landscaping of parking lots; buffering adjoining residences; incorporation of Green Stormwater Infrastructure (GSI); and pedestrian/bicycle access within the commercial districts. The Township envisions revised landscape standards in the Subdivision and Land Development Code. Evaluations and possible reductions in parking requirements, in order to achieve landscaping, will be considered.

Commercial zoning districts, especially those along Montgomery and Lancaster Avenues, contain “split” zoning district designations. Due to boundary tolerance provisions in Zoning §155-6, such areas are generally available for commercial development. A logical outcome of the Zoning update would include straightening the commercial zoning boundary to follow actual parcel boundaries and ensuring any adjoining residential neighborhoods are protected with buffering and landscaping. Be aware that private development agreements also impose different (and sometimes inappropriate) buffer and setback requirements.

For the mixed-use development districts adopted in 2006 (see especially MUST and ROHO overlay districts, and the City Avenue District), the Township encourages the consultant to suggest fine-tuning. For example, the build-to lines in the MUST district (see §155-87.22C(1)) result in consistency. However, staff observes that sometimes a more inviting pedestrian experience could result when new construction/architecture could include a recessed entrance/gathering space and deeper sidewalk, currently restricted to certain uses.

Finally, the commercial areas are categorized in the Comprehensive Plan. Village districts in Gladwyne and Penn Wynne also deserve revisiting, ensuring that these small-scale districts continue to thrive and serve the local neighborhood, while preserving the small-scale commercial areas.

COMPREHENSIVE PLAN REFERENCES: LR8; LR9; LR10 A.; LC1 – LC4; LC6, LC7; LC12; LC15; LC16; LC19; LC33-35; LC37-39; LC41; LC43-49; LC52, 53.

| RESIDENTIAL LAND USE RECOMMENDATIONS | |
|--------------------------------------|--|
| LR8 | Review and revise as appropriate the Mixed-Use Special Transportation District (MUST) and the Rock Hill Overlay District (ROHO) to ensure that all allowed uses are fully integrated with commercial uses and achieves the desired goals of the Districts. |
| LR9 | Evaluate parking standards and incentives to ensure that proposed development accommodates parking needs for the new development and does not lead to parking in residential neighborhoods or take away from business parking. |
| LR10 | Evaluate and improve the goals and standards for the commercial districts to ensure that future residential mixed-use development of these areas is consistent with the vision of the Township. |
| LR10.a | 1. Ensuring ground level commercial; |

| | |
|---|--|
| | <ol style="list-style-type: none"> 2. Developing specific bulk and area standards; 3. Incentives to promote shared parking- and to limit curb cuts; and 4. Requiring streetscape and architectural standards. |
| COMMERCIAL LAND USE RECOMMENDATIONS | |
| TOWNSHIP-WIDE RECOMMENDATIONS | |
| LC1 | Revised zoning should reflect existing commercial land use and provide appropriate controls for residential properties, such as appropriate buffers and design standards to ensure the orientation of commercial activities away from residences. |
| LC2 | Revise commercial zoning, where applicable, to create pedestrian-scaled commercial districts by requiring ground level retail and traditional business district office and service uses in all commercial areas. |
| LC3 | Revise zoning to limit number of large box stores with regional service areas. |
| LC4 | Revise commercial zoning, where applicable, to ensure proper placement of buildings to promote appropriately scaled commercial buildings fronted by an attractive, pedestrian-friendly streetscape. |
| LC6 | Develop appropriate bulk and setback controls to achieve desired form for each commercial area (Table 5.36). |
| LC7 | Develop design standards to promote traditional Village/Downtown/Main Street character using the Ardmore Storefront Design Guidelines as a template. |
| LC12 | Provide specific regulations and/or incentives to integrate stormwater management and site greening throughout commercial areas (e.g., green parking lot ordinance). |
| Villages Common Recommendations | |
| LC15 | Replace existing auto-oriented C-1, and C-2 zoning with appropriately-scaled village zoning with small-scale, active retail and neighborhood-oriented land uses. |
| LC16 | Revised zoning should include design standards to promote traditional compact village pattern with low buildings and appropriate ground floor uses. |
| Villages – Gladwyne Recommendations | |
| LC19 | Ensure that revised village scale zoning is consistent with Gladwyne Historic District |
| Neighborhood Main Streets – Penn Valley Recommendations | |
| LC33 | Incentivize adaptive reuse of underutilized and historic properties located on the edge of the commercial district as multi-family residential or professional office to preserve architecturally-significant buildings. |
| LC34 | Widen sidewalks, where feasible, while preserving on-street parking. |
| Neighborhood Main Streets – Haverford Recommendations | |
| LC35 | Integrate western section of the Haverford commercial district with Bryn Mawr Village through the application of Bryn Mawr Village District (BMVD) use and bulk standards. |
| LC37 | Maintain the central section of the Haverford commercial district for institutional use and low- to mid-rise residential development. Central section serves as a defining physical and visual break in the commercial corridor and reinforces the suburban character of the community. |
| LC38 | Provide a logical transition from the lower intensity pattern characterizing the eastern section of Haverford to the higher intensity of the Ardmore Traditional Main Street pattern. |
| Neighborhood Main Streets – Wynnewood Recommendations | |
| LC39 | Develop specific standards to regulate shopping centers. Work with the owner of the Wynnewood Shopping Center and adjacent property owners to prepare master plan for the area which allows for orderly, quality growth while addressing concerns of immediate residential neighborhood. |
| Neighborhood Main Streets – Penn Wynne (City Avenue) Recommendations: From Bala Avenue to Orchard Road | |
| LC41 | Coordinate land use with adjacent municipalities to ensure consistent development and design standards are used for both sides of City Avenue. |

| Neighborhood Main Streets – City Avenue (South) Recommendations | |
|---|---|
| LC43 | Continue to refine the Bala Village District provisions as necessary to ensure that future development is consistent with the established intent of the ordinance and desired land use and form of the district. |
| LC44 | Coordinate with Saint Joseph’s University to enhance the commercial corridor by providing complementary uses that serve both the University and local residents. |
| LC45 | Develop consistent architectural and streetscape standards for commercial districts with similar characteristics. Incorporate design standards such as designating important intersections for prominent buildings to create a sense of place. Promote connected building where appropriate and incorporate design standards to visually and functionally integrate freestanding buildings. |
| Traditional Main Streets Common Recommendations | |
| LC46 | Identify preservation assets and develop incentives for adaptive reuse of preservation assets. |
| LC47 | Promote higher level of public greening in Traditional Main Street districts. |
| LC48 | Continue to utilize parking lots as interim civic spaces until permanent public spaces can be developed. Work with local businesses and civic associations on programming of interim public spaces. |
| LC49 | Place maximum sizes on commercial footprints along Traditional Main Streets to retain the local commercial environment. |
| Traditional Main Streets – Ardmore Recommendations | |
| LC52 | Reevaluate MUST Zoning. |
| LC53 | Reevaluate the effectiveness of the Ardmore Commercial Center Historic District as a tool to promote the district’s traditional village-scaled commercial environment while preserving individual historic resources. Develop a fine-grained master plan which identifies specific resources/blocks as preservation assets and specific blocks where older buildings may be upgraded and wider sidewalks installed. |

Other Considerations

Public Schools

Public Schools are currently permitted by-right in residential neighborhoods and commercial areas. Public Schools currently do not have adequate development standards (building area and impervious surface) to allow for periodic increases in student populations. As a result, the School District is forced to seek variances and other development work arounds to provide sufficient facilities. The result of this process is increased public expense, contentious public process and a less than desirable product.

Buffers

Current buffer standards are not in synch with development patterns and need to be refined. Existing low intensity residences should be protected from higher intensity uses including multi-family, and quad developments, which are often taller than existing residence. Buffer standards should be performance based rather than specifying a width.

Parking in Commercial Districts

One of the impediments of redeveloping older commercial areas is providing parking for upper floor residential commercial uses in buildings without parking. Several years ago, in order to encourage redevelopment, new developments were permitted to count parking spaces in nearby public parking lots to meet the parking requirements. We have seen several instances where new freestanding multi-

use projects have taken advantage of this provision thereby exhausting the supply of available parking necessary for redevelopment of older properties.

Signage Requirements

Article XIX of the Zoning Code provides standards for signage Township-wide; however, separate signage requirements have been created with newly adopted/amended zoning districts causing confusion (i.e. §155-205 D, §155-217 D, §155-219 D). A unified sign code should be considered as opposed to having different signage requirements listed in each district.

The Code currently limits projection of canopies and awnings in the right-of-way, which leaves pedestrians unprotected from the elements along certain roadways and commercial corridors (i.e. Lancaster Avenue). Flexibility to these requirements should be considered, if the property owner/tenant agrees to remove the canopies and awnings at the request of the Township.

Restricted Accessory Apartment & Cooking Arrangements

Consider replacing §155-177 Restricted accessory apartment, which essentially allows “in-law suites” by special exception with by-right provisions for accessory living spaces with kitchens in both attached and detached accessory structures that would allow family members and/or domestic help to occupy the space. The provisions should require that a deed restriction be placed on the property prohibiting the rental of the space. This would be separate from an historic apartment allowed under Article XXVIA by conditional use approval.

Under §155-4 “Family” is defined as – “Any number of individuals living and cooking together as a single housekeeping unit...” As such, the Zoning Officer may make the interpretation that a second kitchen may not be allowed by-right in a dwelling. Consideration should be given to amending the definition of “Family” and/or allowing a second kitchen under certain circumstances (religious, convenience due to size of dwelling, seasonal use, etc.).

Public Space

Creation of new public space in commercial areas is a crucial component of the vision for Lower Merion Township. Many of the Township’s planning documents (2006 Open Space Plan, Bryn Mawr Master Plan and Ardmore Revitalization Plan) specifically reference the addition of new public spaces (above and beyond sidewalks and trails) as key components of walkable commercial areas. The Ardmore and Bryn Mawr Village zoning does not effectively require or set aside areas for public space and the planning documents are not clear regarding the role of the local government in the creation/maintenance of public space. Without clear responsibility for the location, creation and management of public space the civic realm often takes a back seat to private development through regulatory controls.

The City Avenue District Ordinance and the M District Ordinance both incentivize privately developed and maintained public gathering spaces as ways to achieve additional density. The City Avenue Ordinance specifies the location of public gathering spaces on the Official Map. In the absence of a true regulating plan for commercial districts the Official Map serves as a de facto master plan for the

establishment of the public realm. Overall the requirements for the creation of the public realm in commercial areas needs to be reworked in order to achieve the desired civic vision.

Uniform Building Line

In the 1950s and 1960s Uniform Building Lines were established along several roadway segments to ensure the orderly construction of new buildings (Chapter A163). The definition of Front Yard in §155-4 ties the front yard setback requirement to the Uniform Building Line. In many cases the Uniform Building Line is more restrictive than the Front Yard Setback. These contradictory standards are further complicated as they are measured from different points. The Uniform Building Line is typically measured from the centerline of the roadway while the Front Yard Setback is measured from the Street Line. Some of the newer districts apply Build-to-Lines as opposed to traditional Front Yard Setbacks and the definition for Build-to-Lines is not tied to the Uniform Building Line. The discrepancy leaves the requirements open to interpretation. The Uniform Building Line standards should be reconsidered with the new code to make the Code more transparent, predictable, and easier to use.

YARD – The required open, unoccupied space on the same lot with a building, open and unobstructed from the ground to the sky, except for projections permitted under §155-134 to 155-136, inclusive.

- (1) FRONT YARD – A yard extending the full width of the lot along the street line and not less in depth, measured from the street line, than the minimum required in each district or the uniform building line setback set forth in Chapter A163, Building Line Ordinances, hereof, whichever is greater...*

PART II: OBSERVATIONS FROM THE PAST DECADE OF ZONING HEARING BOARD CASES – NONCONFORMITIES AND SPECIAL EXCEPTIONS

Between 2009 and 2016 the Zoning Hearing Board considered 268 requests. These requests included 109 dimensional variances, 74 special exceptions, 46 appeals of the Zoning Officer’s decision, 45 Rule 14 requests, five (5) use variances, and one (1) validity challenge. Two areas of increasing activity before the Zoning Hearing Board merit particular scrutiny: nonconforming uses, and special exceptions. Several existing definitions should also be closely examined, as staff and the Zoning Hearing Board have encountered issues on repeated occasions. A summary of Zoning Hearing Board requests are included in *Attachment B*.

Legal Nonconformities

The current Ordinance contains some confusing and occasionally conflicting language regarding the treatment of nonconforming uses and dimensionally nonconforming structures. Consideration should be given to:

1. Maintaining a clear distinction between nonconforming uses and dimensional nonconformities. Nonconforming uses enjoy protection and a constitutional right to expand, while dimensional nonconformities have no such right to expand. Currently, for example, §155-99 D permits reconstruction of a “nonconforming building” damaged to an extent of no more than 75% of its value, and allows the building to be used “for the same nonconforming use.” A nonconforming building does not necessarily house a nonconforming use. Most of the Board’s hearings on nonconforming structures involve a permitted residential use. And reading all the language of §155-99 D in the context of Sections 155-99 A through 155-99 C, which refer only to nonconforming use, one could conclude that the intent was to allow the reconstruction of buildings housing nonconforming uses, not the reconstruction of nonconforming buildings. Note that the Board has interpreted §155-99 A, however, to allow the continuation, but not the expansion of nonconforming buildings.
2. Reviewing other Lower Merion Ordinance provisions that grant limited rights to develop or expand lots with dimensional nonconformities and consider consolidating those provisions under the umbrella of nonconformities where feasible, or simply have the Zoning Hearing Board decide as a variance issue (e.g., impervious cover, rear lots, some fences, projections in yards, building height).
3. Addressing the Nettleton expansion of nonconforming buildings. *Nettleton v. Zoning Board of Adjustment of the City of Pittsburgh*, 574 Pa. 45, 828 A.2d 1033 (2003), the Board does not currently recognize a right to expand nonconforming structures vertically, but routinely grants variances for that relief. An excerpt of a 2014 memo to the Zoning Hearing Board members from the Zoning Hearing Board Solicitor regarding the vertical expansion of buildings nonconforming to yard setbacks is provided in *Attachment C*.
4. Deciding whether to allow nonconforming buildings to expand horizontally under any circumstances. This is the most common zoning application for existing single-family residences

and could easily be addressed either as an administrative matter, or with specific Ordinance limits. At this point, the Zoning Hearing Board also routinely grants variances for these expansions as long as they do not project into the yard area any farther than the existing nonconforming structure. Given that the Ordinance has a percentage limit for expanding nonconforming uses, a percentage limit on expanding nonconforming structures (at the very least) should be considered.

5. Deciding whether to allow nonconforming structures to be rebuilt under any circumstances, i.e., whether to allow nonconforming structures to be rebuilt only in conformance with all dimensional requirements, or impose a more restrictive percentage limitation for rebuilding, or prohibiting rebuilding. The case law grants the right to reconstruct nonconforming structures in the absence of any prohibition in the zoning ordinance and the Zoning Hearing Board is seeing an increasing number of cases where owners seek to take advantage of that case law in conjunction with the Zoning Code's somewhat vague language. Owners could always present a case for a variance if the lot was uniquely burdened with an unnecessary hardship and the nonconforming structure was destroyed. Consideration should also be given to distinguishing between changes made voluntarily (modernization) versus involuntarily (casualty), and requiring that any change be made, if at all, within a given time period from a casualty. Structures that have been allowed to decay over time might be treated differently than structures partially destroyed by a natural disaster.
6. Deciding what limits to apply to the rebuilding of structures that contain nonconforming uses. The same considerations apply as above, with the caveat that repairs to structures containing nonconforming uses cannot be prohibited given the constitutional right to continue and expand such uses.
7. Revising the limits on expansion of nonconforming uses to, for example:
 - A. Restrict them to commercial/industrial uses (or adopt greater limits for residential uses or uses in residential districts).
 - B. Require a demonstration of need to expand.
 - C. Require proof of the absence of injury even where the expansion is allowed by special exception.
 - D. Retain, in all events, the requirement to adhere to dimensional limitations.
8. Eliminating the "too small lot" provisions in §155-100. One provision allows construction of a building by right; another allows building by special exception on lots of "unusual dimension"; and a third allows pre-existing single-family dwellings on undersized lots to expand by 3%. These sections should be evaluated and considered for amendment.
9. Updating an inventory of nonconforming uses and structures and considering the impact of allowing those (or any of those) by right or by special exception in order to avoid questions related to continuation or expansion of nonconformities.

Special Exceptions

Between 2009 and 2016, 74 special exception requests were made to the Zoning Hearing Board; 31 of which involved expanding a special exception use in a residential zoning district. There are several overarching issues to examine when deciding how special exception uses and procedures will be incorporated into a new zoning code. From the Zoning Hearing Board's perspective, those are:

1. Exercising care in designating uses permitted by special exception, i.e., give consideration to either allowing or disallowing the particular use and then employ the special exception designation only where the use is generally thought to be appropriate for the district, but a hearing is necessary to determine whether the zoning code standards for the use will be met. The Zoning Hearing Board has rarely denied a special exception application; hearings on special exception applications have become a forum for presenting proposals for conditions on special exception uses. This is particularly the case with regard to special exception uses in residential districts, which consume the lion's share of the Board's hearings.
2. Making more of what the Zoning Hearing Board currently does in special exception cases an administrative matter for Township Staff. This translates into fewer matters decided by special exception where the code otherwise contains very detailed standards of proof. For example, in *SW Land Associates, 17 D.&C. 5th 141 (Montg. Co. 2010)*, the Board dealt with whether a proposal for subsidized housing satisfied fair housing laws and met separation requirements. The Board concluded that the plans submitted did not prove compliance with the detailed fair housing law standards incorporated by reference in the Lower Merion Code. While the Commissioners have deleted some of the provisions at issue in *SW Land*, the question remains whether plan analysis at that level is more efficiently done by Staff, or whether a public hearing under the rubric of a special exception is preferable. And since public participation would be impacted, that is more of a policy choice than a technical zoning choice. Nevertheless, consider:
 - A. Where standards are extremely detailed and specific to a given use, the Zoning Code begins to read more like a building code or Subdivision and Land Development Code than it does a zoning code. However, where standards are general ("health, safety and welfare," e.g.) a public special exception hearing where objectors can prove an extraordinary impact because of circumstances particular to the proposal itself or to the neighborhood is always appropriate.
 - B. The criteria in §155-11 Y for special exceptions (and expansions) in residential districts have led in the last several years to protracted litigation over the meaning and interpretation of some of the standards. This argues for either simplification of the standards or deference to the Township's professional staff in the context of a permit review rather than special exception review by the Zoning Hearing Board.
3. Allowing minor adjustments in dimensional relief by special exception. Most cases discuss special exceptions in the context of use, but nothing prohibits a zoning code from allowing minor modifications in dimension by special exception. Standards would have to be considered (e.g., percentage modification, essentially making *de minimis* variances a special exception category). The current provision allowing 25% expansion of nonconforming use by special exception is an example of this kind of provision.

4. Imposing limits based on impacts of the particular use, rather than the general characteristics of the use.
5. Revisiting §155-114 C, the standards for determining whether a special exception (or variance) is contrary to the public interest. This section has also become the subject of extensive hearings and litigation in the past several years. When read in conjunction with §155-114 E, the mere request of the Board or the mere claim of any objector might be argued to be sufficient to shift the burden to the special exception applicant to prove the absence of injury to the public health, safety and welfare in all of the categories listed in §155-114 C: traffic, drainage, air quality, noise, natural features, property values, aesthetics, the Comprehensive Plan, public services. Since those are specifically listed, the argument has been made that the applicant has the burden of proof on those elements. As the Commonwealth Court noted in *Greaton Properties v. Lower Merion*, 796 A.2d 1038 (Pa. Cmwlth. 2002), there is a distinction between the presentation burden and the persuasion burden. The language of §155-114 E does not specifically make that distinction, though the Court has interpreted that section to require the objectors to present evidence on those §155-114 C factors before the burden shifts back to the applicant. In all events, the burden-shifting ought to be made more explicit in the future.

Definitions

Article II, Definitions requires a comprehensive review. The Zoning Code currently has definitions peppered throughout the Code in various Articles (i.e. §155-50.2, §155-87.2, §155-92). In order to avoid confusion, it may be beneficial to consider consolidating the definitions into a single location in the Zoning Code.

Several existing definitions ought to be closely examined, as staff and the Zoning Hearing Board have encountered issues on repeated occasions regarding the following:

EDUCATIONAL INSTITUTIONS (CERTIFIED AND ACCREDITED): Consideration should be given to the import of the distinction between these two defined institutions in relation to “neighborhood” educational uses versus institutional educational uses - see §155-11 S (1)(e) and 11 S(2).

HOME OCCUPATION: In connection with these various definitions, attention should be paid to the increasing amount of tele-commuting opportunities being offered by businesses, and whether using commercial visits (as defined) is a realistic measure of impact of those businesses and other independent home occupations.

NONCONFORMING: As detailed above, care should be taken in distinguishing between use and dimension/structure in defining nonconformity.

REAR LOT: This concept has to be explicitly dealt with, especially in relation to the definition of street.

RELIGIOUS USES: This term is not currently defined in the Zoning Code, but as noted in the Comprehensive Plan, the incorporation of “ancillary” uses has increased in duration and intensity. Consideration should be given to providing a framework for assessing the impact of ancillary uses (all

by special exception, e.g.), giving appropriate recognition to Pennsylvania’s Religious Freedom Protection Act and the federal Religious Land Use and Institutionalized Persons Act.

STREET: A street is defined as a right-of-way (including private) serving as a means of travel and access and furnishing “space for sewers and public utilities.” Since many other provisions of the ordinance depend on whether a right-of-way is a street or not, the definition ought to be made consistent with others (i.e., alley, driveway, easement area) that ought not to be considered a street for various reasons.

YARD: There is no provision for corner properties or odd-shaped lots where practicality might dictate one result and reasonable readings of the existing ordinance might lead to others; a definition should be relevant to existing structures and streets. Practice has required a designated front yard along all street lines, with a consequence of one or no side yard areas depending on the intersecting streets (and on the definition of street).