

TOWNSHIP OF LOWER MERION

BUILDING & PLANNING COMMITTEE

**WEDNESDAY, JULY 8, 2026
7:10 PM (Approximately)**

Chairperson: Sean Whalen

Vice Chairperson: Jeremiah Woodring, Shelby Sparrow

AGENDA

1. **WAIVER OF TOWNSHIP CODE SECTION 111-4.2 REGULATING OPEN CONTAINERS FOR THE ARDMORE ROCK N RIDE EVENT**
2. **APPROVAL OF HISTORICAL COMMISSION APPLICATIONS**
3. **RESOLUTION - CONDITIONAL USE APPLICATION - 223 N. Highland Avenue, Kohelet, Merion Station, Ward 12, CU# 3927C**
4. **AUTHORIZATION TO ADVERTISE PROPOSED ORDINANCE - CHAPTER 155, ZONING - Bala Village Amendments - Z-26-001**



Township of Lower Merion
A FIRST CLASS TOWNSHIP

AGENDA ITEM INFORMATION

COMMITTEE: Building & Planning

ITEM: **WAIVER OF TOWNSHIP CODE SECTION 111-4.2 REGULATING OPEN CONTAINERS FOR THE ARDMORE ROCK N RIDE EVENT**

Consider for recommendation to the Board of Commissioners approval of a waiver of Township Code § 111-4.2 as requested by the applicant, Ardmore Music Hall (AMH), to permit patrons to possess open containers with alcoholic beverages and serve alcoholic beverages in public rights-of-way within regulated areas on Sunday, August 9, 2026, between the hours of 10:00 a.m. to 9:00 p.m. subject to AMH providing the required insurance certificate documenting adequate coverage as required by the Township.

PUBLIC COMMENT

ATTACHMENT(S):

[Ardmore Rock n Ride Permit - Issue Briefing](#)

TOWNSHIP OF LOWER MERION

Building & Planning Committee

Issue Briefing

Topic: Waiver of Township Code § 111-4.2 regulating open containers for the Ardmore Rock N Ride Event

Prepared By: Charlie Doyle, Assistant Director, Building & Planning

Date: July 2, 2026

I. Action to Be Considered by The Board:

Approve a waiver of Township Code § 111-4.2 as requested by the applicant, Ardmore Music Hall (AMH), to permit patrons to possess open containers with alcoholic beverages and serve alcoholic beverages in public rights-of-way within regulated areas on Sunday, August 9, 2026, between the hours of 10:00 a.m. to 9:00 p.m. subject to AMH providing the required insurance certificate documenting adequate coverage as required by the Township.

II. Why This Issue Requires Board Consideration:

The Township Code restricts serving and consumption of alcohol on Township property, which is defined as a public place in the Township. Township Code § 111-4.2 states: *No person shall drink an alcoholic beverage, nor shall any person, firm, corporation or other organization possess an open container containing an alcoholic beverage, whether inside or outside of a motor vehicle or any part thereof, on or in any public place within the Township of Lower Merion.*

III. Current Policy or Practice (If Applicable):

The Board of Commissioners has permitted alcohol for events on Township Property in the past and this code provision has been waived for this and similar special events in Ardmore and other commercial districts in the Township.

IV. Other Relevant Background Information:

AMH has partnered with Narberth Ambulance to promote the annual Ardmore Rock N Ride bike race, featuring activities like beer gardens and live musical entertainment throughout the day. AMH will be selling alcoholic beverages in designated outdoor areas, including the Schaufelle Plaza, Lancaster Avenue toward Ardmore Avenue, and the privately-owned St. James Place in Suburban Square.

To ensure safety and security, trained event security personnel, as well as Lower Merion Police, will be present to enforce alcohol regulations and maintain crowd safety. Responsible Alcohol

Management Program-trained (RAMP) employees will oversee the vending of alcohol on-site. All volunteers and employees will receive contact information for police, medical, and emergency services, and will be equipped with walkie-talkies for efficient communication.

Individuals aged 21 and above will be required to present identification before being served alcohol. Additionally, each patron will be provided with a wristband for identification purposes. The Police Department has been actively coordinating with the various groups involved in this event and will have officers available as needed on August 9th for the bike race and associated events. In addition to coordination with the Police Department, this event has been reviewed by other Township staff and approved for a special event permit.

V. Impact on Township Finances:

The Township will not receive meter revenue from the metered spaces along Coulter Avenue and Station Avenue and in Schauffele Plaza during the event. The Township provides staff from Police and Public Works to assist in hosting the event.

VI. Staff Recommendation:

Staff recommends that the alcohol waiver be approved as requested subject to Ardmore Music Hall providing the required insurance certificate documenting adequate coverage as required by the Township.



ST JAMES
CLOSED 8PM 8/18 - 11:30PM 8/19

GLENN RD
open for store traffic only.
No Public Parking or through traffic

PUBLIC PARKING

SUBURBAN STAGE

FOOD+DRINK

**Course crossing
With Guards**

PUBLIC PARKING

RACER PARKING

**Pedestrian
Course crossing
With Guards**

**ANDERSON AVE
STATION AVE
COULTER AVE
SIBLEY AVE
CHURCH RD
LANCASTER AVE (SECTION)
CLOSED 9AM - 6:45PM 8/19**

RACER PARKING

STATION AVE

FAMILY FUN ZONE

FOOD/DRINK

**RACER
REGISTRATION**

**RACE START
LINE**

**Pedestrian
Course crossing
With Guards**

FOOD/DRINK

**SCHAUFFELE
STAGE**

PUBLIC PARKING

CRICKET TER

ATHENS AVE

CRICKET AVE

RITTENHOUSE PL

SIMPSON RD

ARGYLE RD

ST PAULS RD

CHURCH RD

SIBLEY AVE

COULTER AVE

MONTGOMERY AVE REMAINS OPEN

W MONTGOMERY AVE

ANDERSON AVE

LLANFAIR RD



Township of Lower Merion
A FIRST CLASS TOWNSHIP

AGENDA ITEM INFORMATION

COMMITTEE: Building & Planning

ITEM: **APPROVAL OF HISTORICAL COMMISSION APPLICATIONS**

Consider for recommendation to the Board of Commissioners approval of the following applications as recommended by the Historical Commission at their meeting held on June 22, 2026:

a) 2026-R-05, 14 Rock Hill Road, Bala Cynwyd, Class II - Allowance of an application to replace original wood windows with vinyl windows to proceed with no delay.

b) 2026-R-13, 1233 Lafayette Road, Bryn Mawr, Class II - Approval to replace a slate roof with a DaVinci synthetic slate product, with a subcommittee to assist with any modifications to the proposal, citing Secretary of the Interior's Standard 9.

c) 2026-R-14, 345 North Bowman Avenue, Merion Station, Class II - Approval to construct a one-story addition largely on the footprint of an existing porch with a new metal roof with skylights, with the applicant to provide further material details for subcommittee review, citing Secretary of the Interior's Standards 9 and 10.

PUBLIC COMMENT

ATTACHMENT(S):

[HC - Supplemental Information](#)



14 Rock Hill Road, Bala Cynwyd

Class 2

Historical Commission

28

Action:

Allowance of an application to replace original wood windows with vinyl windows to proceed with no delay.

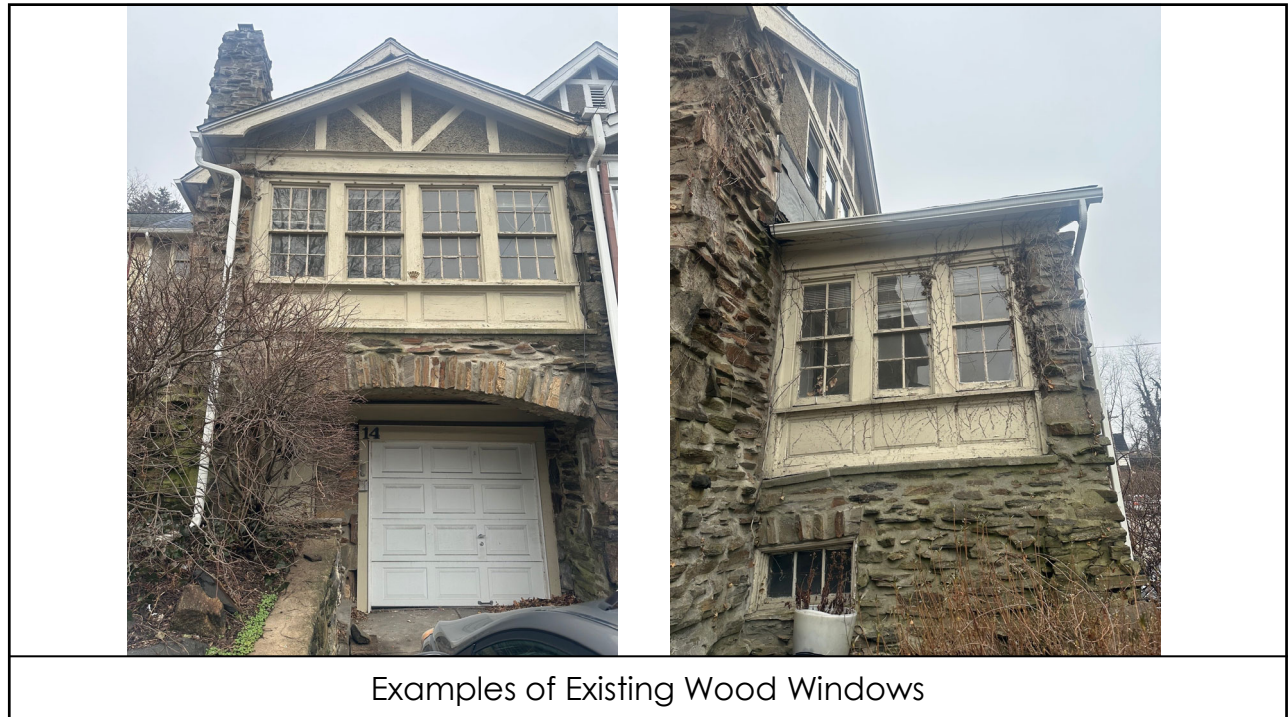
29

Additional HC Comment

The Commission does not recommend the proposed vinyl replacement windows for approval, in accordance with Secretary of the Interior's Standard 9. However, given the length of the review process, tabling, and the cooperation of the applicant, the Commission would recommend that the application move forward with no further delay. The Commission does not recommend vinyl replacement windows and does not in this case.

The Commission does recommend that additional documentation and salvage of original windows be made to further solidify the historic record of these windows, which is the unit on the block with the highest level of integrity.

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Examples of Existing Wood Windows

31



Examples of Existing Wood Windows

32



Note: Fenestration of “grills between glass” grids/dividers has been designed to match that of the existing wood windows, with HC guidance.

UNITED 7400 Series
window & door

Proposed Vinyl Replacement Window

33



LOWER MERION
TOWNSHIP
HISTORIC
PRESERVATION

STAFF ONLY	DATE RECEIVED: _____	REVIEWED BY: _____	STATUS: c ☐ IN/c ☐
	HRI SURVEY #: _____	HRI CLASS: 1 ☐ 2 ☐	
	DATE OF HC MEETING /AGENDA: _____	APP. NO.: _____	
	TYPE OF APPLICATION: ☐ DEMO ☐ ALTERATION ☐ ADDITION ☐ NEW CONSTRUCTION ☐ INFORMATIONAL REVIEW ☐ OTHER [SPECIFY]: _____		

H
C

Historical Commission Application For Review

For Work Involving a Class I or II Historic Resource

This completed application, along with all required materials, must be submitted via original printed copy, email, or other electronic means to the Department of Building & Planning a minimum of ten (10) calendar days prior to the next Historical Commission meeting for consideration.

Please send completed materials or questions to Greg Prichard, Historic Preservation Planner:
gprichard@lowermerion.org (610) 645-6176

PROPERTY ADDRESS

ADDRESS [STREET, CITY]:

14 Rock Hill Rd., Bala Cynwyd

APPLICANT INFORMATION

NAME: _____

PHONE: _____

ADDRESS: _____

EMAIL: _____

ZIP/POSTAL CODE: _____

APPLICANT'S CAPACITY: ☒ OWNER ☐ ARCHITECT ☐ ATTORNEY ☐ CONTRACTOR ☐ OTHER: _____

OWNER INFORMATION [IF DIFFERENT FROM ABOVE]

NAME[S]: _____

PHONE: _____

ADDRESS: _____

EMAIL: _____

ZIP/POSTAL CODE: _____

PROPERTY INFORMATION

NAME OF BUSINESS [IF APPLICABLE]: _____

CURRENT USE: Rehab

PROPOSED USE: Occupancy/residential

PROJECT DESCRIPTION [CHECK ALL THAT APPLY]

☐ ADAPTIVE REUSE ☐ ADDITION ☐ ALTERATION ☐ NEW CONSTRUCTION ☒ OTHER (DESCRIBE BELOW)

PROJECT NARRATIVE [USE ADDITIONAL PAGES AS NECESSARY TO DESCRIBE ALL OF THE WORK PROPOSED]

Install Central A/C, New kitchen + baths, New windows (vinyl) that will be a deep bronze with 6 over 6 grids to match the existing wooden windows. Stucco Repair + paint. Replace any rotted wood in between stucco as needed + paint or cap w/same window color.

CONTINUED

Application Checklist

The following checklist is intended to provide clarification of the requirements and procedures involved in the application process related to obtaining a building permit for the alteration/demolition of a property on the Township's Historic Resource Inventory (HRI) List, as listed in Section 62-2.D.2(b) of the Township Code. This document should in no way take the place of the Applicant's own knowledge and familiarity with Chapter 88 of the Code of the Township of Lower Merion regarding "Historic Districts and Resources" or of The Secretary of the Interior's Standards for the Rehabilitation of Historic Properties. Instead, it is provided as a tool to owners and/or their agents and representatives to ensure the completeness of their application materials prior to submission, thereby minimizing the potential for unnecessary delays in the review process.

CHECK EACH ITEM BELOW TO INDICATE INCLUSION IN THE SUBMISSION MATERIALS

1. ☒ **COMPLETED APPLICATION FOR REVIEW (AFR)**

Complete both sides of this application form for submission with the required attachments

2. ☒ **WRITTEN NARRATIVE INCLUDING:**

- **REASON(S) FOR DEMOLITION/CONSTRUCTION**
Detail the reasons for the proposed demolition/construction
- **PROPOSED METHOD(S) OF DEMOLITION/CONSTRUCTION**
Detail all of the changes proposed to the exterior of the subject structure(s)/property indicating the method(s) to be used in removing and constructing
- **PROPOSED FUTURE USE OF THE SITE & MATERIALS FROM THE HISTORIC RESOURCE**
Include all information relevant to the removal, disposal, salvage, and/or recycling of materials (historic fabric) affected by the proposed change(s) to the resource

3. ☐ **SITE PLAN LOCATING ALL BUILDINGS AND STRUCTURES ON THE PROPERTY**

Provide a scaled site plan of the property, noting all existing and proposed structures and the names of adjacent property owners (unless otherwise exempted by the Building & Planning Department Staff)

4. ☐ **CURRENT PHOTOGRAPHS OF THE HISTORIC RESOURCE(S)**

Provide high resolution digital photographs of each full exterior elevation of the subject structure(s). (Note: Include additional photographs of any relevant significant architectural feature or detail affected by the proposed alteration/demolition)

5. ☐ **SCALED DRAWINGS OF THE HISTORIC RESOURCE(S)**

Provide scaled architectural drawings (i.e., plans, elevations, etc.), 11"x17" format preferred, documenting the existing conditions of the resource (especially those affected by the proposed work), as well as all proposed changes (i.e., demolition and/or new construction, etc.)

6. ☒ **SPECIFICATIONS OF PROPOSED CONSTRUCTION MATERIALS**

Provide a detailed list and/or product brochure(s) of all exterior finish materials (i.e., product name, manufacturer, dimension, texture, color, etc.) proposed for use in the new construction

7. ☐ **HISTORIC RESOURCE IMPACT STUDY (HRIS)**

Provide an HRIS, as described in §155-7.1.J, unless the Building & Planning Department Staff determines that all or a portion thereof is not relevant to the current application

SIGNATURES

APPLICANT:

DATE:

OWNER [IF DIFFERENT]:

DATE:

Note: By filing this application, you are hereby granting permission to Township officials to visit the site for review purposes. In the event that an application is found to be incomplete as submitted, the application shall be returned to the applicant for completion as detailed in §62-2.D.2(c). The forty-five (45) day review requirement prescribed by §62-2.D.4 of the Code shall not apply to an incomplete application.

Revised 10/2023



Preliminary Consultant Review

Prepared by Carol Quigley, Senior Designer / Project Manager Frens & Frens Studio, Patterhn Ives LLC

2026-R-05

14 Rock Hill Road, Bala Cynwyd, Class II

Owner / Applicant: Jerry Lyons

Application Type: Residential

Project Summary: The applicant returns to the HC with clarifications to its proposal to replace all existing wood (and vinyl) windows with vinyl windows.

Comments:

From previous reviews:

- The existing resource is an interior unit within a residential row of two- and three-story dwelling constructed as part of an early 20th century neighborhood. The applicant proposes to remove existing wood windows, original or early installations at the existing residence, and install vinyl replacement windows. Windows are character defining windows at the majority of historic properties, and character defining resources should be retained. Preservation and restoration of original windows is always recommended as the most appropriate treatment. When windows are deteriorated to a degree that restoration is not feasible, replacement windows should match the historic style, material and detail of the original windows. Wood hung windows that require replacement should be replaced with wood or extruded aluminum-clad wood windows, should match the operation and style of the existing windows, and specifications should be considered to ensure the overall daylight opening of the window is preserved. Vinyl windows are never recommended as replacement windows at historic properties because they are not detailed in a manner that resembles historic window detailing and the individual components are typically larger than the historic window components. Further, there are far fewer options within vinyl window offerings to select optional window components that match the originals.
- The presence of inappropriate replacement windows at nearby historic resources does not support the continued practice of inappropriate window selections. In contrast, historic commissions are often created precisely to counteract the trends of inappropriate alterations at historic resources and assist and guide owners to make appropriate alterations.
- Following comments and material requests from the Historic Commission in March, the applicant has provided additional images of the existing windows and additional documentation

on the proposed vinyl windows. The HC has noted that vinyl windows are not appropriate and have never been recommended, but the applicant is still proposing them.

- The images provided indicate that the existing wood windows have not been maintained as well as would be best practice, but from the pictures it appears that the primary failures are of the paint coating and the glazing. These are components that require routine maintenance, so their condition is not at all surprising. With a few exceptions, the wood sash and frames appear to be in good condition, as is also typical of old growth wood used for windows of this age, even despite the weathering of the protective paint coating. The images provide excellent evidence of the primary recommendations of the HC – which is to preserve historic wood windows because they not only retain the historic character of the dwelling but are more likely to last substantially longer than new vinyl windows if they are properly maintained. Further, the retention of the wood windows allows for future repairs and aesthetic changes in color that are not possible with the vinyl windows that will be forever set at the selected dark vinyl finish. Repairs to the existing wood windows – including reglazing and limited component repair where necessary, are recommended here, supplemented with exterior or interior storm panels (which do not appear to be present now in most locations).
- Many of the proposed window pane configuration or window sizes do not match the existing. Four-over-four hung windows are proposed as six-over-six, which results in very tall narrow lights. Many windows are proposed as single light when light divisions are present and should be repeated. On the rear façade, a large, fixed window is proposed where three individual mulled windows of vertical proportion exist. These changes are incongruous with the overall proportions of the façade and are not recommended. The new windows should follow the size, proportion and light arrangement of the existing windows. This is three specific examples of very inappropriate selections, but likely indicative of a more extensive issue within the package.
- The applicant has been asked to submit a dimensioned detail that would confirm the width of the existing sash and a detail of the existing jamb with the proposed new window installed. The applicant has provided standard details of the proposed vinyl replacement window. From the information provided it appears that the width of the frame and sash stile that would be installed within the existing frame would significantly reduce the daylight opening of the existing windows and create a very wide frame at each window. The large component sections of vinyl windows are required because the strength of vinyl is inferior to wood or other materials, and this results in more vinyl and less glass – an inappropriate result at a historic resource.

June Application Update:

- **The applicant has submitted the window installation guide for the selected vinyl window manufacturer. From this we can learn the applicant's intent to install a new full frame within the existing original window frames and that the installation will be from the interior, which suggests that exterior trim details will not be affected, but the applicant should confirm this.**
- **The applicant has revised many of the window styles and divisions, so that the new windows will at least repeat the size and light divisions of the historic windows.**
- **As noted above and repeated within the previous HC reviews of this proposal, while the details of this proposal have improved through the reviews, vinyl windows are never appropriate at historic resources, despite their presence at other resources and**

have never been recommended by the HC. The HC has also never supported installation of vinyl windows or any windows without simulated divided lights where lights are present.

Given the inappropriate material and details proposed by the applicant, we recommend that the HC acknowledge the improvements made during the review process through a reduced period of delay, based on Standard 9.



1233 Lafayette Road, Bryn Mawr

Class 2

Historical Commission

34

Action:

Approval to replace a slate roof with a DaVinci synthetic slate product, with a subcommittee to assist with any modifications to the proposal, citing Secretary of the Interior Standards 9.

35



Slate siding on dormers
will also be replaced

Existing Carriage House Roof

36



Proposed Synthetic Roofing Material

37



Historical Commission Application For Review

FOR INDIVIDUALLY DESIGNATED CLASS I AND CLASS II HISTORIC RESOURCES

This completed application, along with all required materials, must be submitted via original printed copy, email, or other electronic means to the Department of Building & Planning a minimum of ten (10) calendar days prior to the next Historical Commission meeting for consideration.

Please send completed materials or questions to Greg Prichard, Historic Preservation Planner:
gprichard@lowermerion.org (610) 645-6176

PROPERTY ADDRESS

ADDRESS [STREET, CITY]: 1233 Lafayette Rd Gladwyne

APPLICANT INFORMATION

NAME: Jeff Marnelstein PHONE: _____
ADDRESS: 332 Glen Gary Dr EMAIL: _____
Havertown Pa ZIP/POSTAL CODE: 19083

APPLICANT'S CAPACITY: ☒ OWNER ☐ ARCHITECT ☐ ATTORNEY ☒ CONTRACTOR ☐ OTHER: _____

OWNER INFORMATION [IF DIFFERENT FROM ABOVE]

NAME[S]: Mr. Erdman PHONE: _____
ADDRESS: 1233 Lafayette Rd EMAIL: _____
Gladwyne Pa ZIP/POSTAL CODE: 19035

PROPERTY INFORMATION

NAME OF BUSINESS [IF APPLICABLE]: _____

CURRENT USE: House PROPOSED USE: _____

PROJECT DESCRIPTION [CHECK ALL THAT APPLY]

☐ ADAPTIVE REUSE ☐ ADDITION ☐ ALTERATION ☐ NEW CONSTRUCTION ☒ OTHER (DESCRIBE BELOW)

PROJECT NARRATIVE [USE ADDITIONAL PAGES AS NECESSARY TO DESCRIBE ALL OF THE WORK PROPOSED]

New roof

Application for Review Submission Checklist

The following checklist is intended to provide clarification of the requirements and procedures involved in the application process related to obtaining a building permit for the alteration/demolition of a property on the Township's Historic Resource Inventory (HRI), as listed in Section 62-2.D.2(b) of the Township Code. This document should not take the place of the applicant's knowledge of and familiarity with Chapter 88 of the Code of the Township of Lower Merion, "Historic Districts and Historic Resources" or of The Secretary of the Interior's Standards for the Rehabilitation of Historic Properties. It is provided as a tool to owners and/or their agents and representatives to ensure the completeness of application materials prior to submission, thereby minimizing the potential for unnecessary delays in the review process.

1. COMPLETED APPLICATION FOR REVIEW (AFR)

Complete both sides of this application form for submission with the required attachments

2. WRITTEN NARRATIVE INCLUDING:

- REASON(S) FOR DEMOLITION/CONSTRUCTION
Detail the reasons for the proposed demolition/construction
- PROPOSED METHOD(S) OF DEMOLITION/CONSTRUCTION
Detail all of the changes proposed to the exterior of the subject structure(s)/property indicating the method(s) to be used in removing and constructing
- PROPOSED FUTURE USE OF THE SITE & MATERIALS FROM THE HISTORIC RESOURCE
Include all information relevant to the removal, disposal, salvage, and/or recycling of materials (historic fabric) affected by the proposed change(s) to the resource

3. SITE PLAN LOCATING ALL BUILDINGS AND STRUCTURES ON THE PROPERTY

Provide a scaled site plan of the property, noting all existing and proposed structures and the names of adjacent property owners (unless otherwise exempted by the Building & Planning Department Staff)

4. CURRENT PHOTOGRAPHS OF THE HISTORIC RESOURCE(S)

Provide high resolution digital photographs of each full exterior elevation of the subject structure(s).
(Note: Include additional photographs of any relevant significant architectural feature or detail affected by the proposed alteration/demolition)

5. SCALED DRAWINGS OF THE HISTORIC RESOURCE(S)

Provide scaled architectural drawings (i.e., plans, elevations, etc.), 11"x17" format preferred, documenting the existing conditions of the resource (especially those affected by the proposed work), as well as all proposed changes (i.e., demolition and/or new construction, etc.)

6. SPECIFICATIONS OF PROPOSED CONSTRUCTION MATERIALS

Provide a detailed list and/or product brochure(s) of all exterior finish materials (i.e., product name, manufacturer, dimension, texture, color, etc.) proposed for use in the new construction

7. HISTORIC RESOURCE IMPACT STUDY (HRIS)

Provide an HRIS, as described in §155-7.1.J, unless the Building & Planning Department Staff determines that all or a portion thereof is not relevant to the current application

8. \$75 APPLICATION FEE

Must be paid in person at the Building & Planning Department on the first floor of the Township Administration Building, 75 E. Lancaster Ave., Ardmore. Additional fees will be required for any application tabled for additional review more than once.

SIGNATURES

APPLICANT: _____ DATE: _____

OWNER [IF DIFFERENT]: _____ DATE: _____

Note: By filing this application, you are hereby granting permission to Township officials to visit the site for review purposes. In the event that an application is found to be incomplete as submitted, the application shall be returned to the applicant for completion as detailed in §62-2.D.2(c). The forty-five (45) day review requirement prescribed by §62-2.D.4 of the Code shall not apply to an incomplete application.

Revised 4/2026



Historical Commission Roofing Application Supplement

This form lists the supplemental information required for a roof replacement submission to the Historical Commission. This checklist should not take the place of the applicant's own knowledge and familiarity with Chapter 88 of the Code of the Township of Lower Merion or of The Secretary of the Interior's Standards for the Treatment of Historic Properties. It is provided as a tool to owners and/or their agents and representatives to ensure the completeness of their application materials prior to submission for review. It can also serve as a useful guide for projects that include repairs to or minor modification of existing roofs as part of larger projects. For work that includes a roof replacement, the Historical Commission requires all applicants to submit a copy of this form and the supporting materials along with their completed Application For Review (AFR). Please contact Greg Prichard, Historic Preservation Planner, with any questions: gprichard@lowermerion.org

PROPERTY ADDRESS:

1233 Lafayette Rd. Glendwyn

1. ROOF PLAN

Provide an annotated roof plan (i.e. drawing, drone photo, satellite image, etc.) clearly showing all existing and proposed roof surfaces, indicating any areas to be replaced as well as roofing materials to be used.

APPLICATION TIP: If repair and/or restoration is proposed utilizing "in-kind" materials, a formal application to the LMT HC is still likely required, but staff may be able to review and approve the proposed work on an administrative basis depending upon the scope, complexity, and nature of the work. Also, basic roof plans including dimensions for most residential addresses can be ordered for modest fees from satellite survey and imaging companies used by many roofing contractors.

2. DEMOLITION

Confirm whether all existing roofing material(s) will be removed as part of the proposed roof replacement. If not, indicate on the roof plan (Item #1, above), which material(s) will remain.

a. WILL ALL EXISTING ROOFING MATERIAL(S) BE REMOVED?

Yes

3. ROOFING MATERIAL(S)

Identify the original roofing material(s) if known (i.e., through physical evidence, historical photographs, original drawings, etc.), as well as the existing and proposed material(s). Provide manufacturer's product data/cut sheet(s), annotated to indicate the specific material(s) proposed, including color photos and physical samples (if available), that clearly indicate the texture, finish, color, etc. Also provide the exposure of the existing and new materials.

a. HISTORICAL ROOFING (IF KNOWN):

b. EXISTING ROOFING MATERIAL AND EXPOSURE:

Slate

c. PROPOSED ROOFING MATERIAL AND EXPOSURE:

Da Vinci Tiles Slate

d. PROPOSED ROOFING MATERIAL COLOR(S):

Gray Green ~~mixed~~ Mixed color

APPLICATION TIP: While the LMT HC has supported the use of "modern" replacement roofing materials such as architectural (or dimensional) asphalt shingles. In-kind replacement is always preferred. The appearance of any proposed modern replacement material should match the original as closely as possible and sympathetic to the historic character of the resource.

4. SOLAR PANELS, TILES, OR SHINGLES

If applicable, indicate on the roof plan (Item #1 above) any proposed solar panels, tiles, shingles, etc. including but not limited to controls, conduits, and equipment. Provide manufacturer's product data/cut sheet(s) indicating the specific model, options, size, color, etc. of proposed solar products.

☐ 5. CHIMNEY(S)

Indicate on the roof plan (Item #1, above) the location of any existing chimneys, and confirm whether any are proposed to be removed or altered. If so, provide photos of the chimney(s).

a. ARE ANY CHIMNEYS PROPOSED FOR REMOVAL?

No

b. ARE ANY CHIMNEYS PROPOSED FOR ALTERATION?

No

☐ 6. FLASHING & EDGING MATERIAL(S)

Identify the existing flashing material(s) and those proposed, including but not limited to locations such as ridges, valleys, hips, walls, chimneys, dormers, etc. For wall and chimney flashings, indicate method of installation (ex. Stepped flashing in reglet joints). Provide the color of all material(s) proposed.

a. EXISTING FLASHING & EDGING:

Tin

b. PROPOSED FLASHING & EDGING:

Drip edge

c. FLASHING & EDGING COLOR(S):

Dark Bronze

APPLICATION TIP: The LMT HC does not typically support the use of non-historic materials and details like closed valleys, contrasting white painted metal flashing, or the sawcutting of historic masonry to create flashing reglet terminations.

☐ 7. PENETRATION(S)

Indicate on the roof plan (Item #1, above) the approximate location of any existing and/or proposed roof penetrations, including but not limited to fans, plumbing vents, ducts, etc. Provide the color of all material(s) proposed.

a. ARE ALL PLUMBING VENTS TO BE CLAD OR PAINTED?

New collars installed

b. VENT OR PENETRATION COLOR(S):

Remain

APPLICATION TIP: The LMT HC does not typically support the location of plumbing penetrations, skylights, solar panels, etc. on the roofs of primary or front facades. All plumbing penetrations should be clad in metal or painted a non-contrasting color similar to the roof.

☐ 8. SKYLIGHT(S)

Indicate on the roof plan (Item #1) the approximate location of any existing and/or proposed skylights. Provide manufacturer's product data/cut sheet(s) indicating the specific model, options, size, color, etc. of proposed skylights(s).

a. PROPOSED SKYLIGHT(S):

None

☐ 9. GUTTERS & LEADERS

If applicable, identify the existing gutters and leaders and those proposed, including hung, built-in, and/or pole gutters. Provide manufacturer's product data/cut sheet(s) indicating the specific style, size, profiles, material, color, etc. of all gutters and downspouts proposed.

a. EXISTING GUTTERS & LEADERS:

Built in Pole gutters

b. PROPOSED GUTTERS & LEADERS:

To remain

c. GUTTER & LEADER COLOR(S):

APPLICATION TIP: The LMT HC does not typically support the use of K-Style Gutters and corrugated downspouts. K-Gutters came into common use just prior to the mid-20th century, so are not appropriate for buildings designed in earlier styles built prior to the 1930s.

☐ 10. HVAC EQUIPMENT – EXISTING & PROPOSED

If applicable, indicate on the roof plan (Item #1, above) any existing or proposed roof-mounted mechanical (HVAC) equipment, including any associated electrical conduits, penetrations, etc. Provide product data as needed.

NOTE: IN THE EVENT THAT THE LMT STAFF, HISTORICAL COMMISSION, AND/OR THE BOARD OF COMMISSIONERS FIND AN APPLICATION TO BE INCOMPLETE AS SUBMITTED, THE ENTIRE APPLICATION SHALL BE RETURNED TO THE APPLICANT FOR COMPLETION. THE FORTY-FIVE [45] DAY REVIEW REQUIREMENT PRESCRIBED BY §3407.3.4 OF THE ORDINANCE SHALL NOT APPLY TO AN INCOMPLETE APPLICATION.

Revised 4/2026



Preliminary Consultant Review

Prepared by Carol Quigley, Senior Designer / Project Manager Frens & Frens Studio, Patterhn Ives LLC

2026-R-13

1233 Lafayette Road, Bryn Mawr, Class 2

Owner / Applicant: Jeff Marmelstein for Owner

Application Type: Residential

Project Summary: The applicant proposes to remove a slate shingle roof and replace with a synthetic slate roof by DaVinci.

Comments:

- The subject resource is a one-story former carriage house, c 1896, constructed of pointed stone, with a hipped roof with original slate shingles punctuated with single and double gable dormers at each of its roof planes. The applicant proposes to replace the original slate roof with a single width synthetic slate system by Davinci.
- Slate shingles can last over 100 years, and this roof system has surpassed that age. While preserving and retaining a historic roof like this may service the building for a while more, when it has reached the end of its service life and requires replacement, the most appropriate treatment would be an in-kind replacement. If in-kind replacement is not feasible, substitute materials that match the dimension, profile, texture, and color of the original materials are appropriate. The proposed synthetic slates are a good visual match to the original natural slate, perhaps varying a bit from their color: as old slate shingles wear, the surface of the slates scale and often exhibit a more various color than the monochrome options of synthetic slate and even new natural slate. The extent of color variation of the existing slate is not very visible from the photos provided, but the selected manufacturer offers monochrome colors and polychromatic options. The submitted image of the product is of "Slate gray" – monochromatic. But the application notes an intent of a more polychromatic selection. A close match to the existing color is recommended.
- The applicant should clarify several items referenced within the roof replacement application, as follows:
 - Material selection for valley flashing
 - Ridge and hip details (existing hip details is overlapping slate hip caps; existing ridges are capped with sheet metal)
 - Chimney flashing: applicant notes no work is to be done on chimneys, but base flashing, at a minimum, will need to be removed and replaced as part of the roof replacement
 - Confirmation of replacement of all wall slates also with the synthetic slate specified.

- Edge flashing should be painted out or color matched to blend with the painted cornice or rake board it is attached to.
- Pole gutter is noted to be retained, which is very appropriate as it is a character defining feature of the roof, but is the lining of the pole gutter to be replaced, and if so, in what material?

Following clarification of the items noted above, we recommend approval of this application based on Standard 9.



345 North Bowman Avenue, Merion Station

Class 2

Historical Commission

38

Action:

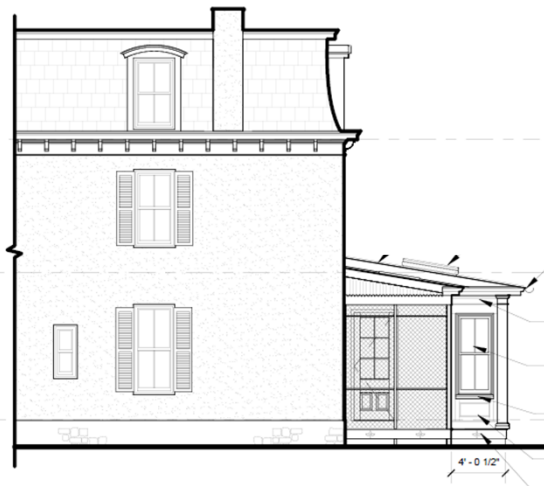
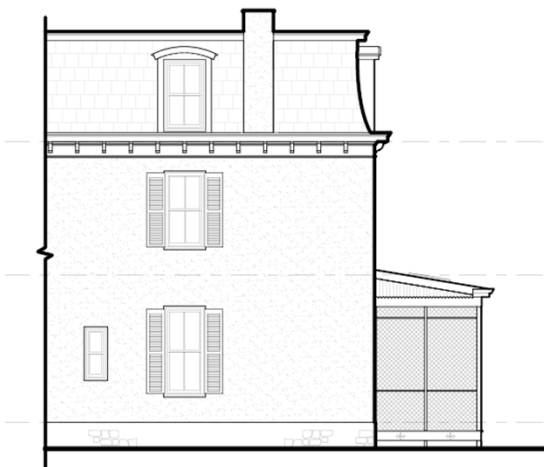
Approval to construct a one-story addition largely on the footprint of an existing porch with a new metal roof with skylights, with the applicant to provide further material details for subcommittee review, citing Secretary of the Interior's Standards 9 and 10.

39



Rear Elevation – Existing and Proposed

40



East Side Elevation – Existing and Proposed

41



Historical Commission Application For Review

FOR INDIVIDUALLY DESIGNATED CLASS I AND CLASS II HISTORIC RESOURCES

This completed application, along with all required materials, must be submitted via original printed copy, email, or other electronic means to the Department of Building & Planning a minimum of ten (10) calendar days prior to the next Historical Commission meeting for consideration.

Please send completed materials or questions to Greg Prichard, Historic Preservation Planner:
gprichard@lowermerion.org (610) 645-6176

PROPERTY ADDRESS

ADDRESS [STREET, CITY]: 345 N. Bowman Avenue

APPLICANT INFORMATION

NAME: Ross Capaccio

PHONE:

ADDRESS: 39 N. Narberth Ave, Narberth, PA

EMAIL:

ZIP/POSTAL CODE: 19072

APPLICANT'S CAPACITY: ☐ OWNER ☒ ARCHITECT ☐ ATTORNEY ☐ CONTRACTOR ☐ OTHER:

OWNER INFORMATION [IF DIFFERENT FROM ABOVE]

NAME[S]: Robert & Cynthia Paul

PHONE:

ADDRESS: 345 N. Bowman Avenue

EMAIL:

ZIP/POSTAL CODE: 19066

PROPERTY INFORMATION

NAME OF BUSINESS [IF APPLICABLE]:

CURRENT USE: Living

PROPOSED USE: Living

PROJECT DESCRIPTION [CHECK ALL THAT APPLY]

☐ ADAPTIVE REUSE ☒ ADDITION ☒ ALTERATION ☐ NEW CONSTRUCTION ☐ OTHER (DESCRIBE BELOW)

PROJECT NARRATIVE [USE ADDITIONAL PAGES AS NECESSARY TO DESCRIBE ALL OF THE WORK PROPOSED]

See attached below.

Application for Review Submission Checklist

The following checklist is intended to provide clarification of the requirements and procedures involved in the application process related to obtaining a building permit for the alteration/demolition of a property on the Township's Historic Resource Inventory (HRI), as listed in Section 62-2.D.2(b) of the Township Code. This document should not take the place of the applicant's knowledge of and familiarity with Chapter 88 of the Code of the Township of Lower Merion, "Historic Districts and Historic Resources" or of The Secretary of the Interior's Standards for the Rehabilitation of Historic Properties. It is provided as a tool to owners and/or their agents and representatives to ensure the completeness of application materials prior to submission, thereby minimizing the potential for unnecessary delays in the review process.

1. ☒ **COMPLETED APPLICATION FOR REVIEW (AFR)**
Complete both sides of this application form for submission with the required attachments
2. ☒ **WRITTEN NARRATIVE INCLUDING:**
 - **REASON(S) FOR DEMOLITION/CONSTRUCTION**
Detail the reasons for the proposed demolition/construction
 - **PROPOSED METHOD(S) OF DEMOLITION/CONSTRUCTION**
Detail all of the changes proposed to the exterior of the subject structure(s)/property indicating the method(s) to be used in removing and constructing
 - **PROPOSED FUTURE USE OF THE SITE & MATERIALS FROM THE HISTORIC RESOURCE**
Include all information relevant to the removal, disposal, salvage, and/or recycling of materials (historic fabric) affected by the proposed change(s) to the resource
3. ☒ **SITE PLAN LOCATING ALL BUILDINGS AND STRUCTURES ON THE PROPERTY**
Provide a scaled site plan of the property, noting all existing and proposed structures and the names of adjacent property owners (unless otherwise exempted by the Building & Planning Department Staff)
4. ☒ **CURRENT PHOTOGRAPHS OF THE HISTORIC RESOURCE(S)**
Provide high resolution digital photographs of each full exterior elevation of the subject structure(s).
(Note: Include additional photographs of any relevant significant architectural feature or detail affected by the proposed alteration/demolition)
5. ☒ **SCALED DRAWINGS OF THE HISTORIC RESOURCE(S)**
Provide scaled architectural drawings (i.e., plans, elevations, etc.), 11"x17" format preferred, documenting the existing conditions of the resource (especially those affected by the proposed work), as well as all proposed changes (i.e., demolition and/or new construction, etc.)
6. ☒ **SPECIFICATIONS OF PROPOSED CONSTRUCTION MATERIALS**
Provide a detailed list and/or product brochure(s) of all exterior finish materials (i.e., product name, manufacturer, dimension, texture, color, etc.) proposed for use in the new construction
7. ☒ **HISTORIC RESOURCE IMPACT STUDY (HRIS)**
Provide an HRIS, as described in §155-7.1.J, unless the Building & Planning Department Staff determines that all or a portion thereof is not relevant to the current application
8. ☒ **\$75 APPLICATION FEE**
Must be paid in person at the Building & Planning Department on the first floor of the Township Administration Building, 75 E. Lancaster Ave., Ardmore. Additional fees will be required for any application tabled for additional review more than once.

SIGNATURES

APPLICANT:

DATE:

OWNER [IF DIFFERENT]:

DATE:

Note: By filing this application, you are hereby granting permission to Township officials to visit the site for review purposes. In the event that an application is found to be incomplete as submitted, the application shall be returned to the applicant for completion as detailed in §62-2.D.2(c). The forty-five (45) day review requirement prescribed by §62-2.D.4 of the Code shall not apply to an incomplete application.

PROJECT NARRATIVE

Paul Residence

345 N. Bowman Avenue

The existing resource is a house in the Second Empire style built circa 1871-77, which was later converted into a twin between 1900-10. It is constructed with a stucco finish on the exterior, a mansard roof with segmental arched dormer windows and rubber roof above, a one story flat-roofed porch supported by tuscan columns, and a stone foundation. The detail of this house is exemplified by the crown, cornice, and ornate brackets under the mansard roof, its arched window openings, tuscan columns, and functional shutters. At the rear of the resource, a generous screened porch features further details, such as the scalloped v-grooved vertical boards along the gabled end, custom leaf-shaped cutouts, and unique brackets incorporated in the post design.

Renovations to the resource are centered around renovating the kitchen in its current footprint, and taking over some of the screened porch space to create a one story addition that will function as a breakfast room. The addition is scaled slightly larger than the original porch in order to give it a sense of hierarchy and provide a stopping place for the original porch. The slope will match the existing porch, and in order to achieve this an aluminum standing seam metal roof has been selected. Two skylights in this roof are present for both form and function. As the addition is located on north side of the house, the homeowner would like as much natural light filtering into the kitchen as possible. Secondly, it calls back to the existing porch and its two skylights, one of which is being removed for the addition. Five new windows can be found on the addition, all of which are Marvin double hung wood clad with aluminum to match as best as possible the original windows of the resource. The new exterior will be composed of Azek site-built panels, which takes cues from the rhythm of the existing porch framing. Alongside the panels are site-built Azek pilasters in the Tuscan style that call back to the columns and pilaster on the front porch. A 1x10 Azek board will run along the bottom of the addition with the same decorative cutouts as the existing porch. On the porch facing side of the addition, stucco will be the exterior finish material.



Preliminary Consultant Review

Prepared by Carol Quigley, Senior Designer / Project Manager Frens & Frens Studio, Patterhn Ives LLC

2026-R-14

345 N Bowman Avenue, Merion Station, Class 2

Owner / Applicant: Ross Capaccio for Owner

Application Type: Residential

Project Summary: The applicant proposes to construct as small addition at the rear façade.

Comments:

- The subject resource is a Second Empire three story twin dwelling (right half) constructed c 1870 of stucco over stone and capped with a mansard roof. Primary characteristics of the front facade include a one-story porch at the right corner that engages a first-floor projecting bay. The right side and rear of the building are more uniform in their massing, with only a simple shed roof screened porch across the two-story rear facade.
- The applicant proposes to construct a small addition at the rear facade in place of half of the screened porch. The addition would extend out 3' further than the end of the porch will have a simple shed roof plane offset from the existing. These slight changes in plane nicely break up the length of the existing screened porch. The addition includes grouped two-over-two windows that match the style of the existing fenestration, trim around the windows and lower panels of Azek, cornices to match the profiles of the adjacent existing, also of Azek, and a standing seam metal roof, all materials and forms that are traditional and appropriate additions at this historic structure. The plan has also noted the inclusion of half round gutters and smooth round downspouts. Windows are noted to be Marvin aluminum clad wood windows, but the applicant should confirm the specification of simulated divided lights, as would be appropriate. Velux skylights are also proposed for this addition to this rear façade, which is the appropriate location for skylights at a historic resource.

Following the requested product clarification noted above, we would recommend approval of this application based on Standards 9 and 10.



Township of Lower Merion
A FIRST CLASS TOWNSHIP

AGENDA ITEM INFORMATION

COMMITTEE: Building & Planning

ITEM: **RESOLUTION - CONDITIONAL USE APPLICATION - 223 N. HIGHLAND AVENUE, KOHELET, MERION STATION, WARD 12, CU# 3927C**

Consider for recommendation to the Board of Commissioners approval of a Conditional Use application. The applicant seeks Conditional Use approval, pursuant to Zoning Code Section 155-4.4.C(6), to modify prior conditions imposed by the Zoning Hearing Board (Appeal No. 4362, modified by Conditional Use Application No. 3896C).

The applicant is seeking relief from prior Zoning Hearing Board decisions to expand their existing religious use to include:

1. Friday and Saturday evening Sabbath prayers services for up to 60 attendees who do not drive. Services will last up to 1.5 hours.
2. Increased Saturday morning Sabbath prayers from 90 to 200 attendees who do not drive.
3. Increased Holiday prayer services from 3-4 times a year to 13 times per year with up to 200 attendees who do not drive.

The Hearing Officer's recommendation is attached.

PUBLIC COMMENT

ATTACHMENT(S):

[223 N. Highland Avenue - CU Resolution](#)
[Hearing Officer Recommendation - The Merion Shtiebel](#)
[Staff Memo - Merion Shtiebel](#)
[Background Document - Merion Shtiebel](#)
[Zoning Hearing Board Decision 4625](#)

TOWNSHIP OF LOWER MERION

RESOLUTION NO. _____

WHEREAS, the Township of Lower Merion received an amended application designated as CU Application #3912, filed on behalf of The Shtiebel of Lower Merion (“The Shtiebel”), dated February 6, 2026, which seeks conditional use approval pursuant to § 155-4.4(C)(6) of the Zoning Code to modify conditions of previously granted special exception approvals which limit the institutional accessory use of the property located at 223 N. Highland Avenue, further identified as Tax Parcel No. 40-00-25368-00-8 (the “Property”);

WHEREAS, the application was referred to Pamela M. Loughman, Esq., Hearing Officer, to take testimony and make recommended Findings of Fact, Conclusions of Law and an Order for the consideration of the Board of Commissioners;

WHEREAS, specifically, the Hearing Officer received testimony and evidence in consideration of the Applicant’s request to modify the application limiting conditions for non-student activities at the Property to accommodate an increase in the maximum number of attendees at Saturday prayer services, increase in the maximum permitted number of holiday prayer services, and the addition of Sabbath prayer services on Friday and Saturday evenings;

WHEREAS, following a public hearing on the application, the Hearing Officer submitted to the Board of Commissioners her “Amended Recommendations for Findings of Fact, Conclusions of Law and Order,” (the “Report”); and

WHEREAS, the Board of Commissioners, having reviewed and considered the Hearing Officer’s Report, hereby intends to render its decision.

NOW THEREFORE, the Board of Commissioners of the Township of Lower Merion hereby resolves:

1. Paragraphs 1 through 147 set forth in the attached Report, together with the Discussion contained therein, are all hereby adopted in their entirety as the Findings of Fact and Conclusions of Law, and discussion thereof, of the Board of Commissioners with respect to CU Application #3912 and the recorded developed pursuant thereto.
2. In consideration thereof, and based thereupon, the Board adopts and issues the following order, which is consistent with the Hearing Officer’s proposed order, with respect to the aforementioned application and is based on the documents and plans submitted in support of the application, all of which are specifically incorporated by reference thereto:

ORDER

And now on this day of , 2026, the application of The Shtiebel of Lower Merion for conditional use approval to modify conditions imposed by the Zoning Hearing Board in connection with special exception approval granted in Appeal No. 4362 and subsequently modified by the Board of Commissioners by conditional use approval in Conditional Use Application No. 3896C, pursuant to Code §155-4.4.C(6), and the application procedure and standards found in §155-11.1.F & G, is granted, subject to the following conditions, for the reasons set forth in the foregoing recommended findings of fact, conclusions of law and discussion.

Conditional use approval is granted on and conditioned on adherence to the testimony, plans, photos, and documents presented at the conditional use hearing on May 14, 2026, and all documents admitted into the record.

This grant of conditional use approval is further conditioned on:

1. Sabbath prayer services on Saturday mornings from 8:30 am to 1:00 pm for a maximum of 200 attendees, and with attendees not driving.
2. Sabbath prayer services on Friday and Saturday evenings for less than 1.5 hours for fewer than 60 attendees, and with attendees not driving.
3. Holiday prayer services thirteen times per year, beginning one hour before sundown and lasting no more than three hours, for a maximum of 200 people, and with attendees not driving.
4. While total attendance for certain services may reach up to 200 individuals, at no time will the occupant load of the Beit Midrash exceed 176 individuals. All prayer activities will take place indoors in designated rooms with occupants distributed across these spaces to remain. The Applicant shall apply for a zoning permit to ensure they comply with occupancy requirements.
5. The Shtiebel of Lower Merion must prepare a post development pedestrian study evaluating pedestrian activity around the school and implement any findings identified in the study as directed by staff.
6. The Shtiebel of Lower Merion must install painted crosswalks and associated elements at the intersection of Melrose Avenue and Old Lancaster Road as previously required by Land Development approval.
7. Attendees of Shtiebel activities at the Property shall be limited to members of the Shtiebel and their Sabbath guests.
8. Parking on adjacent streets, both public and private, in connection with any non-school-related activity or services is prohibited.

All other conditions not modified by this grant of relief shall remain in full force and effect.

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 by reference thereto.

BOARD OF COMMISSIONERS
TOWNSHIP OF LOWER MERION

BY: _____
Todd M. Sinai, President

ATTEST:

Jody L. Kelley, Secretary

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

Application CU #3912

Amended Recommendations for Findings of
Fact, Conclusions of Law, and Order

This conditional use application was filed by The Shtiebel of Lower Merion seeking conditional use approval to modify conditions imposed by the Zoning Hearing Board in connection with a special exception (ZBA Appeal No. 4362) and later modified by conditional use by the Board of Commissioners (CUA No. 3896C) pursuant to Code §155-4.4.C(6) and the application procedure and standards found in §155-11.1.F & G. The Conditional Use Hearing was conducted on May 14, 2026, before the Conditional Use Hearing Officer.¹

I. FINDINGS OF FACT

A. Background

1. The Applicant is The Shtiebel of Lower Merion ("Shtiebel" or "Applicant").
2. The Shtiebel is represented by Kailie Melchior, Esq. and Rebecca W. Geiser, Esq. of Kilkenny Law.
3. The conditional use application concerns 223 N. Highland Avenue, Lower Merion Township, further identified as Parcel I.D. No. 40-00-25368-00-8 ("Property").
4. Kohelet Yeshiva High School ("Kohelet") has been the record owner of the Property since October 28, 2011.

¹ The Conditional Use Hearing Officer is authorized to conduct the hearing pursuant to Code §155-11.1.F(9)(c).

5. The Shtiebel leased certain portions of the premises at Kohelet to allow "prayer services and ancillary programs on Shabbat and certain Jewish Holidays at the Property." Ex. A-3, Lease Agreement at 1.

6. The Property is located in the 1E1 zoning district, established to permit site uses operated for public and private education. The neighboring synagogues and library are zoned IC, Institutional Civic. The IC District regulates sites operated for communally beneficial land uses such as arts and culture, social and religious use, senior housing and recreation. Ex. T-10, Staff Memo at 2.

7. The 6.94-acre Property was assembled from parcels 223 N. Highland Avenue, 280 Melrose Avenue, and 284 Melrose Avenue and land development was approved in 2016. LD No. 3767TS.

8. The Property is located within the bounds of N. Highland Avenue, Old Lancaster Road, and Melrose Avenue with frontage on three sides. There are sidewalks with a verge along the frontage of N. Highland Avenue and Old Lancaster Avenue. There is a grassy verge along the frontage of Melrose Avenue, a private road. The surrounding neighborhood is generally very walkable. Ex. T-10, Staff Memo at 2.

9. The Property is fully enclosed by fencing and gates. It has one gated entrance driveway along N. Highland Avenue and one gated exit driveway along Old Lancaster Road. The Property is accessed by a one-way driveway from N. Highland Avenue that traverses the site and exits onto Old Lancaster Avenue. Ex. T-10, Staff Memo at 2.

10. There are five institutional uses located near the intersection of North Highland Avenue and Old Lancaster Road: Kohelet Yeshiva, The Bala Cynwyd Library, the French International School, Temple Adath Israel, and Lower Merion Synagogue. Ex. T-10 at 2.

11. The area west of Old Lancaster Road, immediately adjacent to Kohelet, is zoned LDR2, a low-density single family residential district with a minimum lot size of one acre. A small pocket of homes fronting Old Lancaster Road is zoned LDR3, a single-family residential district with a minimum lot size of 1/3 of an acres. Many of the lots west of Kohelet on Highland Avenue exceed the minimum lot size requirement. The east side of Old Lancaster Road is primarily zoned LDR4, single family residential with a minimum lot size of 6 units per acre. Ex. T-10 at 2.

12. The Property has been improved with a three-story Jacobethan-style stone estate house with classroom additions, an attached gymnasium and Beit Midrash, and 89 parking spaces. The Jacobean-style stone estate house is a Class 2 historic resource. Ex. T-10 at 2.

13. The Property is currently used as a Modern Orthodox Yeshiva Day School for grades K-12.

B. Previous Special Exception Approvals

14. Institutional uses in residentially zoned districts were permitted by special exception approval from the Zoning Hearing Board before the enactment of the new zoning code in 2020.

15. The Akiba Hebrew Academy (“Akiba”) operated a private school for students in grades 6-12 at the Property from 1956 to 2008. The Property consisted of 4.8 acres at 233 N. Highland Avenue originally improved with an estate house. In 1956 the Zoning Hearing Board (“ZHB”) granted a special exception to allow the estate house on the Property to be used for an educational institution for students in grades 6-12. *See, Appeal of Kohelet Foundation*, No. 4196 (March 16, 2010) p. 2.

16. On March 31, 1974, the ZHB granted a special exception and variance to allow the construction of a gymnasium and classroom building on 223 N. Highland Avenue, and to increase the student population to 350. *Appeal of Akiba Hebrew Academy*, No. 2299 (March 1974). Akiba's school enrollment was capped at 350 students for six (6) grades pursuant to the ZHB decision in 1974.

17. On August 6, 1996, the ZHB granted a special exception to expand the educational facilities on 223 N. Highland Avenue and to use the adjoining 1.3-acre parcel at 280 Melrose Avenue for administrative offices and parking. The ZHB denied requested variances from the building coverage and impervious surface limitations, finding that with the merger of the two parcels and continuation of the existing nonconformities, those limitations would not be violated. *Appeal of Akiba Hebrew Academy*, No. 3433 (August 6, 1996). Several neighbors appealed the ZHB's 1996 decision to the Court of Common Pleas which affirmed the ZHB on November 26, 1996. An appeal was taken by neighbors to the Commonwealth Court, but that appeal was discontinued on April 14, 1998.

18. Akiba did not construct the improvements approved by the ZHB in 1996, but it did install a stormwater management system in the driveway that connects to N. Highland Avenue in order to connect to the Township's main storm water collection system in that road. *See, Appeal of Akiba Hebrew Academy*, N. 3909 (October 21, 2004) p. 3.

19. On October 21, 2004, the ZHB granted a special exception to Akiba to allow the expansion of the educational facilities on 223 N. Highland Avenue and to use the adjoining property at 280 Melrose Avenue for administrative offices, subject to certain conditions. *Id.* Several neighbors appeal the ZHB's decision, which was affirmed by the Commonwealth Court in two separate opinions. *See, Kleinman v. Lower Merion Township Zoning Hearing Board*, 916

A.2d 726 (Pa. Cmwlth. 2006); *Zauderer v Zoning Hearing Board of Lower Merion Township*, 915 A.2d 1278 (Pa. Cmwlth. 2007) (unreported). The Supreme Court denied a petition to review the matter. *In re Appeal of Zauderer*, 593 Pa. 792, 931 A.2d 660 (2007).

20. Akiba did not construct the improvements approved by the ZHB in 2004 and affirmed by the Pennsylvania appellate courts in 2007. Instead, Akiba relocated Radnor Township and sold 223 N. Highland Avenue to the Jewish Federation of Greater Philadelphia in 2008. *See, Appeal of the Kohelet Foundation*, No. 4196 (March 18, 2010), p. 2.

21. The Jewish Federation of Greater Philadelphia operated the Stern Hebrew High School on 223 N. Highland Avenue.

22. In 2010, the Property was purchased by the Kohelet Foundation and was subsequently transferred to the Kohelet Yeshiva High School an accredited educational institution for grades 9-12.

23. Kohelet Foundation applied for campus expansion to several adjacent parcels and significant site improvements including building additions, parking reconfiguration, and construction of playing fields.

24. On March 18, 2010, the ZHB granted a special exception to construct an addition to the educational facilities on 223 N. Highland Avenue and to reconfigure parking and traffic circulation. *Appeal of the Kohelet Foundation*, No. 4196 (March 18, 2010), p. 2 ("*Kohelet 2010*"). Several neighbors appealed and the Board was affirmed by the Court of Common Pleas on October 12, 2010, and then affirmed again by the Commonwealth Court on December 27, 2011. *In re Appeal of Zauderer*, 2011 Pa. Commw. Unpub LEXIS 1023, 32 A. 3rd 890 (Pa. Cmwlth. 2011).

25. The ZHB's prior grant of a special exception for educational use had approved the enrollment of 350 students in grades 6-12. Kohelet Foundation's 2010 application, however, sought approval for 180 students in grades 9-12. The ZHB limited its approval to 180 students in grades 9-12. *Appeal of the Kohelet Foundation*, No. 4196 (March 18, 2010), p. 13. These conditions of approval reduced the overall capacity of the school from 350 to 180 students.

26. Kohelet Foundation constructed the addition to the education building that the ZHB approved in 2010 but did not install several impervious areas of patio and walkways that had also been approved.

27. The Property at 223 N. Highland Avenue was used by Kohelet Yeshiva High School (formerly Stern Hebrew High School) beginning 2010 as an accredited educational institution for grades 9-12 with an enrollment cap of 180 students,

28. Kohelet Foundation, Kohelet Yeshiva High School, and 284 Melrose LLC applied for a special exception to restructure the school from grades 9-12 to grades K-12 and expand facilities in Appeal No. 4362 filed in 2016. Zoning Hearing Board Findings of Fact, Conclusions of Law, Opinion & Order, Appeal No. 4362 dated 5/19/16 ("*Kohelet 2016*")

29. The Zoning Hearing Board granted a special exception, pursuant to Code §155-11S(2) and §155-11(X)², to expand the educational use on the properties at 233 N. Highland Avenue, 280 Melrose Avenue, and 284 Melrose Avenue conditioned on enrollment being capped at 360 students and faculty/staff/volunteers being capped at 74. Other conditions related to the student use and non-student use of the Property, use of the open grass field adjacent to Melrose Avenue, buffering of the Melrose Avenue property line, pick up and drop off procedures, traffic

² Provisions of the Zoning Code in effect in 2016 which were superseded by the new Zoning Code in 2020.

impact and safety, buffering, and lot consolidation. Site improvements approved for land development associated with K-12 renovation included the demolition of an existing home at 284 Melrose Avenue, consolidation of three parcels into one parcel, construction of a two-story addition with an 11,602 footprint adjacent to the gymnasium, construction of a two-story addition with a 1,693 sq. ft footprint onto the existing classroom building, shifting of the existing entrance drive off of N. Highland Avenue 20 feet to the east, the addition of 19 new parking spaces and construction of a playing field on the former 280 and 284 Melrose Avenue properties. ZHB Appeal No. 4362, *Kohelet 2016*.

30. In 2016, the Applicant received a special exception to expand the use of an existing accredited educational institution on the Property from the Zoning Hearing Board. ZHB Appeal No. 4362, *Kohelet 2016*, including Ex. A-22 and A-29

31. The Zoning Hearing Board imposed the following condition, *inter alia*, in *Kohelet 2016*:

Use: use of the property by parties other than the applicants and the school is not permitted (except as set forth in Ex. A-2, attached hereto as Exhibits A-22 and A-29, attached hereto); and any additional use and/or additional users of the property must be approved by the Board as a special exception.

32. *Kohelet 2016* included Exhibit A-22, which summarizes proposed summer and winter programs at the Property which were approved, including some non-student uses.

33. *Kohelet 2016* included Exhibit A-29, which summarizes regularly scheduled and special events at the Property which were approved, including some non-student activities. Approved non-student activities included "Sabbath prayer services for up to 150 attendees."

C. Previous Conditional Use Approvals

34. Lower Merion Township enacted a new zoning code that created Institutional Districts and permits conditions imposed by the Zoning Hearing Board on institutional uses to be

modified by the Board of Commissioners by conditional use pursuant to Code §155-4.4.C.6. Institutional districts are designed to address community concerns regarding physical expansion of institutions into residential neighborhoods. Expansion of institutional uses now occurs only with conditional use approval rather than by special exception. *See*, Ex. T-10, Staff Memo at 3.

35. In 2022, Kohelet filed a conditional use application seeking to modify the conditions of approval imposed by the ZHB Appeal No. 4362 in 2016, under the newly enacted Code §155-4.4.C.6. It specifically sought approval for:

- a) Sabbath prayer services for up to 90 attendees on Saturdays from 8:30 am to 1:00 pm (reducing the number of attendees from 150 to 90, and increasing the number of events from 5 to 52), which attendees will not drive, and
- b) Evening basketball for up to 30 people, twice a week, no later than 10 pm, entirely indoors.

36. On August 1, 2022, the Board of Commissioners granted conditional use relief pursuant to Code §155-4.4.C.6 to modify a condition imposed by the ZHB. The subject condition imposed in 2016 prohibited additional uses and/or additional users of the Property. Modification of the condition in 2022 made the Property available for Sabbath services for up to 90 attendees on Saturdays from 8:30 am to 1:00 pm, which attendees will not drive; and evening basketball for up to 30 people, twice a week, no later than 10 pm, entirely indoors. No basketball leagues or tournaments are permitted. In addition, the Kohelet shall attend a meeting with the Merion Civic Association and the Neighborhood Club of Bala Cynwyd annually; and Kohelet shall work with staff, the adjacent property owners and SEPTA to install a bus shelter at the intersection along Old Lancaster Road. Conditional Use Application No. 3896 ("*Kohelet 2022*")

37. In 2024, Kohelet filed a conditional use application seeking to modify the conditions of approval imposed by ZHB Appeal No. 4362 in 2016, pursuant to Code §155-

4.4.C.6, to expand the educational use on the Property, and increase enrollment by an additional 40 students to a total of 400 students. The Board of Commissioners approved increasing the student enrollment to 400. Conditional Use Application No. 3912C ("*Kohelet 2024*")

D. Current Conditional Use Application

38. The Applicant originally applied for Conditional Use on January 21, 2025 (Application No. 3927C) seeking modification of conditions limiting activities for non-students. The Township Zoning Officer issued a determination requiring relief by the Township Zoning Hearing Board, and the Applicant appealed. A public hearing was held on July 31, 2025, and the ZHB issued Amended Findings of Fact, Conclusions of Law, Opinion and Order upholding portions of the Zoning Officer's determination, and overturning portions of the determination. ZHB Appeal 4625, issued November 26, 2025 ("*Kohelet 2025*").

39. The Applicant filed an Amended Conditional Use Application on Feb. 6, 2026, pursuant to Code §155-4.4.C(6), seeking modification of conditions limiting activities for non-students and requesting approval of activities by The Shtiebel as a secondary, subordinate, and customarily incidental institutional accessory use to Kohelet's use, consistent with the ZHB's amended decision in Appeal No. 4625, at times when it is not being use by Kohelet students:

- a) Friday and Saturday evening Sabbath prayers: less than 1.5 hours, for fewer than 60 attendees, and with attendees not driving;
- b) Saturday morning Sabbath prayers: increase from 90 to 200 maximum attendees, and with attendees not driving;
- c) Holiday prayer services: increase from 3-4 times per year to 13 times per year, with maximum 200 attendees, and with attendees not driving.

Ex. T-5a, Use Application, pp. 1-2

40. The Land Development Committee ("LDC") reviewed the Amended Conditional Use Application on Feb. 24, 2026. The LDC members who attended the meeting: five members

of the Planning Department; Zoning Officer Scott Houchins; Public Works Jesse Hunting; Fire Department Jim Gallagher, Bill Henderson and John Waters; Traffic Safety Officer Matt Colflesh; Township Engineer Nick McGinley and Joe Mastronardo. The LDC made written comments on the Amended Conditional Use Application as follows:

Fire

Architect shall provide a means of egress plan and provide occupant load.

Planning

The Applicant shall indicate the proposed location of the meeting/services within the structure and shall provide an assessment of occupant load as determined by a registered architect or structural engineer.

Zoning Officer, Public Works, Parking Services, Traffic Safety

None.

Ex. T-6.

41. On April 16, 2026, in response to the LDC's comments, the Applicant provided an egress plan with occupant load, which included the proposed location of the meeting/services within the structure ("Beit Midrash"), as determined by Archer & Buchanan Architecture, Ltd.

Ex. A-7, 7a.

42. On April 30, 2026, the Applicant supplied additional information responsive to the LDC comments and the proposed use with an Operations and Compliance Plan for Shtiebel Use at 223 N. Highland Avenue; and floor plans of the Beit Midrash and classrooms with occupancy loads. Ex. A-8.

43. Colleen Hall, ("Hall,") a Senior Planner and Holly Colello, ("Colello") a Planner the Lower Merion Township Department of Building and Planning reviewed the Amended Conditional Use Application. They wrote a joint memo to the Planning Commission for its meeting on May 4, 2026. ("Staff Memo") Ex. T-10. The Staff Memo "identified off-site parking as a potential issue for surrounding neighbors and determined that this may (issue) be addressed

through reasonable conditions." Ex. T-10, p. 5. Staff identified the occupancy load of the Beit Midrash as an additional issue because the fire code permits occupancy up to 176 individuals. The Applicant agreed to implement an "Operations and Compliance Plan" in response to Staff concerns about the occupancy load of the Beit Midrash. Ex. T-5e. Staff made two recommendations for language to be added to the Applicant's Operations and Compliance Plan:

1. Facility Scope and Usage section: While total attendance for certain services may reach 200 individuals, at no time will the occupant load of the Beit Midrash exceed 176 individuals. All prayer activities will take place indoors in designated rooms with occupants distributed across these spaces to remain. The applicant shall apply for a zoning permit to ensure that they comply with occupancy requirements.
2. Non-driving Policy standards and enforcement section: The Applicant shall include provisions prohibiting parking on adjacent streets in connection with any non-school-related services. The Applicant shall provide testimony at the Conditional Use Hearing addressing concerns of off-site parking related to expanded religious use.

Ex. T-10, pp. 5-6.

44. The Applicant submitted a "Revised Operations and Compliance Plan" in response to the Staff Memo, incorporating the recommended language. Ex. T-8a.

45. Lastly, the Staff Memo requested that the Planning Commission make a recommendation on the Conditional Use Application. Ex. T-10, p. 6.

46. On May 4, 2026, the Planning Commission reviewed the conditional use application and issued the following statement: "The Planning Commission determined a recommendation for approval to proceed with the requested conditional use, adding no conditions to the application." Ex. T-11.

47. The Director of Building & Planning, Christopher Leswing, wrote a memo dated May 14, 2026, stating that the Planning Commission requested that Staff consult with the Traffic Safety Unit ("TSU") and the Township Engineer ("TE") regarding any ongoing concerns with

pedestrian safety associated with congregations walking to Sabbath services around the intersection of Old Lancaster Avenue and North Highland Avenue. The Planning Commission is particularly concerned about pedestrians crossing mid-block on Highland Avenue due to the alignment of the sidewalk network and gated entrance to the Kohelet campus. The TSU reported no instances of pedestrian conflicts or accidents in the vicinity of the intersection. However, both the TE and the TSU acknowledged that the area had increased pedestrian activity, and mid-block crossings were a concern. The TE noted that a previous land development condition of approval requires Kohelet to install painted crosswalks and associated elements, if and as approved by the Township at the intersection(s) on Old Lancaster Road. Based on their review of current conditions and the anticipated additional pedestrian activity resulting from the Conditional Use request, the following conditions should be considered if warranted by testimony at the conditional use hearing:

1. Prepare a post development pedestrian study evaluating pedestrian activity around the school and implement any findings identified in the study as directed by staff; and
2. Install painted crosswalks and associated elements at the intersection of Melrose Avenue and Old Lancaster Road as previously required by Land Development approval.

Ex. T-14.

48. On May 5, 2026, the Applicant presented to the Merion Civic Association and the Neighborhood Club of Bala Cynwyd as summarized in a memo written by Applicant's counsel,

Ex. T-13.

49. The Merion Civic Association ("MCA") wrote a letter dated May 12, 2026, which states that it opposes the expansion of the use of the Kohelet school by the Lower Merion Shtiebel, although not unanimously. First, the MCA objects to expanded use of Kohelet school for religious services because it is zoned institutional-education not institutional-religious

district. It contends that the frequency and purpose of end use requested by the Shtiebel effectively would change the zoning to religious institutional use. The MCA recommends drawing a hard line on this institutional change, and approving this revision could pave the way toward more permanent religious usage. Second, the MCA is concerned about the size of the Shtiebel at 200 attendees and the frequency of their events because the scale suggested is a big number for the neighboring community to absorb. There are concerns for the safety of the neighborhood, even though the Shtiebel is adding self-imposed operations and compliance framework, the MCA contends there is no legitimately enforceable plan to monitor usage or growth from non-Shtiebel sources. The neighbors have no legal protections should the Shtiebel or any school affiliated organization decide to expand their community and activities--even those involving car traffic--down the road. Lastly, the MCA notes that Kohelet has a history of repeated incremental zoning request changes. This chipping away at their existing parameters is a troubling pattern that one could assume doesn't end with this application. The MCA opposes incremental zoning change requests and the gradual easing of zoning restrictions that are currently in place. Ex. T-12

50. On May 14, 2026, the president of the Neighborhood Club of Bala Cynwyd ("NCBC") wrote to Christopher Leswing about the conditional use application. NCBC characterized its reaction as "complicated." On one hand, the NCBC supports its neighboring civic association MCA's "recognition of consistent attempts to deviate from the representations that were made to the Township with the original application and the resulting loss of confidence that any particular application for expansion of use will be the last." Alternatively, the NCBC "recognizes the value of using existing institutional space for institutional use, in part to preserve the commercial and residential character of the portions of the community where neighbors do

not want to see institutional creep." NCBC stated each expansion, whether people are driving or not, raises safety concerns. In conclusion, the NCBC advocates strongly for conditions of approval requiring safety guardrails, including crossing guards and lighting at the expense of the Shtiebel if the conditional use application is approved. Ex. T-15.

51. The Shtiebel's attorney responded to the MCC and NCBC in a letter dated May 14, 2026, addressing each point in their letters. Ex A-10. It also compares the municipality's treatment of the Shtiebel to another religious organization that holds worship services at a public school zoned in the same Institutional Education district:

Within Lower Merion Township itself, Discovery Church currently holds weekly Sunday morning worship services at Lower Merion High School (315 E. Montgomery Avenue, Ardmore), a public school zoned in the same Institutional Education district. Discovery Church publicly advertises its use of the high school auditorium for weekly services, and this arrangement has never required a zoning variance, special exception, or public hearing -despite the fact that the high school is a public, secular institution with no religious mission and no institutional connection whatsoever to the church congregation. Moreover, the Discovery Church services generate additional vehicular traffic and parking demand on Sunday mornings, yet, to the best of our knowledge, the Township has consistently treated this as a permissible use without the type of heightened scrutiny being applied to the Shtiebel. If a public school with no religious affiliation can host a church for weekly Sunday worship without zoning challenge, it follows that worship activities organically integrated with a religious school's mission - and scheduled so as not to conflict with educational operations - must be recognized as lawful accessory uses.

Ex. A-10 at 4.

E. Conditional Use Hearing

52. On May 14, 2026, a conditional use hearing was conducted.

53. James J. Greenfield, Esq. entered an appearance on the record on behalf of Barbara Sylk and Karla Moras. ("Objectors").

54. Several neighbors were present at the conditional use hearing in opposition or to request conditions of approval: Mr. Leslie Greenberg and Ms. Alicia Ludwig.

55. Charles Doyle, Assistant Director of Building & Zoning, and Christopher Leswing, Director of Building & Zoning, were present and entered exhibits marked T-1 to T-15 into the record:

- T-1 Conditional Use Hearing Agenda for Application No. 3927C;
- T-2 Letter to Waive MPC Requirements, dated March 3, 2025, prepared by Rebecca Geiser, Esq.;
- T-3 Affidavits of Publication for April 26, 2026, and May 3, 2026;
- T-4 Conditional Use Application Dated January 21, 2025;
- T-5 Revised CU Narrative and Exhibits, Dated February 6, 2026;
- T-5a Amended Application for Conditional Use, Dated February 6, 2026;
- T-5b ZHB Appeal No. 4625 Amended Findings of Fact, Conclusions of Law, Opinion and Order;
- T-5c Summary of Proposed Summer and Winter Programs;
- T-5d Kohelet Yeshiva Lease Agreement, Dated December 18, 2024;
- T-5e Operations and Compliance Plan for Applicant Shtiebel Use at 223 N. Highland Ave.;
- T-6 Land Development Committee Comments dated February 24, 2026;
- T-7 Applicant's Response to Land Development Committee Comments dated April 17, 2026;
- T-7a Egress Plans Sheet A0.14 drafted by Archer and Buchanan Architecture dated January 31, 2017;
- T-8 Applicant's Further Response to Land Development Committee Comments dated April 30, 2026;
- T-8a Revised Operations and Compliance Plan dated April 30, 2026;
- T-9 Planning Commission Meeting Agenda dated May 4, 2026;
- T-10 Staff Report to Planning Commission prepared by Holly Colello and Colleen Hall dated May 4, 2026;

T-11 Planning Commission Recommendation to CU Hearing Officer dated May 5, 2026;

T-12 Merion Civic Association Comments Prepared by Co-Presidents Bruckman and Feuer, dated May 12, 2026;

T-13 Meeting with Civic Associations dated May 11, 2026, prepared by Kailie Melchior, Esq.;

T-14 May 14th CU Hearing Supplemental Info. dated May 11, 2026, prepared by Chris Leswing, Director of Building and Planning;

T-15 The NCBC Civic Association Comments prepared by Kay Sickles, President, dated May 14, 2026.

T-16 Comprehensive Table of Zoning Applications, Approvals, Conditions, and Specific Approved Activities from 1956-2026.³

56. The Applicant offered ten (10) exhibits into the record:

A-1 ZHB Appeal No. 4625 Hearing Decision and Conclusions of Law;

A-2 Summary of Proposed Summer and Winter Programs;

A-3 Kohelet Yeshiva's Lease Agreement with the Shtiebel;

A-4 Operations and Compliance Plan;

A-5 Revised Operations and Compliance Plan;

A-6 Egress Plan Sheet;

A-7 Beit Midrash Egress Plan Sheet;

A-8 Classroom Egress Plan Sheet

³ Ex. T-16 was drafted from information compiled by Attorney Melchior and Staff Holly Colello after the conditional use hearing, at the request of the Hearing Officer. The Hearing Officer organized the information, added information received from the Zoning Officer, and converted it into an Excel spreadsheet. The final version was provided to all parties for review and comment and then admitted into the record as Ex. T-16, *nunc pro tunc*, by agreement on the record at the conditional use hearing.

A-9 Photographs of Beit Midrash

A-10 Response to Civic Association Letters

All of the Applicant's exhibits were accepted into the record.

57. The Objectors offered one (1) exhibit into the record in support of their legal argument, a legal decision by the Commonwealth Court, marked "O-1":

O-1 Ford v. Zoning Hearing Board, 151 Pa. Commw. 323; 616 A. 2d 1089 (1992).

The Objectors' exhibit was accepted into the record. Attorney Greenfield requested that all prior proceedings relating to this property, particularly the conditional use proceedings in 2022 be made part of the record, together with the compilation of all past conditions. Atty Melchior agreed with his request. [N.T. 144]

58. The Township did not present any witnesses for testimony.

59. The Applicant offered testimony from five witnesses: Dr. David Stein, Mr. Maccabee Avishur, Ms. Diane Fenner-Zwillenberg, Ms. Naomi Aronowitz, and Rabbi Itamar Rosensweig.

60. The Objectors offered testimony from Ms. Barbara Sylk and Ms. Karla Moras.

61. David Stein ("Stein") is the Vice President of the Board of Directors of the Lower Merion Shtiebel and the "operational person who runs the services" in a volunteer capacity. His "day job" is surgeon at Temple University Hospital. He has been involved with the Shtiebel since its inception right after covid. The Shtiebel is a 501(c)(3) nonprofit organization with a principal place of business at 305 N. Highland Avenue, Merion Station. The Shtiebel has a lease with Kohelet, Ex. A-3. It currently runs prayer services at 223 N. Highland Avenue. If conditional use approval is granted, the Shtiebel will use the property for prayer services on Saturday mornings, as well as Friday nights and Saturday afternoons into evenings, and thirteen (13) holiday prayer

services. These events are held in the Beit Midrash, the prayer area, of the school. The Shtiebel also uses three classrooms where kids play board games, have some learning activities, and prayer activities. Refreshments are served in the lobby area after services. [N.T. Stein 13-17]

62. The Beit Midrash is permitted to have 176 occupants according to the Egress Plan marked A-7. Stein testified that the Beit Midrash has fewer seats, so its capacity is less than 176. The Shtiebel has requested 200 attendees for services, with additional attendees in the classrooms. The classrooms used by the Shtiebel are shown on the Classroom Egress Plan marked Ex. A-8. [N.T. Stein 18-19]

63. Stein identified a series of photos depicting the Beit Midrash and Torah scrolls, Ex. A-9. He explained that Torah scrolls are handwritten on parchment with a particular type of penmanship. They are very special and hard to acquire. Torah scrolls are read during prayer services. The Shtiebel could not perform the standard prayer service if it didn't have access to the Torah scrolls. [N.T. Stein 21-22]

64. The Shtiebel was created after covid because there was a need for intimacy in prayer and religious observance. The group started meeting in a backyard. It is made up of people who live in the community and walk to Kohelet. Stein testified that the group provides social benefits to the community. [N.T. Stein 22-23]

65. The Shtiebel is partnering with Kohelet to optimize public use of facilities that provide benefits to serve township residents. It does not conflict with the township or county comprehensive plan. [N.T. Stein 23-24]

66. Kohelet and the Shtiebel share a calendar for scheduling events and are in constant communication. The Shtiebel's activities don't interfere with school operations because the school's use is primary. The Shtiebel uses less than a quarter of the building while the school

uses the entire building. The greatest number of Shtiebel people in the building at one time is 60-70, which Stein estimated is 20% of Kohelet's population. The proposed use of the property on Friday and Saturday evenings, Saturday mornings and holiday services will not alter the character of the neighborhood, in Stein's opinion. [N.T. Stein 25-27]

67. Stein acknowledged that the Merion Civic Association, the Neighborhood Club of Bala Cynwyd, and some individuals have raised concerns that are mainly concentrated on the issues of parking, traffic, and neighborhood disruption. Stein testified that he has not observed any issues with parking, traffic, or neighborhood disruption as a result of the Shtiebel's current activities. He has never received complaints from the neighbors. Increased use of the property by the Shtiebel will not worsen the current conditions having to do with traffic or parking, in his opinion. [N.T. Stein 26-27] The Shtiebel will work with Kohelet to install a crosswalk between Old Lancaster Road and Melrose Avenue and obtain a post-application pedestrian traffic study, as requested by the Township. [N.T. Stein 28-29]

68. Kohelet provides security measures on the premises through the lease with the Shtiebel. There are two security guards on Saturday mornings, and the entire property is gated. Security will evaluate people who drive up because they would not be members of the Shtiebel who walk to services. Security will log them into the Compliance Plan as part of the agreed upon security protocols. The Shtiebel agrees to enforce the Operations and Compliance Plan as part of ensuring that there is no disruption to the community. [N.T. Stein 29-30]

69. Stein identified the Revised Operations and Compliance Plan, Ex. A-5, which states that all prayer activities will occur indoors. The occupational limit of the Beit Midrash will not exceed 176 individuals. The Applicant will apply for a zoning permit to ensure compliance with occupancy requirements. The no-driving policy is part of the compliance plan. Stein

testified that the Shtiebel sets up seating in the Beit Midrash for services. Extra seating isn't set up, so it will be easy to see when the room is at capacity if seats are full and people are standing. Limited seating will keep the group small "which is part of our value proposition to our community." [N.T. Stein 31-32]

70. A standing code of conduct will be circulated to all members of the Shtiebel. The group will maintain compliance logs that include the date, service types, scheduled hours, actual start and end times, and approximate head counts. The compliance logs will be shared with the Township upon request and at annual meetings with the two civic groups. [N.T. Stein 32-33]

71. The Hearing Officer asked if Kohelet offers similar services to non-students. Stein testified that Kohelet has not run programs now that the Shtiebel is in the space as the regular occupant. Attorney Melchior clarified that there will not be two sets of services, only the Shtiebel will host services. "Kohelet is not going to separately host something of that nature for those Sabbath prayer services." [N.T. Melchior 37-38]

72. Doyle asked how many attendees are students of Kohelet School, parents, or siblings? Stein answered fifty percent between youth leaders and youth groups. He estimated 30-40 of the attendees out of 80-90 total attendees are parents or families associated with Kohelet. [N.T. Stein 39-40]

73. Attorney Greenfield questioned Stein about conditions attached to the conditional use approval in 2022. Stein acknowledged that Kohelet and the Shtiebel agreed to those conditions which were binding. [N.T. Stein 39-41]. Stein agreed that about 60 people attend services outside of high holidays. During high holidays, the number of attendees increases to 160 to 180. Stein disagreed that there hasn't been demand outside of the high holidays for more than 90 people to attend services. He testified that "as we grow membership, we anticipate that we

have this need" and "on some weekends there are" [N.T. Stein 42] Stein is aware of changes to the composition of the Shtiebel congregation, but not the property itself. He testified that the Shtiebel is not willing to limit the size of the congregation to 60 families because "90 seems logical because we were 50 people, and that would be some growth. We're now skirting that number pretty regularly. I think we'd be shortchanging ourselves, and our congregation and our residents." [N.T. Stein 43-44]

74. Attorney Greenfield noted there will be an increase in the number of people walking to the site by a factor of four and asked what is the Shtiebel "going to do to ensure the safety of pedestrians who are coming to the property?" Stein responded:

We're not adding pedestrians because we all live there and we all walk the same blocks all the time. So, whether somebody goes to Lower Merion Synagogue or somebody walks to the Young Israel or whether somebody walks to the Aish, it is the same core group that walks around. Most of us live in like one square block around the Kohelet property. So, we're walking anyway.

[N.T. Stein 45-46].

75. Stein disagreed that the proposed increase in the number of attendees at services will increase the likelihood of interaction between vehicles and pedestrians in that area. He testified "we all walk to services elsewhere," citing Lower Merion Synagogue as an example.

All of us do this every week, so we're doing it anyway. So actually, I think it's not an increase in all of true pedestrian traffic, 'cause this is our lives; this is what we've been doing for the last 30 years."

[N.T. Stein 46-47]

76. Greenfield asked whether Stein meant pedestrian traffic as it relates to all of the institutions in that area combined, and he agreed. Stein conceded that there will be an increase in the number of people coming to the Property and leaving the Property at the time of services.

[N.T. Stein 47]

77. On redirect questioning by Attorney Melchior, Stein testified that meeting places for services are highly variable.

Some people meet at Lower Merion Synagogue, and some people meet in their houses. Everyone lives close to Kohelet and walks on local streets such as North Highland, Melrose, [Old] Lancaster, and Sycamore to services.

[N.T. Stein 48]

78. Maccabee Avishur ("Avishur") was the second witness called by the Applicant. He has been the Head of School at Kohelet since July 2025. It is a Modern Orthodox Yeshiva high school for the greater Philadelphia area. There are 344 students currently enrolled, with 60% coming from Lower Merion, 25% from Cherry Hill, and others from Center City, Northeast, Allentown, etc. The Shtiebel's use of the property is beneficial to Kohelet for financial and mission-related reasons. He testified that Judaism is a lived religion that takes place seven days per week. Kohelet wants to see its students, their families, and friends living that lifestyle all week. Kohelet's educational program integrates religious practice with daily prayer services in the morning and afternoon, reciting blessings over food, and celebrating holidays together.

[N.T. Avishur 51-52]. Kohelet students and families attend the Shtiebel's services. Kohelet runs the school during the week and the Shtiebel has services on Saturday. [N.T. Avishur 51-54] Avishur testified it that Kohelet students benefit from praying and attending services run by the Shtiebel in the school. [N.T. Avishur 58]

79. There are no physical changes or modifications proposed as part of the conditional use application. Kohelet has mechanisms in place to monitor the Shtiebel's use of the property, such as security team and a maintenance team on the Sabbath. The entire campus is monitored by video. There have not been any issues with cars trying to enter at the gate or pedestrian concerns related to the Shtiebel's use. Avishur testified that no one in the community

drives on the Sabbath, with the exception of life threatening injury, in which case an ambulance would be called. The Orthodox community doesn't need to accommodate people with mobility issues with car transportation on the Sabbath. There is already pedestrian traffic in the neighborhood going to a different synagogue. He has not noticed an increase in pedestrians or problems. He has no concerns about parking, traffic, or neighborhood disruption. [N.T. Avishur 55-56]

80. Kohelet will agree to coordinate with the Shtiebel to install a crosswalk as recommended by the Township. Kohelet welcomes communications from neighbors or the Township at any time. If any concerns are raised, Kohelet would speak to Shtiebel leadership to figure out how to mitigate them. [N.T. Avishur 57]

81. Attorney Greenfield questioned Avishur about the reasons for the requested conditional use and change of conditions. The Head of School testified that the reasons are revenue and to enhance the living out of Judaism by people within the school population, although there could be others. [N.T. Avishur 58-59] On redirect, he explained that Kohelet loves having the Shtiebel there and the financial benefit is ancillary. Not just any group would be able to rent from Kohelet. "It has to be something that is consistent with Kohelet's mission, which the Shtiebel is." [N.T. Avishur 61-62]

82. Diane Fenner-Zwillenberg, ("Fenner-Zwillenberg") the third witness to testify, is affiliated with both Kohelet and the Shtiebel. She has been a board member of Kohelet since 2011 and was the president from 2014 to 2019. Since stepping down as chair, she has been involved primarily with governance and finance. She chaired the search committee that brought Rabbi Avishur to the school. Fenner-Zwillenberg is a founding member of the Shtiebel and attends with her husband, children, and grandchildren.[N.T. Fenner- Zwillenberg 63-64] She has

presented to the Merion Civic Association and answered questions. [N.T. Fenner- Zwillenberg 81]

83. The Shtiebel was initially a very small group of people who had prayed as a minyan until significant limitations during Covid. There were five families and they prayed outside in all types of weather for two years. Fenner-Zwillenberg and her husband were invited to join them because they own a Torah scroll and added value to the group. [N.T. Fenner-Zwillenberg 66] Their Torah scroll is used by both Kohelet and the Shtiebel. It sits in an "aron" which locks and protects all the Torah scrolls in the Beit Midrash. A special desk called a "bema" is used to open Torah scrolls and read from them, as shown in photos marked Ex. A-9. During prayer services, the Torah scroll is taken from the aron, opened on the bema, and read from. [N.T. Fenner- Zwillenberg 79-80].

84. Other people asked to join their prayer group, but they could not accept more members at that time. When people started to go back inside, in 2023, the group looked for space. The Beit Midrash at Kohelet was an obvious choice because it had a place for Torah scrolls and separated men and women in keeping with Modern Orthodox prayer service. [N.T. Fenner- Zwillenberg 66-67]

85. Rabbi Rosensweig agreed to provide sermons to the Shtiebel. Kohelet made clear that the Shtiebel could have services at the school only with Rabbi Rosensweig or another rabbi acceptable to Kohelet. [N.T. Fenner- Zwillenberg 67-68] Rabbi Rosensweig is extremely important as a role model and teacher at Yeshiva University. Equal education for boys and girls is important in Modern Orthodoxy and Yeshiva University. [N.T. Fenner- Zwillenberg 69]

86. Kohelet is a unique location for the Shtiebel because it has the Beit Midrash, incredible acoustics, and is a spiritually uplifting place. The space feels sanctified with Jewish

books lining the room. Everyone enjoys praying in that space. Kohelet is gated and very secure. The Torah scrolls have a lock on the iron itself. [N.T. Fenner- Zwillenberg 70 - 71] The Beit Midrash has separate seating for men and women. [N.T. Fenner- Zwillenberg 80]

87. The Shtiebel uses space at Kohelet for 28 hours per week and doesn't need to rent the space for an entire week. [N.T. Fenner- Zwillenberg 70 - 71] There are very few spaces appropriate for the Shtiebel to meet in. Kohelet is within one mile of everyone's houses so members can walk there. If the Shtiebel wasn't able to meet at Kohelet, it would essentially not be able to meet with the number of people who want to be part of the group. Another alternative that could accommodate the requested number of people has not been found.

88. The partnership between Kohelet and the Shtiebel benefits both institutions. There is overlap with the students and their families. Some families do not have school age children and become familiar with Kohelet when they go to the Shtiebel for services. School age students benefit from the Shtiebel by being able to lead youth groups, learn to read the Torah, practice reading in front of others. The Shtiebel offers Kohelet faculty an opportunity to speak in public. It is a smaller, more intimate group offering a better experience. The Shtiebel would not want to use the space if it weren't associated with Kohelet. [N.T. Fenner- Zwillenberg 72 - 74] She explained that being able to walk in and be part of the community is important. Most people work and care for their families, but don't socialize. The Sabbath is our time for socializing which is community building. Learning in a group setting under Rabbi Rosensweig is important, too. [N. T. Fenner- Zwillenberg 74-77]

89. Attorney Greenfield asked where members worshipped before 2022. Fenner- Zwillenberg testified that people worshipped at other synagogues until 2020 when covid hit. [N.T. Fenner-Zwillenberg 82-83]

90. The Hearing Officer asked whether the Shtiebel could hold services in a conference room at the library across the street. The witness said it cannot because there's no security, Torah scrolls, or separation between men and women as required by Modern Orthodox practice.

91. The Hearing Officer asked what is the difference between the Beit Midrash and a synagogue? Fenner-Zwillingberg said that a synagogue is fancier and the seats don't move. The Beit Midrash at Kohelet has seats that may be moved into different configurations for different reasons. [N.T. Fenner-Zwillingberg 85-86]

92. Naomi Aronowitz ("Aronowitz"), a Board Member of The Shtiebel, a graduate of Kohelet, and the mother of four children currently attending Kohelet, testified for the Applicant. Kohelet has been inviting the neighbors to speak, trying to communicate, and engage with the civic associations. Aronowitz presented to a civic association on behalf of the Shtiebel last year and this year. [N.T. Aronowitz 87] She has read the letters from the Merion Civic Association and the Neighborhood Club of Bala Cynwyd, Ex. T-12 & T-15. Aronowitz said that they do not correspond to anything said at the meeting, which she attended and would have addressed. There are issues that appear in the letter for the first time. [N.T. Aronowitz 89] The Shtiebel will commit to continued communication and providing compliance logs if necessary to ensure compliance with conditions and the compliance plan. [N.T. Aronowitz 88]

93. The Shtiebel's request for 200 people to attend religious services is "aspirational" according to Aronowitz who testified that the Shtiebel wants "a small, intimate setting:"

We would not want it to be hundreds and hundreds of families. So other synagogues in the area have 500 family membership. We do not want anything like that. We want it to be small, intimate, that maximizes engagement and maximizes connectivity. That's what we're trying to do. So, we don't want it to be bigger.

[N.T. Aronowitz 90] There's no intent to try to turn the Kohelet property into a synagogue with 500 people and "all the bells and whistles". There are 70 member families currently, and, from Aronowitz's perspective, the Shtiebel does not want more than 85 or 90 families. [N.T. Aronowitz 90-91]

94. Barara Sylk ("Sylk"), a resident of 350 North Highland Avenue testified that she is not against the prayer group or families coming together. She is concerned with conditions of approval changing every two or three years. Sylk feels this will not be the last ask. She questioned how 75 to 90 families is consistent with being intimate group. Sylk suspects that the prayer group is a marketing tool to maximize the number of students at Kohelet.

95. Sylk is also concerned with the impact on the neighborhood. It's a very busy corner with Adath Israel, the Bala Library, the French School, and Main Line Synagogue, in addition to St. Joe's students in the area. Old Lancaster and N. Highland are busy streets. Adath Israel has many cars on the high holidays. Sylk testified that events with 200 walkers cannot be a safe situation. Other institutions like St. Joe's are required to have security guards outside to direct traffic. She is concerned about the number of attendees increasing from 60 to 200. The time of day is an issue when it's dark outside. If refreshments are going to be served, then there may be drivers and issues with trash pickup. Her concerns are the continual changing of conditions of approval, the number of people walking, and dealing with traffic that's already there. [N.T. Sylk 95-96]

96. When questioned by Attorney Melchior, Sylk testified that 60 people is a reasonable number for the group. [N.T. Sylk 97]

97. Sylk testified she doesn't understand the timing of the pedestrian study since it will be conducted after receiving approval. [N.T. Sylk 99] Attorney Melchior stated that the

intersection isn't lighted and a crosswalk button can't be used by her clients on the Sabbath, so the crosswalk will be painted at this location. Leswing added that there will be signage. [N.T. Leswing 100] Sylk stated that she doesn't know how people will see it on the ground in the dark and although she's not a safety expert, she doesn't feel that it's acceptable. [N.T. Sylk 101]

98. Karla Moras ("Moras"), a resident of Yorklynne Manor, 415 City Avenue, Merion, testified that she has been the director of the Merion Civic Association and is a member. The conditions of approval in 2022 required Kohelet to meet with the Merion Civic Association annually and that did not happen. If Kohelet requested to meet, it is unlikely that the MCA would not have allowed Kohelet to present, given the culture of the Civic would be to agree. [N.T. Moras102]

99. Moras testified that the Shtiebel presented to the MCA in June 2025 and during that meeting it was stated that there were 60 families in the congregation. Today, the Shtiebel is asking for up to 90. Her view is that the Shtiebel's intentions with respect to the size of its congregations relate to the numbers that are being asked for today, which are different than the numbers requested four years ago. She perceives a pattern of repeated requests to change conditions previously agreed upon. Moras asked if the Shtiebel will agree to a condition of approval limiting the number of families of the congregation. She queried: if there are currently 70 families, shouldn't that be sufficient? [N.T. Moras 102-103]

100. Moras testified that institutional educational zoning does not help residents in the district have predictability about expansion of use of facilities or number of students. There's no sense that there's ever a tipping point in the repeated requests or expansion of institutions. As a result, Moras would like a cap on the number of families in the Shtiebel. The needs will increase if the Shtiebel isn't limited in the number of families in its congregation. [N.T. Moras 104-105]

101. Attorney Melchior addressed Morass's concerns, stating the Shtiebel originally made a larger ask in the original Conditional Use Application. The Zoning Hearing Board determined that anything more than what is being asked for today would change the nature of this use to a second primary religious use. As a result, if the Shtiebel asks for more people or more uses, it's already been determined that a variance would be required which is harder to receive. The Zoning Hearing Board has committed to these numbers as caps for an accessory use. If the Shtiebel asked for anything else, it would be an entirely different, much harder process for them to go through because it would be a primary religious use rather than an accessory institutional use that's permitted in the zoning district. Another primary use would not be permitted on the property. They'd have to go through big hurdles to try to get approval for that. Moras stated that information was helpful, but she would still like a cap on the size of the Shtiebel's congregation. [N.T. 106-108]

102. Alicia Ludwig ("Ludwig") has resided at 312 Melrose Avenue for 27 years. She testified that she finds the large number of services concerning. She believes that they come close to the number of days that Kohelet is in school. It changes the contour of what the property is used for. Although cars will not be used, 200 attendees is a significant increase for the area. There are quality of life issues as well as compliance issues in Ludwig's opinion. Kohelet has not complied with the landscape plan in the 2016 Zoning Hearing Board decision. She assumes it is a simple lack of awareness and lack of attention to the property along Melrose Avenue. To date, Kohelet has not adhered to the annual removal of vines on the property or landscape the trash enclosure. Tree have been removed and stumps left behind, without replacing the trees. Plant beds are not kept and have not been turned into lawn. Items are sometimes left on the property and Zoning Hearing Board signs are frequently not removed. She finds it difficult to

accept providing greater privileges when there are obligations that have not been met. She does not trust that new obligations will have compliance. This is particularly true with the proposed number of attendees. [N.T. Ludwig 109-112]

103. Leswing stated that Kohelet has a Perpetual Maintenance and Operation Plan that they're required to comply with as a condition of approval relating to land development. The Township conducts annual inspections of Kohelet. He will ask the Township staff to inform Ludwig when the inspection will occur. "It's something that we take seriously, and we will follow up when those inspections need to happen." [N.T. Leswing 112]

104. Leslie Greenberg ("Greenberg"), a resident of Lower Merion, testified that he would like a recommendation that people attending the Shtiebel's services are members of Kohelet and families or extended family members. [N.T. Greenberg 120-121]. It should not be an open synagogue because then they have to change the zoning, Greenberg testified. [N.T. Greenberg 123]. He stated that a recommendation to the Commissioners should emphasize that the attendees should mainly be from Kohelet. [N.T. Greenberg 129-130].

105. Itamar Rosensweig ("Rosenzweig,") a resident of 300 Latches Lane, and Rabbi of the Shtiebel, addressed concerns about the size of his congregation. He explained the "shtiebel" means room as opposed to synagogue which connotes a full-scale type of pastoral, seven-days-a-week organization. The Shtiebel primarily meets on Saturdays and combines prayers. The Shtiebel is unique as a small prayer group of limited size and the goals of everyone recognizing each other and having a relationship with each other. Rosensweig testified:

There are many full-scale synagogues in the community that provide the large-scale synagogue model. What distinguishes our smaller meeting group is that it's more intimate and has a closer, warmer, charming feel.

[N.T. Rosensweig 138-139]

F. Legal Authority for Use and Conditional Use Relief

106. The Lower Merion Township Board of Commissioners enacted Ordinance No. 4181 on February 26, 2020, which established the new zoning code including the Institutional Districts.

107. The Institutional Districts are codified through §155-4.4 of the Zoning Ordinance.

108. The intent of the Institutional Districts set forth in Code §155-4.4.A states:

The intent of the institutional districts is to provide a regulatory context for institutional uses, with two main goals: to support the sustainability of institutions, and to render them compatible with the residential neighborhoods in which they may be located. These regulations recognize a diversity of institutional locations and goals, the institutional need to adapt to changing circumstances (including functions and growth,) and neighborhood desires to minimize incompatibilities (including activities and expansion).

Code §155-4.4.A.

109. There are four principal institutional districts. Institutional Nature Preserve (IN), Institutional Civic (IC), Institutional Educational (IE) and Institutional Housing (IH). These categories correspond to the variety of activities and range of impacts that might be expected of each. The Institutional Civic (IC), Institutional Educational (IE) and Institutional Housing (IH) Districts are divided into subdistricts with varying development standards to assure compatibility with adjacent residential development. Code §155-4.4.B.

110. Institutional Education (1E1, 1E2, 1E3) is intended to collectively define sites or buildings operated for the provision of full-time or part time educational services for students of all ages. Code §155-4.4.B(3)

111. Private schools are permitted uses in the Institutional Educational district. Code §155-4.4.F(1) and Table 5.2, Uses for Institutions.

112. The Municipalities Planning Code confers authority to municipalities to grant conditional use relief pursuant to the express standards and criteria of their applicable code:

Zoning ordinances may contain provisions for conditional uses to be allowed or denied by the governing body after recommendations by the planning agency and hearing, pursuant to express standards and criteria set forth in the zoning ordinance. (...) In allowing a conditional use, the governing body may attach such reasonable conditions and safeguards, other than those related to off-site transportation or road improvements, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance.

Pennsylvania Municipalities Planning Code (Act 247 of 1968) §603.c.2.

113. The Board of Commissioners shall have the power to approve or disapprove conditional uses when this chapter specifically requires obtaining such approval, pursuant to Code §155-11.1.F(1).

114. The Applicant shall have the initial burden of persuasion that the application complies with the specific requirements of the proposed use set forth in Article V, Uses, subject to §155-11.1.F(4), pursuant to §155-11.1.F(3).

115. Opponents shall have the initial duty of presenting substantial evidence that the application does not comply with the general criteria of this chapter, but the Applicant shall retain the ultimate burden of persuasion concerning those criteria, pursuant to §155-11.1.F(4).

116. All previous conditions imposed by the Zoning Hearing Board on the approval of institutional uses by special exception and all imposed conditions by the Board of Commissioners by conditional use shall remain in force but may be modified by conditional use, pursuant to Code §155-4.4.C(6),

117. The Applicant proposes to modify conditions imposed by the Zoning Hearing Board in connection with special exception approval granted in ZHB Appeal No. 4362, *Kohelet*

2016 and subsequently modified by the Board of Commissioners by conditional use in CUA No. 3896C, *Kohelet* 2022, pursuant to Code §155-4.4.C(6).

118. Lower Merion Township Zoning Code § 155-11.1.F. *et seq.* contains conditional use procedures. Criteria for conditional use approval is found in Code § 155-11.1F.9(f):

Criteria for conditional use approval. The Board of Commissioners shall grant a conditional use only if it finds substantial evidence that any proposed development plan submitted comply with the following:

- (1) Meets all conditions of uses expressed in the use classification section of this chapter;
- (2) Does not conflict with the Township and County Comprehensive Plans and other plans adopted by the township;
- (3) Is consistent with the spirit, purposes and intent of the applicable zoning district;
- (4) Is in conformance with all applicable requirements of this Chapter and all municipal, state and federal codes applicable to the use or process in question;
- (5) Is suitable to the property in question. This criterion shall consider issues such as traffic, vehicular and pedestrian circulation, location and design of parking areas, adjacent land use(s) and other impacts on the surrounding area. If the proposal is adjacent to a residential district, the scale of the use shall relate to and complement the surrounding area.
- (6) Public Utilities. All uses shall be capable of being served by public sewer. A use may be permitted to be served on an on-lot sanitary system, only if deemed acceptable by the Board of Commissioners and the adopted 537 Plan of the Township, upon recommendation of the Township Engineer. Sufficient water supply must be available to accommodate the needs of the proposed use.

119. Additional requirements for conditional use applications are found in Code § 155-11.1G.

Compliance with Code §155-11.1.F(9)

120. The proposed development plan must meet all conditions of uses expressed in the use classification section of this chapter, Code §155-11.1F(9)(f)[1]. The Applicant's request to modify conditions of approval does not involve development. Kohelet's institutional educational use was approved in ZHB Appeal No. 4362, *Kohelet 2016*. The Board of Commissioners approved Kohelet's conditional use application to modify conditions and allow Sabbath services on Saturday mornings as part of the institutional accessory use in 2022. *Kohelet 2022*. The Zoning Hearing Board found the combined religious activities currently proposed by the Shtiebel is an institutional accessory use in ZHB Appeal No. 4625, *Kohelet 2025*.

121. The proposed modification of conditions limiting non student activities to permit activities by the Shtiebel, specifically, Saturday morning prayer services from 90 to 200 attendees who do not drive; holiday prayer services from 3-4 times per year to 13 times per year with up to 200 attendees who do not drive; and the proposed Friday and Saturday evening Sabbath prayers lasting up to 1.5 hours for up to 60 attendees who do not drive, does not conflict with the Township and County Comprehensive Plans and other plans adopted by the Township, pursuant to Code §155-11.1F(9)(f)[2]. The Lower Merion Comprehensive Plan recommends partnering with institutions to optimize public use of facilities to benefit Township residents. Lower Merion Comprehensive Plan, Land Use Element, Institutional Land Use, Table 5.27 Institutional Land Use Recommendations, No. LI5; p. 235 & 237. The individuals who will attend services provided by the Shtiebel are community residents who live within walking distance of the property. [N.T. Stein at 15, 23] Allowing the Shtiebel to partner with Kohelet and use the Beit Midrash for events and worship services will optimize public use of facilities and benefit the local community.

122. The proposed modification of conditions limiting non-student activities to permit activities by the Shtiebel are consistent with the spirit, purposes and intent of the applicable zoning district, complying with §155-11.1F(9)(f)[3]. The Institutional District is “intended to support the sustainability of institutions and to render them compatible with the residential neighborhoods in which they may be located,” while “recognizing institutional needs to adapt to changing circumstances (including functions and growth,) and neighborhood desires to minimize incompatibilities (including activities and expansion)” Code §155-4.4.A. Expanding the number of events conducted by the Shtiebel and number of attendees is consistent with the spirit, purposes, and intent of the IE1 District because they will occur in Kohelet's designated indoor spaces when school is not in session. Ex. A-3, Lease Agreement, para. 2 & Schedule A; Ex. A-10 at p. 4. The lease specifies that "the Shtiebel agrees and recognizes that Kohelet Yeshiva's premises, including the designated spaces, is foremost and primarily a K-12 school and not a synagogue (...)" Ex. A-3 at pp. 2. Moreover, the Shtiebel's activities will be documented in detailed logs pursuant to the Operations and Compliance Plan. Ex-4 & 5. Logs will be retained for Township inspection and summarized annually at required community meetings with the MCA and NCBC. Ex. A-10 at p. 3. Kohelet has mechanisms in place to monitor the Shtiebel's use of the property, such as security team and a maintenance team on the Sabbath. The entire campus is monitored by video. [N.T. Avishur at 55-56].

123. The Shtiebel's activities, as conditioned herein, will minimize incompatibilities with neighbors who are concerned about increased pedestrian activity, safety and neighborhood disruption. All attendees of Shtiebel events will walk to the property and no one will drive. The Shtiebel has a non-driving policy, standards and enforcement provision in its Operations and Compliance Plan. Ex. A-4 at 1. Many attendees already walk to religious events at other nearby

institutions on Friday evenings, Saturday mornings and evenings, and on holidays, according to credible testimony by David Stein [N.T. Stein 45-46] "The Shtiebel does not generate new foot traffic; rather it redistributes the same congregants who are already walking in the community to various synagogues." Ex. T-13 at p. 2. "There is no net increase in pedestrian volume and zero increase in vehicular traffic." Ex. A-10 at p. 4. The intersection of Old Lancaster Avenue and North Highland Avenue is signalized with four crosswalks for pedestrians. The Township Engineer and the Traffic Safety Division recommended painted crosswalks and associated elements at the intersection of Melrose Avenue and Old Lancaster Avenue as previously required by land development approval, and a post-development pedestrian study evaluating pedestrian activity around the school. No pedestrian conflicts or accidents in the vicinity of the intersection have been reported. Ex. T-14. "The Shtiebel and Kohelet agree to both of these conditions and are prepared to have them incorporated as binding conditions of any conditional use approval." Ex. A-10 at p. 2.

124. Compatibility with the residential neighborhood is also facilitated by a condition imposed in 2022 requiring the Applicant to meet annually with the Merion Civic Association and the Neighborhood Club of Bala Cynwyd to address any operational concerns which may arise and seek mutually acceptable resolutions. Diane Fenner-Zwillenberg testified that she presented to the Merion Civic Association.[N.T. Fenner-Zwillenberg 81] Naomi Aronowitz testified that she presented twice to local civic association meetings in July 2025 and in May 2026. [N.T. Aronowitz 89]

125. The proposed modification of conditions limiting non student activities to permit activities by the Shtiebel are in conformance with all applicable requirements of this Chapter and all municipal, state and federal codes applicable to the use or process in question based on the

exhibits submitted into the record and testimony, as required by §155-11.1F(9)(f)[4]. The proposed uses are institutional accessory uses permitted in the Institutional Educational (IE1) District as determined by the Zoning Hearing Board. Appeal No. 4625, *Kohelet 2025*. Moreover, the record exhibits and testimony at the conditional use hearing document multiple reviews by Township Staff, the Township Engineer, the Traffic Safety Unit, and the Planning Commission, which have strengthened conformance with this Chapter and all applicable municipal, state and federal codes.

126. The proposed modification of conditions limiting non-student activities to permit activities by the Shtiebel are suitable to the Property in question when considering traffic, vehicular and pedestrian circulation, location and design of parking areas, adjacent land uses and other impacts on the surrounding area. The scale of the use relates to and complements the surrounding area. Code §155-11.1F(9)(f)[5] No site development is proposed by this application. The proposed uses will occur outside of the school's normal operating hours and on Saturdays. Traffic generated by the use will primarily be foot traffic and a very limited number of additional vehicular traffic that will not disrupt the surrounding neighborhood. There are 89 parking spaces on the Property. Indoor events will not create noise disruptive to neighbors. Attendees walking to events will not result in vehicular traffic or parking problems. The property is adjacent to four other institutional properties, two of which are synagogues. The Property has approximately seven (7) acres and landscape buffers, so the proposed activities will take place in deep in the lot.

127. The Property is currently served by public sewer, in compliance with §155-11.1F(9)(f)[6].

128. There is no substantial evidence that the application does not comply with the general criteria of this chapter. Neighbors' concerns about pedestrian activity, safety, and

neighborhood disruption are not substantial evidence and will be mitigated as necessary by conditions.

Compliance with Code §155-11.1.G

129. This section does not apply to uses regulated by 155-7.1, HROD Historic Resources Overlay District, and uses involving fewer than 24 participants per day, pursuant to Code §155-11.1.G(1)(a, b). Here, the Applicant's conditional use application is not regulated by the Historic Resources Overlay District, even though there is a Class 2 Historic Resource on the Property, because the educational use involves more than 24 participants.

130. The Applicant has complied with Code §155-11.1.G(2)(a) by providing all required information with its conditional use application and subsequent materials admitted into the record. Ex. A-5a, p. 5. General information about total number of participants, type of participants, and their method and time of arrival and departure from the site, pursuant to Code §155-11.1G(2)(a):

- a. Friday and Saturday evening Sabbath prayers, less than 1.5 hours, for fewer than 60 attendees, with attendees not driving.
- b. Saturday morning Sabbath prayers increase from 90 to 200 maximum attendees with attendees not driving.
- c. Holiday prayer services increase from 3-4 times per year to 13 times per year, with the maximum of 200 attendees, and with attendees not driving.

131. The age distribution of participants has been provided with the conditional use application and subsequent materials submitted by the Applicant, pursuant to Code §155-11.1G(2)(b). All services will be attended by adults and children. 50% of attendees are youth leaders and youth groups. 30-40 attendees out of the 80-90 total attendees are parents or families associated with Kohelet. [N.T. Stein 39-40]

132. The days and hours of operation, including normal periods of concentrated ingress and egress, pursuant to Code §155-11.1G(2)(c), are:

- a. Saturday morning from 8:30 am to 1:00 pm for Sabbath prayer services;
- b. Friday and Saturday evening prayer services for less than 1.5 hours;
- c. Holiday prayer services beginning one hour before sundown and lasting no more than three hours.

Ex. A-3 at 2-3; *see also*, *Kohelet 2025* at 24.

133. Description and expected attendance at regularly scheduled events, including third-party and other uses of the Property beyond those commonly associated with like use of similar properties pursuant to Code §155-11.1G(2)(d):

- a. Sabbath prayer services on Saturday mornings from 8:30 am to 1:00 pm for 90 to 200 attendees;
- b. Sabbath prayer services Friday and Saturday evenings for less than 1.5 hours for fewer than 60 attendees;
- c. Holiday prayer services thirteen times per year, beginning one hour before sundown and lasting no more than three hours, for a maximum of 200 people.

134. The separation requirements of Code §155-11.1G(3) are not applicable to this application.

135. A traffic impact study was not required by the Director of Building and Planning in connection with this conditional use application, see Code §155-11.1.G(4).

136. Loading and queuing requirements of Code §155-11.1.G(5) are not applicable because vehicular transportation is not proposed. All attendees will walk to Kohelet.

137. Lighting requirements of Code §155-11.1.G(6) are not applicable to this application because no change to the existing lighting is proposed and no additional lighting has

been recommended by Township Staff, the Township Engineer, the Traffic Safety Division, or the Planning Commission.

138. Buffering requirements of Code §155-11.1.G(7) have previously been met with a 50-ft buffer installed pursuant to the Order and Conditions of Approval of Appeal No. 4362, *Kohelet 2016*. The Township inspects invasive vines and landscaping annually and will notify the concerned neighbor when its next inspection is scheduled.

II. CONCLUSIONS OF LAW

139. The Board of Commissioners possesses jurisdiction over this matter.

140. The Applicant possesses standing related to its conditional use application.

141. The Hearing Officer closed the record at the conclusion of the conditional use hearing on May 14, 2026, subject to agreement of all parties to admit Ex. T-16 into the record *nunc pro tunc*, and renders recommendations based solely on the contents of the record.

142. The Applicant has met all applicable criteria for the grant of conditional use approval found in Code § 155-11.1.F.

143. The Applicant has met all applicable criteria for the grant of conditional use approval found in Code § 155-11.1.G.

144. The Applicant has met its initial burden of persuasion that the application complies with conditional use criteria pursuant to Code §155-11.1.F.3

145. No substantial evidence has been presented that the proposed modification of previous conditions of approval does not comply with the general criteria of this chapter, pursuant to §155-11.1.F(4), or will adversely impact the public health, safety or welfare.

146. The Applicant has met its ultimate burden of persuasion concerning those criteria, pursuant to Code §155-11.1.F.4.

147. The Applicant is entitled to the grant of conditional use approval modifying conditions imposed by the Zoning Hearing Board by special exception in Appeal No. 4362; *Kohelet 2016* and subsequently modified by the Board of Commissioners in CUA No. 3896C, *Kohelet 202,2*, pursuant to Code §155-4.4.C(6).

III. DISCUSSION

The Shtiebel of Lower Merion, a tenant of Kohelet Yeshiva High School, seeks conditional use approval to modify conditions limiting use of the Property by non-students imposed by the Zoning Hearing Board in 2016, and subsequently modified by the Board of Commissioners in 2022. The proposed modifications would permit expanded activities involving prayer services conducted by the Shtiebel at the Property.

The broad issue underlying this matter is what happens when demographic shifts increase demand for a particular type of prayer services which may be reached by foot in an established neighborhood? This rhetorical question is beyond the scope of this conditional use application.

The legal issues presented in this conditional use application are narrower than they may appear at first glance. The Zoning Hearing Board has already decided that "the religious activities proposed by the Shtiebel to occur on the Property constitute institutional accessory use to the educational use of the Property." *Kohelet 2025*, Conclusion of Law No. 5. The religious activities found to be an institutional accessory use are:

- a) an increase in the maximum number of attendees at Saturday morning prayer services from 90 to 200, with the attendees to not drive;
- b) an increase in the holiday prayer services from 3-4 times per year to 13 times per year, with the maximum of attendees to remain at 200 as permitted in *Kohelet 2016*, with attendees not to drive.
- c) the addition of Sabbath prayer services on Friday and Saturday evenings for less than 60 attendees for less than 1.5 hours, with attendees to not drive.

Kohelet 2025, Conclusion of Law No. 5.

The remaining issues for the Board of Commissioners are whether the Shtiebel has met its burden of persuasion for modification of conditions by conditional use; whether the Objectors have shown that the requested conditional use does not meet the general criteria of the ordinance or will adversely impact the public health, safety or welfare; and whether the Applicant has met its ultimate burden of persuasion.

By way of background, the Shtiebel evolved from a small prayer group that prayed outdoors during covid restrictions. The prayer group members live in the neighborhood near Kohelet Yeshiva. In 2022, the group formed a 501(c)(3) nonprofit organization named "The Shtiebel of Lower Merion." "Shtiebel" means room as opposed to "synagogue" which connotes a full-scale pastoral, seven-days-a-week organization. The Shtiebel is unique as a small prayer group of limited size by design and intention. It primarily meets on Saturdays for morning services and combines afternoon and evening prayers into one meeting beginning just before sundown. [N.T. Rosensweig 137-138] Rabbi Rosensweig explained that there are

many full-scale synagogues in the community that provide the large-scale synagogue model. (...) And what distinguishes us is this type of smaller meeting group that it's more intimate and has a closer, warmer, charming feel.

[N.T. Rosensweig 138-139] Similarly, Naomi Aronowitz testified that the Shtiebel's request for approval for 200 people to attend religious services is "aspirational" and the Shtiebel wants a small, intimate setting that maximizes engagement and connectivity, not hundreds and hundreds of families like other synagogues. There are 70 member families currently and Aronowitz estimated that the Shtiebel does not want more than 85 or 90 families. [N.T. Aronowitz 90-91].

The Shtiebel looked for indoor space to lease after Covid restrictions were lifted. The Beit Midrash at Kohelet was an obvious choice because it has Torah scrolls, an aron⁴ and a bema⁵, as well as separate seating for men and women. Kohelet also has excellent security on its campus and is within walking distance of all members' residences. The Shtiebel has not found an alternative space that could accommodate people and meet its needs. It entered into a lease agreement with Kohelet, which states that the premises are "foremost and primarily a K-12 school and not a synagogue." Ex. A-3 at 2. The Shtiebel's use of the property is beneficial to Kohelet for mission-related reasons and ancillary financial benefit, according to the Head of School. The Shtiebel currently offers Sabbath services in the Beit Midrash on Saturday mornings and holiday prayer services 3-4 times per year. Although an evening basketball program for non-students was approved in 2022, it has not become a regular activity.

The Objectors, the Merion Civic Association, and the Neighborhood Club of Bala Cynwyd have a broad range of concerns, including disruptions to the residential quality of the neighborhood, pedestrian safety issues, compliance with conditions, and the frequency of requested zoning changes. They are also concerned that increasing approved activities connected with the institutional accessory use may become more intense than Kohelet's institutional educational use of the Property. The Zoning Hearing Board, however, drew a line when it determined that "the addition of life event celebrations (...) to the collection of religious activities listed in Conclusion of Law No. 5 would render the Shtiebel's religious use of the property no longer accessory to Kohelet's educational use." *Kohelet 2025*, Conclusion of Law No. 6.

⁴ An aron houses Torah scrolls and serves as the spiritual centerpiece of the sanctuary.

⁵ A bema is place in the sanctuary where Torah scrolls are unrolled and read.

There have been more than thirteen requests for zoning approvals since the Property was approved for educational use in 1956. *Kohelet 2025*, Finding of Fact No. 3. A comprehensive table containing all zoning requests, zoning approvals, conditions of approval, and specifically approved events and activities since 1956 is marked Ex. T-16 ("Comprehensive Table"). It is attached to these recommendations and made part of them.

The history of activities approved for non-students as part of the institutional accessory use begins in 2010. The ZHB granted a special exception to expand Akiba's prior use by constructing an addition to the existing education building to house a Beit Midrash, a worship and prayer study space unique to a Jewish school. *Kohelet 2010*; *see also*, *Kohelet 2025*, Conclusion of Law No. 9.

In 2010, the ZHB granted permission for student and non-student events, without distinguishing between them, as follows:

Regularly Scheduled and Special Events/Expected Attendance

Open House: 90-120
Parent Night: 60 - 120
Back-to-school Dinner: 150 -200
Graduation: 225 - 400
Basketball tournament: 100-250
Special Events, (e.g. annual fundraising): 350

Kohelet 2010, Use Chart, Ex. A-9; *see also* Ex. T-16.

In 2016, the Zoning Hearing Board granted special exception approval for multiple new activities that involved non-students and were not directly related to the education of students at the school, as follows:

Jewish studies classes held 36-60 times per year for 5-40 attendees;
Guest lectures held 6-12 times per year for 25-180 attendees;
Holiday prayer services held 3-4 times per year for 150-200 attendees;
Sabbath prayer services held 5 times per year for 150 attendees.
Summer Sports Program, eight weeks, for 50 children and 10 staff.
Winter Sports Program, one week, 50 children and 10 staff.

Kohelet 2016, Ex. A-22 & A-29; *see also* Ex. T-16. These new activities appear to include religious services for non-students for the first time. Although the participants in the summer and winter programs could include non-students, Kohelet was required to operate the programs.

Kohelet 2016, Finding of Fact No. 48.

In 2022, the Board of Commissioners modified the conditions imposed in 2016 and granted conditional use approval for two activities involving non-students:

Sabbath services for up to 90 attendees on Saturday mornings from 8:30 am to 1:00 pm (modifying previously approved Sabbath services by reducing the number of attendees from 150 to 90; increasing the number of events from 5 to 52; and specifying start time and end time);

Basketball two evenings per week in the evening for up to 30 persons.

Kohelet 2022.

In 2026, the Shtiebel seeks conditional use approval to modify conditions that limit the approved institutional accessory use of the Property. Specifically, the Shtiebel seeks to modify those conditions so that non-student programming may include:

Sabbath prayer services on Saturday mornings from 8:30 am to 1:00 pm for up to 200 attendees who do not drive (Increasing the maximum number of attendees from 90 to 200);

Holiday prayer services 13 times per year, beginning one hour before sundown and lasting no more than three hours, for a maximum of 200 attendees who do not drive (Increasing the number of prayer services from 3-4 times per year to 13 times per year with the maximum number of attendees to remain the same at 200); and

Sabbath prayer services on Friday and Saturday evenings for less than 1.5 hours for fewer than 60 attendees who do not drive (Adding prayer services in the evenings on Friday and Saturday for the first time).

See, Ex. T-5a, Amended Conditional Use Application

The Modification Standard

All previous conditions imposed by the Zoning Hearing Board on the approval of institutional uses by special exception and all imposed conditions by the Board of Commissioners by conditional use shall remain in force but may be modified by conditional use. Code §155-4.4.C.6.

The Shtiebel seeks modification of a condition imposed by the Zoning Hearing Board in *Kohelet 2016*:

Use: use of the property by parties other than the applicants and the school is not permitted (except as set forth in Ex. A-2, attached hereto as Exhibits A-22 and A-29, attached hereto); and any additional use and/or additional users of the property must be approved by the Board as a special exception.

The activities and regularly scheduled events for non-students set forth in Ex. A-2 in *Kohelet 2016* (Exhibits A-22 and A-29) are listed, *supra*, and appear in the Comprehensive Table, Ex. T-16, attached hereto.

The Shtiebel also seeks to modify a condition imposed by the Board of Commissioners in *Kohelet 2022*:

Sabbath services for up to 90 attendees on Saturday mornings from 8:30 am to 1:00 pm.

Kohelet 2022. If approved, this modification would increase the maximum number of attendees at Sabbath services on Saturday mornings from 90 to 200.

The Objectors presented legal argument that conditions of approval attached to special exceptions cannot be modified without a change in circumstances that make the condition

inappropriate and establishing that the grant of relief will not injure the public, or a variance. *Ford v. Zoning Hearing Board*, 151 Pa. Commw. 323, 328; 616 A. 2d 1089, 1092 (1992). The circumstances of this zoning matter are distinct from those of the *Ford* case cited by the Objectors. Here, the Zoning Code explicitly authorizes modification of the conditions of existing special exception and conditional use approval by conditional use. This necessarily, and statutorily, establishes the conditional use standard as the appropriate burden. Furthermore, the more recent Commonwealth Court decision in *S. Broad St. Neighborhood Ass'n v. Zoning Bd. of Adjustment* is most instructive. *Id.*, 208 A.3 529 (Pa. Cmwlth. 2019). In that case, the applicant sought to modify existing conditions placed on a variance. The Commonwealth Court held that an “owner seeking relief from a condition attached to an existing variance may decide whether to demonstrate changed circumstances **or meet the traditional standard for granting variances.**” *Id.* at 545 (emphasis added). In other words, the applicant can either meet the original standard of approval or else demonstrate a change in circumstances. Applied to conditional uses and special exceptions, a property owner seeking to modify an existing condition of an approval is entitled to the modification if they can either satisfy the general conditional use/special exception standard or else a change in circumstances. This application for relief by conditional use approval is analyzed accordingly.

The Conditional Use Standard

An applicant for a conditional use has the initial burden of proving compliance with specific criteria set forth in a zoning ordinance. *In re Thompson*, 896 A.2d 659 (Pa. Cmwlth. 2006). If an applicant satisfies its initial burden, the burden shifts to objectors to show that the proposed use would be detrimental to public health, safety and welfare. *Sheetz, Inc. v. Phoenixville Borough Council*, 804 A.2d 113 (Pa. Cmwlth. 2002).

The objector's burden is more than merely showing an adverse impact. The fact that a certain use is permitted as a conditional use evidences a legislative determination that such use would not have an adverse impact upon the public interests in normal circumstances. *In re Cutler Group, Inc.*, 880 A.2d 39 (Pa. Cmwlth.2005). The burden then "shifts to [the] objectors to rebut the presumption by proving that there is a high degree of probability the proposed use will adversely affect the welfare of the community in a way not normally expected from the type of use." *Brookview Solar I, LLC v. Mount Joy Twp. Bd. of Supervisors*, 305 A.3d 1222, 1233 (Pa. Commw. Ct. 2023) citing *H.E. Rohrer, Inc. v. Zoning Hearing Board of Jackson Township*, 808 A.2d 1014 at 1018 (2002); *Kretschmann Farm LLC v. Township of New Sewickley*, 131 A. 3d 1044 (Pa. Cmwlth. 2016). "Mere speculation" of possible harm is not sufficient, and the objectors' burden may not be satisfied with personal opinion or bald assertions. *H.E. Rohrer, Inc., supra*, 808 A.2d at 1018. A "conditional use application *must* be granted unless the objectors present sufficient evidence that the proposed use has a detrimental effect on the public health, safety and welfare." *In re McGlynn*, 974 A.2d 525, 537 (Pa. Cmwlth. 2009) (emphasis added).

The Applicant has Complied with the Specific
and General Criteria for Conditional Use Approval

The Applicant has sufficiently demonstrated that the proposed modifications of conditions limiting the institutional accessory use meet the criteria for conditional use approval.

The Shtiebel's proposed modification of the conditions limiting the approved institutional accessory use do not conflict with the Township and County Comprehensive plans. The Lower Merion Comprehensive Plan recommends partnering with institutions to optimize public use of facilities to benefit Township residents. Lower Merion Comprehensive Plan, Land Use Element, Institutional Land Use, Table 5.27 Institutional Land Use Recommendations, No. LI5; pp. 235 &

237. The individuals who will attend services provided by the Shtiebel are community residents who live within walking distance of the property. [N.T. Stein 15, 23] Allowing the Shtiebel to partner with Kohelet and use its facilities for events and worship services will optimize public use of facilities and benefit Township residents residing within walking distance of the Property, comporting with the Comprehensive Plan.

The Shtiebel's proposed modification of conditions limiting the approved institutional accessory use are consistent with the spirit, purposes and intent of the Institutional District. The IE district is “intended to support the sustainability of institutions and to render them compatible with the residential neighborhoods in which they may be located,” while “recognizing institutional needs to adapt to changing circumstances (including functions and growth,) and neighborhood desires to minimize incompatibilities (including activities and expansion)” Code §155-4.4.A. The proposed modifications will allow the Shtiebel to offer services in the Beit Midrash, a smaller setting than a traditional synagogue. This venue will allow the Shtiebel to be a more intimate group as it is designed and intended, albeit with potential "aspirational" growth in membership from 60 to 90 families, or 200 people. Shtiebel Vice President David Stein testified that about 60 people currently attend services outside of the high holidays, and 160-180 people currently attend high holiday services. [N.T. Stein 39-40]. This attendance at high holidays is within the cap of 200 set by the ZHB in *Kohelet 2016*.

The risk of potential incompatibilities with neighbors arising from expanded activities is minimized because all activities occur indoors when school is not in session. The Property contains approximately seven (7) acres and has mature landscape borders along the perimeter to buffer and screen activities. The building containing the Beit Midrash and classrooms is located in the interior of the Property. Activities inside the building are unlikely to be audible by

neighbors. The Shtiebel's functions and growth will be documented in a detailed logs pursuant to an Operations and Compliance Plan. Logs will be retained for Township inspection and summarized annually at required community meetings with the MCA and NCBC. Ex. A-10 at p. 3. Kohelet has mechanisms in place to monitor the Shtiebel's use of the property, such as security team and a maintenance team on the Sabbath. The entire campus is monitored by video.

The modifications to the institutional accessory use, as conditioned herein, will minimize incompatibilities with neighbors who are concerned about increased pedestrian activity, safety and neighborhood disruption. All attendees of Shtiebel events will walk to the property and no one will drive. The Shtiebel has a non-driving policy, standards and enforcement provision in its Operations and Compliance Plan. Ex. A-4 at 1. Many attendees already walk to religious events at other nearby institutions on Friday evenings, Saturday mornings and evenings, and on holidays, according to credible testimony by David Stein [N.T. Stein 45-46] "The Shtiebel does not generate new foot traffic; rather it redistributes the same congregants who are already walking in the community to various synagogues." Ex. T-13 at p. 2. "There is no net increase in pedestrian volume and zero increase in vehicular traffic." Ex. A-10 at p. 4. The intersection of Old Lancaster Road and North Highland Avenue is signalized with four crosswalks for pedestrians. The Township Engineer and the Traffic Safety Unit recommended painted crosswalks and associated elements at the intersection of Melrose Avenue and Old Lancaster Avenue as previously required by land development approval, and a post-development pedestrian study evaluating pedestrian activity around the school. "The Shtiebel and Kohelet agree to both of these conditions and are prepared to have them incorporated as binding conditions of any conditional use approval." Ex. A-10, at p. 2. No pedestrian conflicts or

accidents associated with religious activities in the vicinity of the intersection have been reported. Ex. T-14.

Compatibility with the residential neighborhood is also facilitated by a condition imposed in 2022 requiring the Applicant to meet annually with the Merion Civic Association and the Neighborhood Club of Bala Cynwyd to address any operational concerns which may arise and seek mutually acceptable resolutions. Diane Fenner-Zwillenberg testified that she presented to the local civic association in 2025. Naomi Aronowitz testified that she has presented twice to local civic associations in 2025 and 2026.

The proposed modification to conditions limiting activities that are part of the institutional accessory use is suitable for the Property in question when considering traffic, vehicular and pedestrian circulation, location and design of parking areas, adjacent land uses and other impacts on the surrounding area. The scale of the use relates to and complements the surrounding area. The Shtiebel has security needs which are met by Kohelet's strong security on the Property. The proposed activities will occur outside of the school's normal operating hours and on Saturdays. The mode of transportation to proposed activities will be foot traffic and a very limited number of additional vehicular traffic that will not disrupt the surrounding neighborhood because there are 89 parking spaces on the Property. Attendees walking to events will not result in vehicular traffic or parking problems. Potential traffic impacts will be *de minimus* and demand for parking will not change because attendees will walk to the Property. In addition, the Property is adjacent to four other institutional properties, two of which are synagogues. The Property contains approximately seven (7) acres and has extensive landscape buffering on the perimeter to reduce impacts on the neighborhood. Indoor events will not be visible or audible from neighboring properties.

Objectors have not Provided Substantial Evidence that the
Proposed Use is Detrimental to the Public Health, Safety, and Welfare.

The Objectors have not presented substantial evidence that the application does not comply with the general criteria of this chapter or shown that the proposed use would be detrimental to public health, safety, and welfare.

Neighborhood Disruption

The Objectors and the Civic Associations are concerned about neighborhood disruption arising from an increase in religious services. The large lot size of the Property reduces the likelihood of neighborhood noise and disruption created by the Shtiebel's activities. The 7-acre Property has mature landscape borders along the perimeter which provide screening and buffering. The Beit Midrash and leased classrooms are located in a building in the interior of the lot. All Shtiebel activities take place inside the building when school is not in session, preventing excessive noise. Moreover, the two entrances to the Property have ingress and egress onto public roads: Old Lancaster Road and N. Highland Ave. There is no access point onto Melrose Avenue, an adjacent private road, for cars or pedestrians. It would be more disruptive if attendees were driving to the Shtiebel's events, but all attendees walk to them. There is no net increase in pedestrian volume and zero increase in vehicular traffic. Ex. A-10 at p. 4. Walking to the Property for Sabbath and holiday services, instead of another synagogue located in the same neighborhood, if not literally across the street, is not substantial evidence of neighborhood disruption if the modifications are approved.

Pedestrian Activity and Safety

Concerns about pedestrian safety are not well supported by existing conditions or projected pedestrian access to the Property. There are no records of pedestrian accidents associated with religious activities at the intersection of Old Lancaster and N. Highland Avenue,

according to the Director of Building and Planning, based on his conversations with the heads of the Traffic Safety Unit and the Township Engineer. [N.T. Leswing 157] Existing pedestrian improvements are sidewalks with verges on both sides of Old Lancaster Road and N. Highland Avenue along two frontages of the Property. The signalized intersection of Old Lancaster Road and N. Highland Avenue has crosswalks on all four approaches. Moreover, the Applicant offered credible testimony from the Vice President of the Board of Directors that new activities will not add pedestrians because most attendees are walking to services at other local synagogues, such as Lower Merion Synagogue, Young Israel, or AISH. Lower Merion Synagogue is located across Old Lancaster and across N. Highland Avenue (diagonally across the street). Most attendees live in one square block around the Kohelet property "so we're walking anyway." [N.T. Stein 45-47] The Applicant provided evidence that "the Shtiebel does not generate new foot traffic; rather it redistributes the same congregants who are already walking in the community to various synagogues," Ex. A-13 at p. 2, which was supported by credible testimony. Although there may be an increase in the number of pedestrians walking to the Property, redistributing the same neighborhood congregants appears to pose a *de minimus* risk given the excellent existing pedestrian crosswalks at Old Lancaster Road and N. Highland Avenue, and no reported conflicts with pedestrians associated with religious activities at the intersection.

Objectors also requested crossing guards, speed bumps, additional lighting, and a midblock crossing for pedestrian safety. The Director of Building and Planning testified that the Township Engineer and Traffic Safety Unit "recommend waiting on mid-block crossings and crossing guards. They strongly oppose putting in an unsignalized mid-block crossing because it creates an expectation of safety for pedestrians that can't be [supported] by traffic documentation methodology." [N.T. Leswing 157] Additional lighting was not recommended by Staff, the

Planning Commission, the Township Engineer, or the Traffic Safety Unit even though some activities on the Property which may occur when it is dark outside. Similarly, speed bumps were not recommended by Staff, the Planning Commission, the Township Engineer, or the Traffic Safety Unit. Signage, however, will be installed.

The Board of Commissioners should impose conditions to prevent or reduce mid-block pedestrian crossings not at the signalized intersection. The first recommended condition is the Shtiebel shall install painted crosswalks and associated elements at the intersection of Melrose Avenue and Old Lancaster Road, as previously required by Land Development approval. The second recommended condition is the Shtiebel shall prepare a post development pedestrian study evaluating pedestrian activity around the school and provide it to the Director of Building and Planning and the Township Engineer and implement any findings identified in the study as directed by Staff.

*Pedestrian Access for Attendees with
Mobility Limitations and Internal Circulation*

Township Staff identified questions about the proposed pedestrian-only access plan, particularly how it would accommodate attendees with mobility limitations without vehicular drop-offs, noting that drop-offs and pick-ups along N. Highland Avenue and Old Lancaster Road could add to traffic congestion. The Shtiebel produced substantial evidence that pedestrian gates (P1 & P2) are designed to accommodate individuals using wheelchairs, walkers, and scooters. The gate along N. Highland Avenue (P1) includes ramp access from the street and internal pathways are similarly equipped with ramps to support mobility devices. Moreover, the surrounding area has an established pattern of walkability which all attendees regularly navigate.

Off-Site Parking

Objectors are concerned about off-site parking by attendees of religious services at the Property. The Shtiebel has a no-driving policy that is enforced through established community and social norms within the congregation. It provides regular communications from leadership to congregants reinforcing the prohibition on driving. The Shtiebel has credibly represented that "the prohibition on driving has never been an issue to date, as Orthodox Jewish law prohibits driving on the Sabbath and holidays." Ex. A-13 at 1-2. It has agreed to implement an Operations and Compliance Plan that will enforce the no driving policy by including: (1) pre-event communications to attendees reaffirming the prohibition on driving, and (2) security measures to deter unauthorized drop-offs, as well as any additional reasonable conditions the Township may require as part of granting conditional use approval. In response to Staff's recommended language prohibiting street parking, the Shtiebel provided a Revised Operations and Compliance Plan, which states:

Non-driving policy: standards and enforcement. Shtiebel maintains a no-driving policy for all approved services. Compliance is enforced primarily through established community and societal norms within the congregation. On Shabbat and Jewish holidays, the Property's vehicular gates are closed, and on-site security is instructed not to open them for vehicular access, drop-offs, or pick-ups associated with these services. Security will observe perimeter conditions during typical ingress and egress windows, and any observed vehicular activity will be documented in the compliance log described below. **Parking on adjacent streets in connection with any non-school-related services is prohibited**

(emphasis added). Ex. A-5a. The Shtiebel has adequately demonstrated that it has a robust Operations and Compliance Plan to prevent attendees from parking vehicles on adjacent streets, in addition to strong group norms against driving to religious services within the congregation. Nonetheless, a condition prohibiting parking on adjacent streets, both public and private, in connection with any non-school-related activity or services is recommended.

Shtiebel Membership and Connection with Kohelet

Objector Greenberg testified that people attending Shtiebel's services should be students of Kohelet and families or extended family members of students. [N.T. Greenberg 120-121]

Testimony supports the Shtiebel's representation that "all attendees come from two zip codes and live within walking distance of the Property. The Shtiebel is attended exclusively by people who live in Merion of Bala Cynwyd and their Sabbath guests," Ex. A-13, p. 2. The Vice President of the Board of Directors of the Shtiebel testified that 30-40 current members out of 80-90 people are parents of Kohelet students and 50 percent of the youth leaders and youth groups. [N.T. Stein 39-40] It is reasonable to require attendees of Shtiebel activities to be connected to Kohelet's educational purpose. A condition limiting attendees of religious services to members of the Stiebel and their Sabbath guests is recommended.

Objectors Sylk and Moras requested a condition of approval limiting the number of families in the Shtiebel congregation, suggesting that membership should be capped at 60 families. Both Objectors testified that, in their opinion, 70-90 families are too large. [N.T. 96-98;102-108] The Township might infringe on church autonomy under the First Amendment if it prescribes a blanket membership cap on the Shtiebel. A recommended condition limiting attendees of approved activities to members of the Shtiebel and their Sabbath guests is not overly burdensome.

Capacity of the Beit Midrash and Fire Safety

Township Staff identified the capacity of the Beit Midrash as a concern in light of occupancy limits under the fire code, and recommended language be added to the Operations and Compliance Plan. Ex. T-10. The Shtiebel explained that some attendees will utilize the

classroom space instead of the Beit Midrash. As a result, the Applicant provided a Revised Operations and Compliance Plan, Ex A-5a, which states:

Facility and space usage. All prayer activities will occur indoors. The Beit Midrash (occupant load of 176) and four classrooms identified as Classroom 208 (occupant load of 27), Classroom 217 (occupant load of 25), Classroom 219 (occupant load of 24) and MPR 212 (occupant load of 82) will be used for youth and prayer activities. The room identified as MPR is one larger room that can be divided into three, which is why the occupant load is listed as three different numbers (24, 29 and 29). The Beit Midrash and classrooms are identified and attached to this Operations and Compliance Plan as Exhibit A. Despite the maximum occupant load, operational attendance caps remain at the more restrictive caps set forth above. No physical changes to the Property are proposed in connection with these activities. **While total attendance for certain services may reach up to 200 individuals, at no time will the occupant load of the Beit Midrash exceed 176 individuals. All prayer activities will take place indoors in designated rooms with occupants distributed across these spaces to remain. The applicant shall apply for a zoning permit to ensure they comply with occupancy requirements.**

(emphasis added). In summary, The Shtiebel has agreed to "ensure the Beit Midrash only has a maximum of 176 occupants per the occupancy plan submitted as part of its application." Ex. A-13, p. 2. This agreement should be a condition of approval.

Compliance and Monitoring

Objector Ludwig testified that there are existing compliance problems and pointed to the lack of required landscaping along Melrose Avenue which she believes arises from a simple lack of awareness and lack of attention to the Property.[N.T. Ludwig, 109-112] The Director of Building and Planning responded that Kohelet has a Perpetual Maintenance and Operation Plan that it is required to comply with as a condition of approval of land development. He will ask Township staff to inform Ludwig when the next annual inspection will occur. [N.T. Leswing 112] Informing Ludwig about the Township's annual inspection of landscaping mitigates that part of her objection to lack of compliance.

Objector Ludwig also questioned whether attendance caps will be complied with by the Shtiebel. The MCA similarly objects that there is "no legitimately enforceable plan to monitor usage or growth" which may create disruptions in the neighborhood. The Shtiebel has proven with substantial evidence that it has developed a detailed Operations and Compliance Plan which includes compliance logs recording date, service type, scheduled hours, actual start and end times, headcounts, and any observed vehicular activity. It specifies concrete attendance caps for approved activities: Saturday morning Sabbath prayers for no more than 200 attendees; Friday and Saturday Evening Sabbath prayers for fewer than 60 attendees; and Holiday prayer services for no more than 200 attendees. To enforce these limits, prior to each service, the setup team will place only the number of chairs corresponding to the applicable attendance cap. The number of chairs must also comply with occupancy limits in the fire code. Substantial evidence shows that the Shtiebel's functions and growth will be documented in detailed logs pursuant to the Revised Operations and Compliance Plan. Logs will be retained for Township inspection and summarized annually at required community meetings with the MCA and NCBC. The Shtiebel has also agreed to "promptly address any Township directives concerning the observed non-compliance, including temporary suspension of specific service times if directed." Ex. A-10, p. 3. Additionally, Kohelet has mechanisms in place to monitor the Shtiebel's use of the property, such as security team and a maintenance team on the Sabbath. The entire campus is monitored by video. It is possible to check compliance through Kohelet's resources in addition to the Shtiebel's Operations and Compliance Plan records. If any enforcement action is necessary, the Zoning Officer may issue citations.

Incremental Zoning Changes

The Objectors object to incremental zoning changes over the years and are apprehensive about the future. The Comprehensive Table shows that the number of students over time has been relatively consistent over the decades, with an approximately 50% reduction in the student body from 350 to 180 students in 2010. Ex. T-16. Student enrollment returned to 360 students in 2016 and was subsequently raised to 400 students in 2024. *Id.* It also shows the number of approved activities for students and non-students began in 2010, increased in 2016, and one additional activity was approved, and one previously approved activity was modified in 2022. The Shtiebel originally filed a conditional use application in 2025 requesting modifications to permit many more activities on the Property, then revised its application to entirely remove the requests for daily morning prayers, Selichot services, and family celebrations. The Zoning Hearing Board determined that the three remaining proposed activities are an institutional accessory use and not principal uses. *Kohelet 2025*. The Board of Commissioners is bound by the ZHB's determination that the three proposed activities are a lawful institutional accessory use. Looking forward, the Zoning Hearing Board has indicated that future requests for modification of conditions limiting non-student activities would alter the nature of the institutional accessory use into a principal use, which is not permitted in the zoning district.

Kohelet 2025

The Shtiebel has met its initial burden of persuasion by showing compliance with specific conditional use criteria set forth in the zoning ordinance, and its ultimate burden of persuasion by showing compliance with general criteria and adequately demonstrating the proposed use will not be detrimental to public health, safety and welfare. Objectors have not met their burden of proof. As a result, conditional use approval to modify conditions imposed by the Zoning Hearing

Board in connection with special exception approval in *Kohelet 2016* and subsequently modified by the Board of Commissioners by conditional use approval in *Kohelet 2022*, pursuant to Code §155-4.4.C.6, is recommended with conditions.

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

ORDER

And now on this ____ day of July 2026, the application of The Shtiebel of Lower Merion for conditional use approval to modify conditions imposed by the Zoning Hearing Board in connection with special exception approval granted in Appeal No. 4362 and subsequently modified by the Board of Commissioners by conditional use approval in Conditional Use Application No. 3896C, pursuant to Code §155-4.4.C(6), and the application procedure and standards found in §155-11.1.F & G, is granted, subject to the following conditions, for the reasons set forth in the foregoing recommended findings of fact, conclusions of law and discussion.

Conditional use approval is granted on and conditioned on adherence to the testimony, plans, photos, and documents presented at the conditional use hearing on May 14, 2026, and all documents admitted into the record.

This grant of conditional use approval is further conditioned on:

1. Sabbath prayer services on Saturday mornings from 8:30 am to 1:00 pm for a maximum of 200 attendees, and with attendees not driving;
2. Sabbath prayer services on Friday and Saturday evenings for less than 1.5 hours for fewer than 60 attendees, and with attendees not driving;
3. Holiday prayer services thirteen times per year, beginning one hour before sundown and lasting no more than three hours, for a maximum of 200 people, and with attendees not driving.
4. While total attendance for certain services may reach up to 200 individuals, at no time will the occupant load of the Beit Midrash exceed 176 individuals. All prayer activities will take place indoors in designated rooms with occupants distributed

across these spaces to remain. The Applicant shall apply for a zoning permit to ensure they comply with occupancy requirements.

5. The Shtiebel of Lower Merion must prepare a post development pedestrian study evaluating pedestrian activity around the school and implement any findings identified in the study as directed by staff;
6. The Shtiebel of Lower Merion must install painted crosswalks and associated elements at the intersection of Melrose Avenue and Old Lancaster Road as previously required by Land Development approval.
7. Attendees of Shtiebel activities at the Property shall be limited to members of the Shtiebel and their Sabbath guests.
8. Parking on adjacent streets, both public and private, in connection with any non-school-related activity or services is prohibited.

All other conditions not modified by this grant of relief shall remain in full force and effect.

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 by reference thereto.

By: Pamela M. Loughman

Pamela M. Loughman, Esq.
Conditional Use Hearing Officer

Date	Application Number	Zoning Application	Approvals	Conditions	Specific Approved Activities	# Times Per Year	Expected Attendance
1956	ZHB #1357	Special Exception	Convert estate house to educational institution at 223 N. Highland Ave. Akiba Hebrew Academy grades 6-12	Outdoor play area is limited to corner of Highland Avenue and Old Lancaster Road			
		Modification	Construction of outdoor tennis court				
1974	ZHB #2299	Special Exception	1. Construction of gym 2. Construction of classroom building 3. Increase student pop. to 350				350 students Grades 6-12
1996	ZHB #3433	Special Exception	1. Expand educational facilities on 223 N. Highland Ave.* 2. Expand administrative offices on 280 Melrose Ave.*	*Not built			
2004	ZHB #?	Special Exception	1. Expand educational facilities on 223 N. Highland. * 2. Use adjoining property as administrative offices on 280 Melrose Ave. *	*Not built			
2010	ZHB #4196	Special Exception	Construct a sanctuary addition	1. Use of the property by parties other than the Applicant and SHHS shall not be permitted. 2. Enrollment is capped at 180 students, the number of faculty/staff/volunteers is capped at 63. 3. The Applicant shall provide the Township Zoning Officer with a current license from the State Board of Private Academic Schools to operate a school on the property. 4. The Applicants's final plans and subsequent construction shall adhere to all applicable Township codes and ordinances.			180 students Grades 9-12 63 faculty/staff/volunteers
					Use Chart, Ex. A-9 Regularly Scheduled & Special Events		

Date	Application Number	Zoning Application	Approvals	Conditions	Specific Approved Activities	# Times Per Year	Expected Attendance
					Open House		90-120
					Parent Night		60-120
					Back-to-School Dinner		150-200
					Graduation		225-400
					Basketball Tournament		100-250
					Special Events (e.g. annual fundraising)		350
2016	ZHB #4362	Special Exception	1. Expand Educational Use to include grades K-8 bringing total to 360, 2. Construct two building additions to existing educational building on 223 N. Highland Ave. southeast & northeast sides, 3. Add two adjacent properties, 4. Add additional parking, 5. Demolish existing dwellings on 280 Melrose and 284 Melrose and locate parking and playing fields on them	Use: Use of the property other than by the Applicants and the school is not permitted (except as set forth on exhibits A-22 and A-29.) Non-Student use: Guest lectures, Jewish Studies classes and all other approved programs shall not occur during school hours			360 total students Grades K-12 180 students Grades K-8 180 students Grades 9-12 Faculty, staff and volunteers capped at 74
					Ex. A-22 Student Uses Regularly Scheduled & Special Events		
					Back to School Night	2	200 people
					College Information Night	2	50-75
					Kohelet Cafes (student artistic performance programs)	2	200
					School Plays	3 or 4	150
					Concert Fundraiser	1	250
					Gala Fundraiser	1	400-500
					Blood Drives (student organized)	2	100
					Sunday Test Site (SAT, ACT, ISEE)	10	5 to 30
					Parent Teacher Conference	4	180
					Awards Program	2	80-100
					Graduation	2	225-400
					Open House for Prospective Students & Parents	2	50-120
					Intramural Sports Tournaments	1	100-250

Date	Application Number	Zoning Application	Approvals	Conditions	Specific Approved Activities	# Times Per Year	Expected Attendance
					<u>Ex. A-22</u> Non Student Uses Regularly Scheduled & Special Events		
					Holiday Prayer Services	3 to 4	150-200
					Sabbath Prayer Services	5	150
					Guest Lectures	6 to 12	25-180
					Jewish Studies Classes	36-60	5 to 40
					<u>ZHB Ex. A-29</u> Summer Program Non Student Uses		
					Sports & Judaic Studies Program run by Kohelet	8 weeks total 4 weeks boys 4 weeks girls June to August 8am-4pm staff 9am-3pm kids	50 children + 10 staff
					<u>ZHB Ex. A-29</u> Winter Program Non Student Uses		
					Sports & Judaic Studies Program run by Kohelet	One week total Late Dec to January 8am-4pm staff 9am-3pm kids	50 children + 10 staff
2022	# 3896C	Conditional Use	Modify Conditions of Approval in ZHB #4362	Increase Non-Student Events	Sabbath services, increased from 5 times per year to 52 times per year. Number of attendees decreased from 150 to 90. Attendees will not drive	52 Saturdays 8:30 AM to 1:00 PM	90 attendees
					Evening Basketball	104 (2x52)	30 persons
2024	#3912C	Conditional Use	Modify Conditions of Approval in ZHB #4362	Enrollment increased to 400		Academic Year	400 students total 135 students in High School

Date	Application Number	Zoning Application	Approvals	Conditions	Specific Approved Activities	# Times Per Year	Expected Attendance
							74 staff
2025	CU#3927	Conditional Use Application (subsequently revised and resubmitted)	Modify Conditions of Approval in ZHB #4362 and CU #3896	Proposed New Events and Activities	<u>Proposed & Resubmitted</u> Sabbath prayers on Saturday morning weekly from 8:30 am to 1:00 pm Attendees will not drive.	52	200
					<u>Proposed & Reduced</u> Sabbath Evening prayers on Friday and Saturday, 3.0 hours. Attendees will not drive.	104 (2x52)	150
					<u>Proposedn & Resubmitted</u> Holiday prayer services: increase from 3-4 times per year to 13 times per year, maximum 3 hours with the maximum of 200 attendees. Attendees will not drive.	13	200
					<u>Proposed & Withdrawn</u> Life Event Celebrations b'nai mitzvot or brisses. Attendees will walk if held on Sabbath or Holiday, and may otherwise drive.	6	300
					<u>Proposed & Withdrawn</u> Selichot Prayers at 10:00 PM, 2.0 hours, 5 nights per week. Attendees will mainly walk but may drive.	260 (5x52)	50

Date	Application Number	Zoning Application	Approvals	Conditions	Specific Approved Activities	# Times Per Year	Expected Attendance
					<u>Proposed & Withdrawn</u> Daily Morning Prayers other than Saturday, beginning 45 minutes prior to astronomical sunrise for under an hour for not more than 50 attendees. Attendees will mainly walk but may drive.	312 (6x52)	50
1/31/2025	Zoning Officer	Determination (subsequently rescinded)	1. Proposed expansion of use will require additional parking 2. Expanded use does not qualify as Institutional Accessory Use because the proposed new use is not subordinate and dependent on the primary use, therefore it would be a new primary use. 3. Property is zoned 1E1 which does not permit religious use. 4. Leasing property to a separate religious organization constitutes a separate religious use 5. Expanded use would be a new primary use by a separate religious organization				
2/26/2025	Zoning Officer	Revised Determination	1. Expansion of Saturday Sabbath prayers offered by The Shtiebel from 90 to 200 attendees is an acceptable institutional accessory use. 2. Increasing Holiday Prayers from 3-4 times per year to 13 times per year for no more than 200 attendees is an acceptable institutional accessory use. 3. All other proposed uses are separate religious principal uses due to the increase in hours of operation and number of participants. ZHB approval is needed for a second principal religious use on an 1E1 zoned property.				
3/3/2025	ZHB #4625	Appeal of ZO Determination	Affirmed in part, Reversed in part				

Date	Application Number	Zoning Application	Approvals	Conditions	Specific Approved Activities	# Times Per Year	Expected Attendance
				<u>AFFIRMED acceptable institutional accessory uses to the Property as an educational institution:</u> <u>Saturday morning Sabbath Prayer Services from 8:30 am to 1:00 pm for no more than 200 attendees;</u> <u>Holiday Prayer services beginning one hour before sundown, lasting no more than three hours, for no more than 200 attendees</u>	*Requires CU approval		
				<u>REVERSED and found acceptable institutional accessory uses to the Property as an educational institution:</u> <u>Friday and Saturday Evening Prayer Services for less than 1.5 hours for less than 60 attendees</u>	*Requires CU approval		
<u>2026</u>	<u>CU# 3927C</u>	Amended Conditional Use Application	<u>Proposed</u> Modification of Conditions	<u>Proposed</u> Increase Number and Frequency of Events and Number of Participants	<u>Proposed</u> Friday and Saturday evening Sabbath prayers: less than 1.5 hours, for fewer than 60 attendees, with attendees not driving.	104 (2x52)	60
					<u>Proposed</u> Saturday morning Sabbath prayers: increase from 90 to 200 maximum attendees, with attendees not driving.	104 (2x52)	90 to 200
					<u>Proposed</u> Holiday prayer services: increase from 3-4 times per year to 13 times per year, with the maximum of 200 attendees, and with attendees not driving.	13	200

Staff Report

Agenda Item 2

Meeting Date: May 4, 2026

TO: Lower Merion Township Planning Commission Members

FROM: Department of Building and Planning - Holly Colello, Planner and Colleen Hall, Senior Planner

SUBJECT: Conditional Use Application – 223 N. Highland Avenue, Merion Station, Ward 9, Applicant No. 3927C

PROPOSAL:

Avi Weiner, President & Board of Directors and The Shtiebel of Lower Merion (“Applicant”), a Pennsylvania nonprofit corporation, as well as Jennifer Groen, Executive Director of Kohelet Yeshiva High School, Inc. (“Property Owner”) are seeking Conditional Use approval to modify prior conditions imposed by the Zoning Hearing Board (Appeal No. 4362, modified by Conditional Use Application No. 3896C) pursuant to Zoning Code [§155-4.4.C\(6\)](#).

The Shtiebel is seeking two approvals:

Foremost, to use their institutional facilities as a secondary, subordinate, and customarily incidental accessory use to Kohelet’s educational use, consistent with the Zoning Hearing Board’s amended Decision in Appeal no. 4625. The proposed religious use at Kohelet would occur when facilities are not under hours of operation as an educational use. A second request for consideration consists of a plan to expand Kohelet’s previously permitted religious use of an educationally zoned property. The proposed expansions include:

1. Friday and Saturday evening Sabbath prayers services for up to 60 attendees who do not drive. Services will last up to 1.5 hours.
2. Increasing Saturday morning Sabbath prayers from 90 to 200 attendees who do not drive.
3. Increasing Holiday prayer services from 3–4 times a year to 13 times per year with up to 200 attendees who do not drive.

Conditional Use Order (3896C) permits Kohelet to the following religious uses:

1. Sabbath services for up to 90 attendees on Saturdays from 8:30 AM to 1:00 PM. Attendees do not drive; and
2. Evening basketball, twice a week, for up to 30 persons, not later than 10pm, held entirely indoors.

The applicant has submitted materials indicating:

- “Will agree to an “Operations and Compliance Plan” which will address the no driving policy will include 1) pre-event communications to attendees reaffirming the no driving policy; and 2) security protocols to deter drop-offs as well as any other reasonable conditions the Township wishes to impose if approval for relief is granted.”
- “The proposed uses respond to community requests, are subordinate to the school’s educational use, and are supported by Kohelet.”

No land development plans are associated with the conditional use requests.

SUBMISSION MATERIALS:

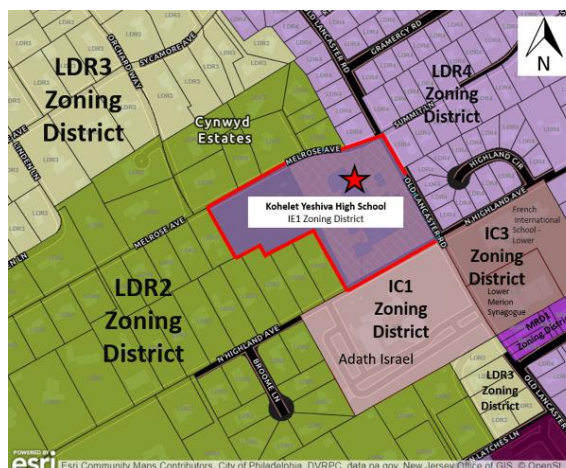
Upon submitting the Conditional Use Application and supplemental documents dated April 17, 2026, the applicant presented the following materials in their conditional use application:

- **Exhibit A** – Cover Letter from Kilkenny Law dated February 6, 2026.
- **Exhibit B** – 223 N. Highland Avenue Revised Conditional Use Narrative with Exhibits, dated February 6, 2026.
 - Zoning Hearing Board Amended Findings of Fact, Conclusions of Law, Opinion & Order Findings of Fact for Appeal Number 4625, signed by Scott Houchins, Zoning Officer and Secretary, Lower Merion Township.
 - Lease Agreement between Kohelet Yeshiva and The Shtiebel of Lower Merion, dated December 18, 2024.
 - Schedules A, B & C dictating the Designated Spaces for use (A), Kohelet Setup Responsibilities (B), The Shtiebel Responsibilities (C).
 - Operations and Compliance Plan for Shtiebel Use at 223 N. Highland Avenue Revised
- **Exhibit C** – Response to Land Development Committee Comments dated April 17, 2026
- **Exhibit D** – Egress Plans, Sheet A0.14 drafted by Archer & Buchanan Architecture, LTD., dated January 31, 2017.

PROPERTY DESCRIPTION, ZONING DISTRICT & SURROUNDING USES:

The 6.94-acre property is located on the northwest corner of the intersection of Highland Avenue and Old Lancaster Road in Merion. The property is accessed by a one-way driveway from N. Highland Avenue that traverses the site and exits onto Old Lancaster Road with playing fields along the Melrose Avenue frontage.

The site is improved with a three-story Jacobethan-style stone estate house with classroom additions, an attached gymnasium and Beit Midrash which contains a Modern Orthodox K-12 Yeshiva Day School, with 89 parking spaces. The estate house is listed on the Historic Resource Inventory (HRI) as a Class II resource.



Kohelet High School is one of five institutions located at the intersection of Highland Avenue and Old Lancaster Road. Adath Isreal Synagogue is located at the southwest corner of the intersection, and the French International School, Bala Cynwyd Library and Lower Merion Synagogue are located on the southwest corner of the intersection. The area west of Old Lancaster Road, immediately adjacent to the Kohelet School, is zoned LDR 2, except for a small pocket of homes fronting Old Lancaster zoned LDR3. LDR 2 is a low-density single-family residential district with a minimum lot size of 1 acre. LDR 3 is a single-family residential district with a minimum lot size of 1/3 an acre. Many of the lots west of the school on Highland Avenue exceed the minimum lot size requirement. The east side of Old Lancaster Avenue is primarily zoned LDR4 (single family residential with a minimum lot size of 6

units per acre). The surrounding residential neighborhood is improved with sidewalks on high vehicular traffic streets and is generally very walkable.

The subject property is zoned (IE1) Institutional Education, established to permit site uses operated for public and private education. The neighboring synagogues and library are zoned IC, Institutional Civic. The IC District regulates sites operated for communally beneficial land uses such as arts and culture, social and religious use, senior housing and recreation.

Prior to the 2020 Zoning Code update, institutional uses were permitted as special exceptions in residentially zoned districts. Included with the update, Institutional districts are now designed to address community concerns regarding physical expansion of institutions into established residential neighborhoods through purchase and Special Exception approval. The formation of Institutional districts placed limitations on expansion of institutional uses that can only be changed through legislative action by the Board of Commissioners.

Institutional districts were created to provide a regulatory context for institutional uses, with two main goals:

1. to support the sustainability of institutions, and to render them compatible with the residential neighborhoods in which they may be located. These regulations recognize a diversity of institutional locations and goals, the institutional need to adapt to changing circumstances (including functions and growth), and
2. the need to minimize off-site externalities associated with higher intensity institutional activities in proximity to residential uses.

Staff notes that Institutional Zoning was a recommendation of the 2016 Comprehensive Plan. The 2016 Comprehensive Plan includes comprehensive analysis and discussion of institutional issues. The Instructional Land Use Chapter can be found using the link provided [HERE](#)

SUMMARY OF ZONING HEARING BOARD APPEAL NO. 4625:

On November 20, 2025, the Lower Merion Township Zoning Hearing Board (ZHB) ruled that limited religious prayer services are permitted as an accessory use to its main use as a religious educational institution at 223 North Highland Avenue. Subsequently additional activities could be allowed through conditional use approval:

- Saturday morning Sabbath services (8:30 AM–1:00 PM, up to 200 people). Attendees will not drive.
- Friday and Saturday evening Sabbath services (under 1.5 hours, under 60 people). Attendees will not drive.
- Holiday Prayer Service, beginning one hour before sundown, for a maximum of 3 hours no more than 13 times per year for no more than 200 attendees. Attendees will not drive.
 - However, adding additional religious activities such as life event celebrations, Selichot prayers, or daily morning prayers would make the property function as a primary religious institution, which is not permitted under Zoning Code Chapter 155 Table 5.3.

A more detailed history of the Zoning Hearing Board decisions can be read within the “Background” section of the staff report.

MEETING SCHEDULE & PROCESS:

The tentative schedule for the Conditional Use request is as follows:

	Monday, May 4, 2026	Planning Commission	Review of the Conditional Use Request
Upcoming	Thursday, May 14, 2026	Conditional Use Hearing	Conditional Use Hearing Officer Hears Request
	Wednesday, July 8, 2026	Building & Planning Committee	Review of the Conditional Use Request
	Wednesday, July 15, 2026	Board of Commissioners	

Additional information about the Township's Land Development approval process is illustrated in the [Subdivision & Land Development Flowchart](#). This application is currently in the *Stage 4: Public Meetings* portion of the process.

SUMMARY OF PLANNING ISSUES:

This application raises interesting issues about the evolving use of institutional property – on the positive side providing locations for religious activities is in the community interest, but does the extra activity on the site create a negative burden on the surrounding neighbors by extending use of the site into the evenings and weekends? From a planning standpoint the goal is to understand what potential externalities are associated with the expanded/new use. In this instance, planning staff has only identified off-site parking as a potential issue for surrounding neighbors and staff has determined that this may be addressed through reasonable conditions.

For a property to receive Conditional Use approval it must satisfy both the general and specific criteria outlined in the Zoning Code. Conditional Use criteria include a requirement that the applicant demonstrate, and the Board of Commissioners consider the suitability of the property in question. The evaluation considers issues such as traffic, vehicle and pedestrian circulation, location and design of parking areas, adjacent land use(s), and other impacts on the surrounding area. If the proposal is adjacent to a residential district, the scale of the use shall relate to and complement the surrounding area.

1. OCCUPANCY LOAD OF THE BEIT MIDRASH BUILDING & REQUESTED ATTENDEES:

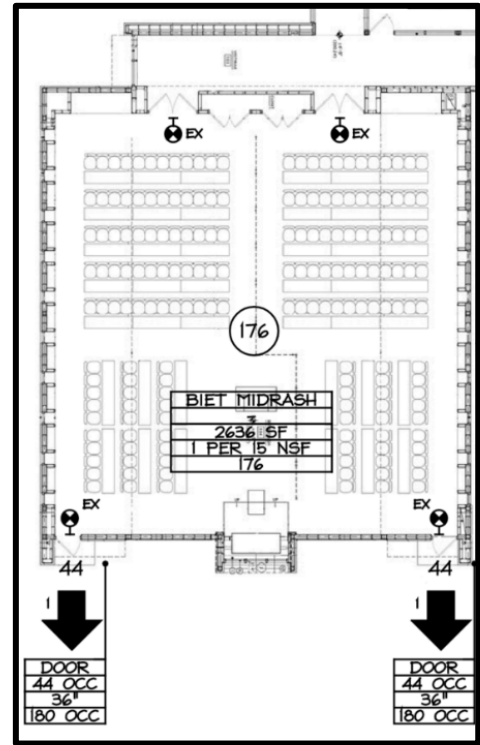
The applicant's Conditional Use request includes the following:

- Sabbath prayers on Saturday mornings with an increase from 90 to 200 attendees.
- Holiday prayer services increasing from 3–4 times per year to up to 13 times per year, with no more than 200 attendees.

The Township's Fire Department requires sealed plans identifying the means of egress and the occupant load for the building being used. In response the applicant submitted plans indicating the maximum occupancy load for the 2,636 sq. ft. Beit Midrash building is 176 attendees. However, the requested occupancy for conditional use indicates 200 attendees and would exceed the occupant load limit by 24 attendees.

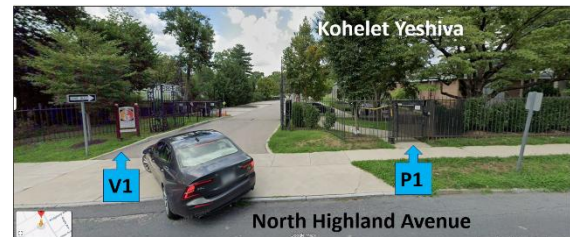
In response, the applicant has stated that all prayers will occur indoors, with attendance distributed among the Beit Midrash (capacity 176), Classroom #208 (capacity 27), Classroom #217 (capacity 25), Classroom #219 (capacity 24), and the multipurpose room (MPR). The MPR is a single large room that can be partitioned into three smaller sections, which is why it has multiple occupant load limits listed (24, 29, and 29).

- Staff Recommendation:**
The applicant shall also include in the “Operations and Compliance Plan-Facility and Space Usage” section the following language: While total attendance for certain services may reach up to 200 individuals, at no time will the occupant load of the Beit Midrash exceed 176 individuals. All prayer activities will take place indoors in designated rooms with occupants distributed across these spaces to remain. The applicant shall apply for a zoning permit to ensure they comply with occupancy requirements.



2. PEDESTRIAN ACCESS DURING NON-SCHOOL HOURS:

Staff review identified questions about the proposed pedestrian-only access plan, particularly how it would accommodate attendees with mobility limitations without vehicular drop-offs during non-school hours. Staff also noted that drop-offs and pickups along N. Highland Avenue and Old Lancaster Road could add to traffic congestion. To illustrate these concerns, staff has provided three graphics showing the entrance types where congestion may occur:



North Highland Avenue: V1 = Vehicle Entrance Only & P1 = Pedestrian Gate Entrance/Exit



Old Lancaster Road: V2 = Vehicle Exit Only & P2 = Pedestrian Gate Entrance/Exit

The aerial image of the property shows parcel boundaries, identifying the one-way vehicular entrance into the site as “V1”, with vehicular exit as “V2”, and pedestrian entrances and exits as both “P1” and

“P2”. The street view graphics show pedestrian and vehicular entrances from N. Highland Avenue and Old Lancaster Road, respectively coinciding with points indicated on the aerial. All entrances and exits are secured by coded electronic metal gates.

In response to circulation concerns, the applicant indicated pedestrian gates (P1 & P2) are designed to accommodate individuals using wheelchairs, walkers, and scooters. Additionally, the gate along N. Highland Avenue (P1) includes ramp access from the street, and internal pathways are similarly equipped with ramps to support mobility devices. The applicant further stated that the surrounding area has an established pattern of walkability, including nearby pedestrian-only synagogue access, and indicated that attendees, including those with mobility limitations, are expected to access the site via these pedestrian routes.

Additionally, the applicant has agreed to implement an “Operations and Compliance Plan” that will enforce the no-driving policy by including: (1) pre-event communications to attendees reaffirming the prohibition on driving; and (2) security measures to deter unauthorized drop-offs, as well as any additional reasonable conditions the Township may require as part of granting Conditional Use.

- **Staff Recommendation:**
The applicant shall include in the “Operations and Compliance Plan: Non-driving policy standards and enforcement” section the following language: The applicant shall include provisions prohibiting parking on adjacent streets in connection with any non-school-related services. The applicant shall provide testimony at the Conditional Use Hearing addressing concerns of off-site parking related to expanded to related religious use.

ADDITIONAL REVIEWS:

- **Civic Association:** The applicant will tentatively be appearing before the Neighborhood Club of Bala Cynwyd Civic Association on May 5th, with Merion Civic Association members invited to attend that session as well. The Township requests that a written report be sent to the Planning Department after the meeting which will be included in the Conditional Use Hearing.
- **Historical Commission (HC) Review:** This application does not involve any construction or exterior improvements, so the applicants do not have to appear before the Historical Commission for review or approval.
- **Township Engineer’s Review:** The Township Engineer has no comments on this application.
- **Montgomery County Planning Commission (MCPC):** The County does not review conditional use applications.

PLANNING COMMISSION ACTIONS:

The Planning Commission must take the following actions with respect to this application:

1. A recommendation on the requested Conditional Use application.

Meeting Date: May 4, 2026

SUBJECT: Zoning Hearing Board Decisions and Outcomes for 223 N. Highland Avenue, Merion Station, Ward 9.

CONDITIONAL USE:

A use or standard modification permitted by conditional use is expressly permitted, but subject to a hearing to determine whether the conditional use application is consistent with the public interest as expressed in specific standards and criteria established in the Zoning Code. Conditional uses are usually reserved for land uses or standards that necessitate more control, additional safeguards, or greater flexibility. This is typically accomplished by imposing conditions of approval. The difference between a special exception and a conditional use is that special exceptions are decided by the Zoning Hearing Board, while conditional uses are decided by the Board of Commissioners.

The conditional use process is outlined in Article IX of the [Pennsylvania Municipalities Planning Code](#). In allowing a conditional use, the governing body may attach such reasonable conditions and safeguards, other than those related to off-site transportation or road improvements, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act and the zoning ordinance.

Further provisions for the conditional use process may be found within the Township Zoning Code Section [155-11.1.F](#). Ordinance provisions require that the applicant have the initial burden of persuasion that the application complies with the specific requirements of Section 155-11.1.f. Opponents have the initial duty of presenting substantial evidence that the application does not comply with the general criteria of this chapter, but the applicant shall retain the ultimate burden of persuasion concerning those criteria.

Applicant's Burden:

- The applicant has the burden of satisfying the conditional use criteria at the Conditional Use Hearing. The staff report complements the Conditional Use Hearing by providing background and identifying any planning issues related to the request. The Planning Commission may recommend that the applicant address issues at the Conditional Use Hearing and may also recommend conditions be imposed with the conditional use order to address specific issues.

MODIFICATION OF ZONING HEARING BOARD & CONDITIONAL USE RECCOMENDATIONS:

[Article 155-4.4.C\(6\) Institutional District Applicability](#) of the Township Zoning Code permits the modification of Zoning Hearing Board conditions, stating:

All previous conditions imposed by the Zoning Hearing Board on the approval of institutional uses by special exception and all imposed conditions by the Board of Commissioners by conditional use shall remain in force but may be modified by conditional use. All previous

conditions imposed by the Board of Commissioners on the grant of land development approval for institutional uses shall remain in force but may be modified by the Board of Commissioners, by amendment of the land development approval.

PREVIOUS - ZONING HEARING BOARD DECISIONS & APPEAL HISTORY:

Since the original 1956 Zoning Hearing Board (ZHB) special exception approval to allow an estate house to be used as a private educational institution, the ZHB and Board of Commissioners (BOC) have both approved and denied numerous expansion proposals. Approved expansion proposals have included varying limits on the maximum number of students throughout the duration of the institutional use. Currently, there are 358 students enrolled at Kohélet Yeshiva in grades K-12 for the 2023-2024 school year, with a maximum cap of 360 students and the number of faculty, staff, and volunteers is capped at 74 individuals. Lastly, the school must supervise pick-up and drop-off to keep traffic safe and efficient, prevent car lines from reaching North Highland Avenue, maintain a drive-by lane, and protect pedestrians. Certain parking spaces must remain empty during peak times, and signs must direct vehicles and pedestrians. Arrival for grades 9–12 must be 7:30–8:00 AM and departure 4:30–5:00 PM.

CURRENT - ZONING HEARING BOARD DETERMINATION OF APPEAL NO. 4625:

- **Township Zoning Officer Letter of Determination**

January 31, 2025, Scott Houchins, Zoning Officer provided a letter of determination to Mr. Avi Weiner, President of the Merion Shtiebel, stating that the proposed use violates the zoning code:

"The proposed expansion of use will require additional parking which will need to be demonstrated. In addition, it is my opinion the expanded use does not qualify as an Institutional Accessory use. The proposed new use is not subordinate or dependent on the existence of the primary use, therefore, would be a new primary use. The property is zoned IE1 which does not permit religious use. Leasing the property to a separate religious organization constitutes a separate religious use. Only with Zoning Hearing Board approval would a second primary religious use be permitted on an IE1 zoned property."

- **Township Zoning Officer Modified Letter of Determination**

February 26, 2025, Scott Houchins, Zoning Officer rescinded the January 31, 2025, determination letter and provided a new zoning determination to Mr. Weiner which stated the following:

"After careful consideration, it is my opinion the expansion of the Saturday Sabbath prayers offered by The Merion Stiebel from 90 attendees to 200 attendees and the increase of Holiday Prayers from 3-4 times a year to 13 times a year for no more than 200 attendees is acceptable as an institutional accessory use to Kohélet Yeshiva High School. However, the addition of the other proposed uses listed in the [2025 CU Application] would be considered a separate religious principal use due to the increase in hours of operation and number of participants utilizing the property. Only with Zoning Hearing Board approval would a second principal religious use be permitted on an IE1 zoned property."

- **Applicant Appeals the Zoning Officers Determinations**

The Merion Shtiebel ("Applicant") then filed an appeal to the Zoning Hearing Board of the Township Zoning Officer's revised determination of February 26, 2025, on March 26, 2025. The outcomes of this appeal are outlined in the following section.

CURRENT - ZONING HEARING BOARD OUTCOMES OF APPEAL NO. 4625:

- **November 20, 2025, The Zoning Hearing Board stated the following:**

"ZHB finds that the combined religious activities of (1) Saturday morning Sabbath prayer services from 8:30 am to 1:00 pm for no more than 200 attendees; (2) Friday and Saturday evening Sabbath prayer services for less than 1.5 hours for less than 60 attendees; and (3) Holiday prayer services beginning one hour before sundown, lasting no more than three hours, for no more than 200 attendees is an institutional accessory use to the use of the Property as an educational institution.

In all other respects, we affirm Mr. Houchins' February 26, 2025 determination. To be clear, that means that the addition of the life event celebrations, Selichot prayers, and daily morning prayers would cause the Appellant's religious use of the Property to no longer be an institutional accessory use, but would render it a principal religious use of the Property, prohibited by the Zoning Code. Code Ch. 155 Table 5.3. Uses for Institutions."

"In sum, the ZHB interprets Mr. Houchins' January 31, 2025 determination to mean that the combination of all the religious activities proposed in the Appellant's 2025 CU Application constitute a prohibited principal religious use of the Property. As we have held, that determination is binding. Likewise, we interpret Mr. Houchins' February 26, 2025 determination to mean that the combination of Friday and Saturday evening Sabbath prayers, life event celebrations, Selichot prayers, and daily morning prayers added to his stated approval of the increased attendance at Saturday morning Sabbath prayers and the increased number of Holiday prayer services would constitute a prohibited principal religious use of the Property. Except for the Friday and Saturday evening Sabbath prayers, we agree with Mr. Houchins and conclude further that adding the life event celebrations alone would have the same effect.

As noted above, the determination of the Zoning Officer dated February 26, 2025, regarding the religious uses of the property located at 223 North Highland Avenue was **AFFIRMED in part and REVERSED in part on November 20, 2025, by the Zoning Hearing Board**. Specifically, the determination is affirmed with respect to two requests and reversed with respect to one request, as set forth in the below sections:

- The Zoning Hearing Board AGREED with the Zoning Officer and AFFIRMED his determination on appeal #4625 that the below are considered institutional accessory uses.
 - (1) Sabbath prayers on Saturday morning weekly, from 8:30 AM to 1:00 PM, for no more than 200 attendees.
 - (3) Holiday Prayer Service, beginning one hour before sundown, for a maximum of 3 hours no more than 13 times per year for no more than 200 attendees. Attendees will not drive.
- The Zoning Hearing Board DISAGREED with the Zoning Officers' determination and REVERSED his determination on appeal #4625 that the below is also considered an institutional accessory use.
 - (2) Sabbath Evening Prayers on Fridays and Saturdays, beginning one hour before sundown, for a maximum of 3 hours weekly for no more than 150 attendees. At the hearing the appellant reduced their request from 3 hours for 150 attendees to 1.5 hours for 60 attendees.

APPEAL NO. 4625

4. In the first of those applications, in 1956, the ZHB granted a special exception to Kohelet's predecessor in interest to allow what was then an estate house on 223 North Highland to be used for an educational institution – the Akiba Hebrew Academy (“Akiba”), a private school for students in grades 6-12. *Appeal of Akiba Hebrew Academy*, No. 1357 (January 12, 1956). (“*Akiba 1956*”). At the time, the Lower Merion Township Zoning Ordinance permitted “private educational institutions” in all residential districts by special exception.

5. The ZHB conditioned the grant of the special exception in *Akiba 1956* on the use of the outdoor play area being limited to the corner of Highland Avenue and Old Lancaster Road. The ZHB later modified that condition to allow Akiba to construct an outdoor tennis court on the side of the 223 North Highland parcel that faces Melrose Avenue. The ZHB refused to modify the condition to allow Akiba to construct an outdoor basketball court there. The ZHB's decision was affirmed by the Court of Common Pleas of Montgomery County. *Akiba Hebrew Academy v. Lower Merion Township Zoning Board of Adjustment*, 47 Pa. D. & C.2d 171 (Montg. Co. 1969).

6. Akiba subsequently added a gymnasium and classroom building pursuant to the ZHB's grant of a special exception for that purpose in 1974.

7. Over the next 30 years, as described in *Kohelet 2016*, the ZHB granted special exceptions to allow Akiba to expand its educational use on 223 North Highland, as well as to expand its administrative offices onto the adjoining residential property at 280 Melrose.

8. Akiba moved to Radnor Township in 2008. *Kohelet 2016*, Finding of Fact No. 13.

9. In 2010, the ZHB granted The Kohelet Foundation, the entity that owned 223 North Highland at the time, a special exception to expand Akiba's prior use by constructing an addition to the existing education building to house a Beit Midrash, a worship and study space unique to an orthodox Jewish school. The Kohelet Foundation planned to lease the Property to the Stern

Hebrew High School to operate a private high school (grades 9-12) for Judaic and general college preparatory studies. Enrollment in the high school was capped at 180 students. *Appeal of Kohelet Foundation*, No. 4196 (March 18, 2010) (“*Kohelet 2010*”).

10. The ZHB in *Kohelet 2010* conditioned the grant of the special exception on a prohibition on the use of the parcel by parties other than the Kohelet Foundation and Stern Hebrew High School and required that any additional use and/or additional users of the parcels be approved by the ZHB as a special exception. *Id.*

11. In 2015, the Kohelet, the Kohelet Foundation, and an entity known as 284 Melrose LLC jointly filed an application with the ZHB for a special exception to expand the educational activities permitted in *Kohelet 2010* to include the parcel at 284 Melrose Avenue. At the time the application was filed, Kohelet owned 223 North Highland Avenue, The Kohelet Foundation owned 280 Melrose Avenue, and 284 Melrose LLC owned 284 Melrose Avenue. *Kohelet 2016*, Finding of Fact No. 3.

12. The 2015 application proposed to construct two separate additions to the education building on 223 North Highland, to add additional parking, and to increase enrollment at the school (then operating as Kohelet Yeshiva High School) to 360 students by adding grades K-8. The application also proposed to demolish the residential dwellings on 280 Melrose and 284 Melrose and to locate parking and playing fields on those parcels. *Id.*, Findings of Fact Nos. 19-20.

13. The ZHB held 10 public hearings on the application over a period of six months. The ZHB heard testimony from the applicants’ representatives, Township personnel, neighborhood organizations, individual neighbors, and nine expert witnesses. The ZHB also admitted 107 exhibits into evidence. *Kohelet 2016*, Findings of Fact Nos. 22-31.

14. The ZHB granted the application on May 19, 2016, subject to nine specific conditions, including the condition that the applicants consolidate the three parcels into what is now the Property, owned by the Appellant. *Id.*, pp. 44-46.

15. The conditions imposed on the approval in *Kohelet 2016* that are relevant to the present appeal are conditions 1 and 2:

Use: use of the property by parties other than the Applicants and the school is not permitted (except as set forth on Exhibits A-22 and A-29, attached hereto); any additional use and/or additional users of the property must be approved by the Board as a special exception;

Non-student use: guest lectures, Jewish Studies classes and all other approved programs for non-students shall not occur during school hours.

16. By incorporating Exhibit A-22 into the conditions of approval in *Kohelet 2016*, the ZHB permitted: (1) a sports and Judaic studies program during two consecutive four-week periods in the summer - one held for boys and one held for girls (both for ages 7-14); and (2) a sports and Judaic studies program during one week in the winter (for ages 7-18). *Kohelet 2016*, Exhibit A-22

17. Although the participants in the summer and winter programs could include non-students, *Kohelet* was required to operate the programs and participation was limited to 50 children and 10 staff. *Id.*, Finding of Fact No. 48.

18. By incorporating Exhibit A-29 into the conditions of approval in *Kohelet 2016*, the ZHB permitted certain activities that involved non-students and were not directly related to the education of the students at the school: (1) Jewish Studies classes held 36-60 times per year for 5-40 attendees; (2) guest lectures held 6-12 times per year for 25-180 attendees; (3) Holiday prayer services held 3-4 times per year for 150-200 attendees; and (4) Sabbath prayer services held 5 times per year for 150 attendees. *Kohelet 2016*, Exhibit A-29. The ZHB found that these activities

were to be hosted by Kohelet and were part of the “accredited educational use” of the Property. *Id.*, Finding of Fact No. 51.

19. The remaining events listed on Exhibit A-29 and permitted by the ZHB all related directly to the operation of the school by Kohelet, though non-students would be in attendance (open house, parent night, back-to-school dinner, graduation ceremony, fundraisers).

20. At the time of the ZHB’s decisions in *Kohelet 2010* and *Kohelet 2016*, the Township zoning ordinance permitted private educational institutions and non-residential religious uses in all residential districts by special exception. Former Code §§155-11 S(1), S(2) and S(4) (repealed February 26, 2020).¹ The Property was, at all times relevant to those decisions, zoned R1 Residence District.

21. On February 26, 2020, the Township Board of Commissioners (“BOC”) repealed the Township’s zoning ordinance in its entirety and enacted a new zoning ordinance, codified in Chapter 155 of the Lower Merion Township Code (“Zoning Code”).

22. The Zoning Code, for the first time, created institutional zoning districts in Lower Merion Township. Code §155-4.4.

23. Educational uses and religious uses are now regulated largely in separate zoning districts. The Property at issue in this appeal is zoned IE1 Institutional Education District 1 (“IE1 District”).

24. Zoning Code §4.4 B(3) states that the Institutional Education districts are “intended to collectively define sites or buildings operated for the provision of full-time or part-time educational services for students of all ages.” Code §155-4.4 B(3).

¹ Section 11 S of the Former Code regulated uses in RAA Residence Districts. The uses permitted in §11 S were incorporated by reference in the regulations for all other residential districts and the C1 Commercial District.

25. Zoning Code §4.4 B(2) states that the Institutional Civic districts are “intended to collectively define communally beneficial land uses, including but not limited to organizations dedicated to the arts and culture, social and religious use, senior housing, wellness and recreation.” Code §155-4.4 B(2).

26. Religious uses are not permitted in Institutional Education zoning districts. Code Ch. 155 Table 5.2. Uses for Institutions.

27. Zoning Code Table 5.3 expressly permits “cultural and recreational accessory uses” in Institutional Education districts. The Zoning Code does not expressly permit religious uses as accessory uses in Institutional Education districts. Code Ch. 155 Table 5.3. Use Regulations (IE).

The 2022 Conditional Use Application

28. Zoning Code §4.4 C(6) states:

All previous conditions imposed by the Zoning Hearing Board on the approval of institutional uses by special exception and all imposed conditions by the Board of Commissioners by conditional use shall remain in force but may be modified by conditional use.

Code §155-4.4 C(6).

29. On February 25, 2022, Kohelet filed application no. 3896C with the BOC (“2022 CU Application”) for modification of condition no. 1 imposed by the ZHB in *Kohelet 2016* that prohibited use of the Property by parties other than Kohelet (except for the uses identified on Exhibits A-22 and A-29). *See*, CU 3896 Recommendations for Findings of Fact, Conclusions of Law and Order (“2022 CU Recommendations”), ¶17.

30. The 2022 CU Application requested that the BOC allow these additional third-party uses/users: (1) Sabbath services for up to 90 non-driving attendees on Saturdays from 8:30 am to 1:00 pm; (2) evening basketball twice a week for up to 30 persons; and (3) up to five events

annually related to religious services, such as bar/bat mitzvahs, brises and weddings (“life events”), for up to 150 attendees. 2022 CU Recommendations ¶18.

31. Mr. Houchins did not make any determination with respect to the 2022 CU Application.² The 2022 CU Application was reviewed by Jillian Dierks, a Lower Merion Township staff planner at the time. Ms. Dierks wrote a staff report (later supplemented) pertaining to the 2022 CU Application to the Lower Merion Township Planning Commission (“Planning Commission”). Her supplemental report notes that Kohelet reduced its life events request to only bar/bat mitzvahs for up to 100 people, to be held entirely indoors. 2022 CU Recommendations ¶¶20, 23.³

32. The 2022 CU Application was reviewed by the Planning Commission on two separate occasions. 2022 CU Recommendations ¶¶21, 24. By the second such occasion, Kohelet had completely withdrawn its request to allow five life events on the Property in response to the concerns of the neighbors:

Applicant withdrew its request for special religious events like weddings, bar/bat mitzvahs and brises after learning neighbors were concerned about spillage from these events adversely affecting them. Alan Joffe, the Executive Director of Kohelet, testified he heard the neighbors’ concerns and was sensitive to them, leading to Kohelet withdrawing its request for special religious events from its conditional use application.

2022 CU Recommendations, pp. 27-28.

33. On May 16, 2022, Conditional Use Hearing Officer Pamela M. Loughman, Esq. (“CU Hearing Officer”) heard testimony on the 2022 CU Application.

² The Zoning Code requires that the Zoning Officer refer conditional use applications to the Planning Commission and the Board of Commissioners. Code §155-11.1 E(5).

³ The Zoning Code requires the BOC to request an advisory opinion from the Planning Commission on all conditional use applications. Code §155-11.1 F(9)(b).

34. At the hearing, Ms. Dierks explained that the BOC established separate institutional districts and also reserved the power to modify ZHB conditions attached to special exceptions subject to BOC jurisdiction (through conditional use) because of community concerns with third-party use of educational properties that were located in residential neighborhoods: — — — — —

Kohelet's current uses were approved in 2016 under old zoning code. The new zoning code looks at third party uses slightly differently which is why there is a conditional use process and rather than a return to the ZHB. The Township's Comprehensive Plan takes very seriously third party uses on institutional uses and educational uses embedded within residential neighborhoods. There are community concerns with the ability of people to utilize properties in different ways than was originally intended. As a result, the new zoning code created institutional districts and provided the conditional use process for modifying previously approved uses and conditions.

2022 CU Recommendations ¶29.

35. CU Hearing Officer issued the 2022 CU Recommendations to the BOC. She recommended that the BOC modify the ZHB's third-party use restriction in *Kohelet 2016*, to allow: (1) Sabbath services for up to 90 attendees on Saturdays from 8:30 am to 1:00 pm, with attendees not permitted to drive to services; and (2) evening basketball pick-up games for up to 30 adults, twice a week, no later than 10 pm entirely indoors, with basketball leagues and tournaments prohibited. 2022 CU Recommendations, p. 29.

36. The CU Hearing Officer recommended that the modifications be subject to additional conditions that: (1) Kohelet attend a meeting with the Merion Civic Association and the Neighborhood Club of Bala Cynwyd annually; and (2) Kohelet work with staff, the adjacent property owners and SEPTA to install a bus shelter at the intersection along Old Lancaster Road. 2022 CU Recommendations, p. 30.

37. On August 1, 2022, the BOC accepted the CU #3896 Recommendations as the Findings of Fact and Conclusions of Law of the BOC and entered an order accordingly. See, Board of Commissioners Resolution No. 2022-22, August 1, 2022.

The 2025 Conditional Use Application and the Zoning Officer's Determination

38. On January 21, 2025, the Appellant, as lessee of certain designated portions of the Property, filed application no. 3927C with the BOC ("2025 CU Application") for modification of condition no. 1 imposed by the ZHB in *Kohelet 2016* and modified by the BOC in the 2022 CU Recommendations.

39. The 2025 CU Application requested that the Appellant be permitted to conduct the following religious activities on the Property:

- a. Sabbath prayers on Saturday morning weekly, from 8:30 AM to 1:00 PM, for no more than 200 attendees. Attendees will not drive.
- b. Sabbath Evening Prayers on Fridays and Saturdays, beginning one hour before sundown, for a maximum of 3 hours weekly for no more than 150 attendees. Attendees will not drive.
- c. Holiday Prayer Service, beginning one hour before sundown, for a maximum of 3 hours no more than 13 times per year for no more than 200 attendees. Attendees will not drive.
- d. life event celebrations such as b'nai mitzvot or brisses no more than 6 times per year for a maximum of 300 attendees. Attendees will walk if held on Sabbath or Holiday and may otherwise drive.
- e. Selichot Prayers at 10:00 P.M., for a maximum of two hours, no more than 5 nights per year for no more than 50 attendees. Attendees will mainly walk but may drive.
- f. Daily Morning Prayers (other than Saturday) beginning 45 minutes prior to astronomical sunrise for under an hour for no more than 50 attendees. Attendees will mainly walk but may drive.

40. On January 31, 2025, Mr. Houchins issued a determination to the Appellant stating:

The proposed expansion of use will require additional parking which will need to be demonstrated. In addition, it is my opinion the expanded use does not qualify as an Institutional Accessory use. The proposed new use is not subordinate or dependent on the existence of the primary use, therefore, would be a new primary

use. The property is zoned IE1 which does not permit religious use. Leasing the property to a separate religious organization constitutes a separate religious use. Only with Zoning Hearing Board approval would a second primary religious use be permitted on an IE1 zoned property.

[Zoning Officer Determination, January 31, 2025; *see also*, N.T. p. 9]

41. The Appellant subsequently met with Mr. Houchins⁴ after which he issued a second determination on February 26, 2025. That determination stated:

After careful consideration, it is my opinion the expansion of the Saturday Sabbath prayers offered by The Merion Stiebel from 90 attendees to 200 attendees and the increase of Holiday Prayers from 3-4 times a year to 13 times a year for no more than 200 attendees is acceptable as an institutional accessory use to Kohelet Yeshiva High School. However, the addition of the other proposed uses listed in the [2025 CU Application] would be considered a separate religious principal use due to the increase in hours of operation and number of participants utilizing the property. Only with Zoning Hearing Board approval would a second principal religious use be permitted on an IE1 zoned property.

Zoning Officer Determination, February 26, 2025.⁵

42. The Appellant, through its counsel Rebecca W. Geiser, Esq., appealed that determination to this ZHB on March 26, 2025 ("Appeal").

43. The letter from Ms. Geiser that accompanied the Appeal included the following statements:

[Appellant] has decided to pursue the zoning appeal for the determination issued by the Township dated February 26, 2025, and to the extent necessary, the determination issued January 31, 2025. Please accept this letter as a request that the Zoning Hearing appeal for the zoning determinations dated January 31, 2025, and February 26, 2025, be scheduled before the Lower Merion Township Zoning Hearing Board.

44. The Appellant did not appeal from Mr. Houchins' January 31, 2025 determination until filing the present Appeal on March 26, 2025.

⁴ The substance of that meeting is not in the record in this Appeal.

⁵ The determination is included in the Zoning Officer's Memorandum to the ZHB in this Appeal.

45. The Appeal requests that the ZHB find that the uses requested in the 2025 CU Application are permitted as “institutional accessory uses,”⁶ with the following modifications to those requested uses:

Usage of the Shtiebel on Friday and Saturday evenings, as well as for life event celebrations:

For Friday night and Saturday night, beginning one hour before sundown, the [Appellant] usage is less than 60 people and for less than 1.5 hours. Attendees will not drive.

life event celebrations

life event celebrations such as b'nai mitzvot or brisses no more than 6 times per year for a maximum of 300 attendees. Attendees will include Kohelet students or their families. The life event celebrations will be held on Sabbath or Holiday and attendees will not drive.

Appeal ¶6.

The Hearing on the Appeal

46. The ZHB held a hearing on the Appeal on July 31, 2025.

47. Ms. Geiser represented the Appellant and presented four witnesses: Jen Groen, Kohelet’s Executive Director; Avi Weiner, Appellant’s board president; Diane Fenner-Zwillenberg, a former Kohelet board president and one of Appellant’s founders; and Rabbi Itamar Rosensweig, Appellant’s Rabbi. Ms. Geiser also offered two exhibits into evidence, which the ZHB accepted without objection: a lease between Kohelet and the Appellant (Exhibit A-1) and a photograph of the beit midrash at the high school on the Property (Exhibit A-2).

⁶ The Zoning Code defines “institutional accessory use” as “A use that is secondary to, subordinate to, customarily incidental to, or dependent on the existence of the primary institutional use; does not alter the character of the property in respect to its primary use; inhabits the structures and facilities of the primary use or its own facility; and conforms to all regulations applicable to the primary use. This may include, for example, occasional or seasonal events such as: vacation-time camps; programming; fairs; conferences; off-campus user sports events; and multischool competitive sports and playoffs.” Code §155-2.1 (INSTITUTIONAL ACCESSORY USE).

48. Four neighbors of the Property testified in opposition to the Appeal: Mr. Leslie Greenberg, a member of the board of the Merion Civic Association; Ms. Karla Moras, also a member of the board of the Merion Civic Association; Ms. Rosalind Seiden; and Ms. Alicia Ludwig. Mr. Greenberg also introduced a letter from the Merion Civic Association in opposition to the Appeal, which the ZHB admitted without objection. That letter was inadvertently marked as Exhibit A-3 rather than as an objector exhibit.

49. At the outset of the hearing, Ms. Geiser noted that Mr. Houchins had determined that (1) the increase in maximum attendance at the Saturday morning Sabbath prayers from 90 (permitted by the BOC in 2022) to 200; and (2) modifying the ZHB's condition in *Kohelet 2016* on Holiday prayer services to allow a maximum of 13 services a year (up from 4 permitted by the ZHB) with the same maximum attendance of 200 were both acceptable as institutional accessory uses and the appellant was not appealing that part of Mr. Houchins' determination. [N.T. pp. 10-14]

50. Ms. Geiser also stated that the Appellant was withdrawing its appeal from Mr. Houchins' determination with respect to the Selichot Prayers and the daily morning prayers. [*Id.*]

51. The Appeal, therefore, asks the ZHB to reverse Mr. Houchins' determination with respect to the Sabbath prayers on Friday and Saturday evenings and the life event celebrations. [*Id.* at 12-13]

52. Ms. Groen testified that Kohelet is a Modern Orthodox Yeshiva Jewish School. It draws students from Lower Merion, Allentown, Northeast Philadelphia, Bucks County and Cherry Hill, New Jersey. [N.T. pp. 18, 48]

53. Ms. Groen described the Appellant as a "congregation" of Modern Orthodox Jewish families that worship, pray and sometimes study together. She believed that allowing the

Appellant to increase its use of the Property would be an opportunity for Kohelet to be a good neighbor with the Modern Orthodox community. [N.T. pp. 20, 41]

54. When she was asked about a connection between the Kohelet curriculum and the Appellant's use of the Property, Ms. Groen stated that, while both Kohelet and the Appellant pray and study on the Property, the Appellant's activities are separate from the activities of Kohelet's students. [N.T. pp. 31-32]

55. Ms. Groen testified that the primary space that the Appellant would use for its worship is the high school beit midrash. That use would be only when the school is not in session. [N.T. pp. 33-38; Exhibit A-2, Photo of Beit Midrash]

56. The beit midrash has a capacity of 280. [N.T. p. 44]

57. In response a ZHB question as to how the Appellant's use of the Property in the last three years has benefited Kohelet, Ms. Groen stated that, for the Kohelet students whose families are also part of the Appellant's congregation, the arrangement makes them feel more connected to the school. [N.T. pp. 45-46]

58. About ten percent of Kohelet families belong to the Appellant's congregation. [N.T. pp. 47-48]

59. As for the community at large, Ms. Groen believed that the arrangement may have helped Kohelet with "public relations," [N.T. p. 46]

60. Mr. Weiner, the president of the Appellant's board, described the Appellant as a prayer group that gets together to pray, sing and learn. [N.T. p. 55]

61. He testified that the Appellant was asking to expand its religious use on the Property because they've grown "a little bit" and Kohelet offers a beautiful place to pray. According to Mr.

Weiner, members of the congregation feel disjointed praying in multiple locations for the 25-hour Sabbath. [N.T. pp. 58-60]

62. When asked if he considered Kohelet a school or a place of worship or both, Mr. Weiner testified that it is primarily a school, but schools are places of worship in Modern Orthodox Judaism. [N.T. p. 61]

63. Mr. Weiner felt that although Kohelet is a school, it was important for the Appellant to worship there because the Kohelet beit midrash had Torah scrolls that are integral to prayer services. [N.T. pp. 79-81]

64. With regard to the requested increase in maximum attendance for Saturday morning Sabbath prayers from 90 to 200, Mr. Weiner testified that he thought the number was reasonable, although the Appellant is not currently turning anyone away at its services. [N.T. pp. 65-66] He stated that, generally, fewer people come out for Sabbath prayer services on Friday and Saturday evening. [See, N.T. pp. 69-73]

65. As for the life event celebrations, the Appellant was asking for a maximum of 300 attendees, which exceeds the capacity of the beit midrash, but it made sense to Mr. Weiner to revise the request to a maximum of 280. [N.T. pp. 75-77] He testified that currently, the Appellant's life event celebrations are held at other synagogues, but that is "uncomfortable . . . it doesn't feel like home, which is one of the reasons that we wanted to, you know, put that in there." [N.T. pp. 84-85]

66. Near the conclusion of Mr. Weiner's testimony, Ms. Geiser agreed that the Applicant's request for Friday and Saturday evening prayer services should be amended to reflect the reduced numbers that the Appellant requested in the Appeal to the ZHB: maximum of 60 attendees for a maximum of 1.5 hours. [N.T. pp. 90-91; Appeal to the ZHB, ¶6]

67. Ms. Fenner-Zwillenberg testified that she is involved with the Appellant as a co-founder, and with Kohelet as a board member and former president of the board. [N.T. pp. 102-106]

68. She stated that the Appellant started (with no official name) as a small neighborhood group that met outside in the middle of the COVID pandemic for prayer services. The group wanted to stay “really small” and remained so over the next two years, turning away people who wanted to join. By 2022, Ms. Fenner-Zwillenberg testified, the group wanted to move indoors and accommodate some of the people who wanted to participate, but “we’re still talking about a small number of people.” [N.T. pp. 103-104]

69. She also testified to the desirability of Kohelet as the site for the Appellant’s worship services. She stated that the Property is centrally located to the congregation, the beit midrash is “magnificent,” there are prayer books and Torah scrolls available, and Kohelet already has a security crew and maintenance staff. [N.T. pp. 107-109]

70. Ms. Fenner-Zwillenberg believed that the Appellant’s expanded use of the Property would help Kohelet’s exposure and enable it to attract donors and students. [N.T. pp. 112-113] She also felt that Rabbi Rosensweig, who teaches classes for the Appellant, is a dynamic speaker and a benefit to those Kohelet students who attend his talks. [N.T. pp. 110-112]

71. As for the requested increase in maximum permitted attendees at worship services, Ms. Fenner-Zwillenberg saw those numbers as “more aspirational,” and they go “beyond what we were thinking - thinking we would have.” The Appellant has been “keeping a low profile,” according to Ms. Fenner-Zwillenberg, but if the request were granted, the Appellant could speak to people “a little bit louder” and grow the congregation. [N.T. pp. 115-116]

72. Rabbi Rosensweig teaches at Yeshiva University in New York City and is an arbitrator for the Beth Din of America there. In Lower Merion, he serves as the Appellant's rabbi and gives presentations to the Kohelet students several times a year, though he is not a part of Kohelet's faculty. [N.T. pp. 123-126]⁷

73. Rabbi Rosensweig was asked to explain the difference between the Appellant's use of the Property and a synagogue. He stated that a synagogue has "more bells and whistles and a more extravagant service." The Appellant, he stated, is more focused on the substance of prayer and the weekly Torah portion of the service. [N.T. pp. 127-128]

74. The Rabbi agreed with Ms. Fenner-Zwillenberg that the Appellant wants to remain a small congregation, but life Cycle events would draw from the entire Lower Merion community:

So, for example, bar mitzvah, someone's kid is turning 13, then we get mobbed with like the whole community comes. Because even though there's no overlap of the kids in the same school, everyone has some overlapping piece. So, it's true that maybe in our normal services we're pretty tight knit, but then you have these like, blowout weekends when something --- someone's having a celebration.

[N.T. p. 136] He noted though, that the Appellant did not want to be out of compliance with the zoning ordinance. [*Id.*]

75. Rabbi Rosensweig described what he considered to be the desirability of the Property for the Appellant's congregation. He stated that the Appellant would not worship there if Kohelet was not there. He believed that it would be a waste of the Kohelet space if the Appellant did not use it for its worship services. He cited Ms. Fenner-Zwillenberg's testimony to support the claim that the Appellant's proposed use of the Property was part of Kohelet's vision for the site all along. [N.T. 139-140]

⁷ The ZHB's decision in *Kohelet 2016* permits "guest lectures" 6-12 times a year for up to 180 attendees and "Jewish studies classes" 36-60 times a year for up to 40 attendees both as part of the educational use of the Property. *Kohelet 2016*, Finding of Fact No. 51 and Exhibit A-29.

76. Unlike the worship services for the Appellant's congregation, the life event celebrations at the Property would involve non-members of the congregation from the wider Lower Merion community, an unknown number of whom would drive to the Property.

77. None of the Appellant's witnesses provided evidence that the life event celebrations would be accessory uses to the educational use of the Property.

78. Mr. Greenberg is on the board of the Merion Civic Association ("MCA"). He testified that the MCA opposes the expansion of the Appellant's religious use of the Property. He believed that the Appeal is a "roundabout way to create a synagogue" and opposed the Appeal on his own behalf as well. [N.T. 155-156]

79. Mr. Greenberg also stated that the ZHB members were not experts in Jewish law and could be swayed by emotional appeals. The ZHB noted that it would decide the matter based on the Zoning Code. [N.T. 173-174]

80. Ms. Moras is also on the board of the MCA and opposed the Appeal. She supported Mr. Houchins' decision and stated her belief that the Appeal is inconsistent with the creation of institutional zoning districts in 2020, which separated educational uses from religious uses. [N.T. 161-163]

81. Ms. Moras also expressed her concern that the Appellant had not proposed to the MCA and the neighborhood residents any mechanism to enforce the limits on the requests that the Appellant made in the 2025 CU Application. [N.T. 167-168]

82. The Appellant is subject to a condition imposed by the BOC in the 2022 CU Recommendations that it meet with the neighborhood civic organizations annually to address, among other things, compliance with prior decisions of the ZHB and the BOC.

Board of Commissioners Resolution No. 2022-22, August 1, 2022. Actual enforcement of ZHB decisions is the province of Township staff.

83. Ms. Seiden testified that the major concern of the MCA members and Merion residents was the life cycle events - large events being held in the evenings. [N.T. pp. 176-177]

84. Ms. Ludwig agreed with Ms. Moras' concern that the Appellant did not know how attendance at the various proposed events would be monitored. She also felt that the Appellant's proposed religious use of the Property was inconsistent with Kohelet's educational use. [N.T. pp. 179-180]

85. On September 9, 2025, per the request of the ZHB at the close of the hearing, the Appellant submitted a memorandum of law to the ZHB, with proposed findings of fact.

86. The Appellant granted the Board an extension of time through November 20, 2025 within which to render a decision on the Appeal.

CONCLUSIONS OF LAW

1. The ZHB has jurisdiction of the Appeal pursuant to §909.1(a)(3) of the Municipalities Planning Code ("MPC") and §11.2 B(1)(a)[2] of the Zoning Code as an appeal from the determination of the Zoning Officer. 53 P.S. §10909.1(a)(3); Code §155-11.2 B(1)(a)[2].

2. The Zoning Code does not permit religious uses in the IE1 District. Code Ch. 155 Table 5.2. Uses for Institutions.

3. To be permitted on the Property, the collection of religious activities proposed in the Appellant's 2025 CU Application must meet the definition of an institutional accessory use. Code §155-2.1 (INSTITUTIONAL ACCESSORY USE).

4. The Appellant's March 26, 2025 Appeal from the January 31, 2025 determination of the Zoning officer was untimely. 53 P.S. §10914.1(b).

5. Mr. Houchins' January 31, 2025 determination that the collection of religious activities proposed in the Appellant's 2025 CU Application is not an "institutional accessory use" to the educational use of the Property is binding and unappealable. *In re Provco Pinegood Sumneytown, LLC*, 216 A.3d 512, 518 (Pa. Cmwlth. 2019).

6. Mr. Houchins' February 26, 2025 determination letter constituted a new appealable determination that two of the religious activities proposed in the Appellant's 2025 CU Application constituted an "institutional accessory use" to the educational use of the Property.

7. The following religious activities proposed by the Appellant to occur on the Property constitute an institutional accessory use to the educational use of the Property:

- a. an increase in the maximum number of attendees at Saturday morning prayer services from 90 to 200, with the attendees to not drive;
- b. an increase in holiday prayer services from 3-4 times a year to 13 times a year, with the maximum number of attendees to remain at 200 as permitted in *Kohelet 2016*, with the attendees not to drive;
- c. the addition of Sabbath prayer services on Friday and Saturday evenings for less than 60 attendees for less than 1.5 hours, with attendees to not drive.

8. The addition of the life event celebrations as described at the hearing to the collection of religious activities listed in Conclusion of Law No. 7 would render the Appellant's religious use of the Property no longer accessory to Kohelet's educational use.

9. The Zoning Code permits religious uses as of right in the following zoning districts: Institutional Civic; Neighborhood Center; Village Center; and Town Center. The Zoning Code permits religious uses by special exception in the following districts: Low Density Residential; Medium Density Residential; and Bryn Mawr Village. Code Ch. 155 Table 5.1. Uses.

10. The Appellant failed to allege in its Appeal or at the hearing on the Appeal that the failure to grant the requested relief would violate the Appellant's religious freedom under the Religious Land Use and Institutionalized Persons Act (RLUIPA). Any such claim now is waived or is denied as "ill-developed." *Allentown Victory Church v. City of Allentown*, No. 22-2817, 2024 WL 3439772 *6 (3d Circuit, July 17, 2024).

OPINION

The ZHB's Jurisdiction

This Appeal comes before the ZHB in an unusual procedural posture. Traditionally, the ZHB had the power to modify conditions that it attached to the grant of special exceptions. Indeed, the ZHB exercised that power over the Property at issue in this case more than fifty years ago when we modified the conditions on the original special exception to Akiba to operate a private school on the Property involved in this Appeal. We allowed outdoor tennis, but not outdoor basketball, given the difference in impacts of those activities on the neighborhood. *Akiba Hebrew Academy v. Lower Merion Township Zoning Board of Adjustment*, 47 Pa. D. & C.2d 171 (Montg. Co: 1969).⁸

The Zoning Code, however, now places that power in the BOC - insofar as institutional uses are involved. Code §155-4.4 C(6). Consequently, in the case of the Appellant's 2022 CU Application, the question of whether the requested modification of the ZHB's *Kohelet 2016* conditions was warranted as an "institutional accessory use" was decided by the BOC, not by us (and not by Mr. Houchins). We pause here because the Appellant claims that when a conditional use application is pending before the BOC, the ZHB is "the sole and final authority to decide whether a use is accessory." Appellant's Proposed Findings of Fact, Legal Discussion, and

⁸ See also, *German v. Zoning Board of Adjustment of the City of Philadelphia*, 41 A.3d 947 (Pa. Cmwlth. 2012) (Court provides a comprehensive review of the grounds for modifying conditions).

Conclusions of Law, p. 18.⁹ We disagree. Nothing in the MPC or the Zoning Code gives the ZHB the authority to determine whether a use is accessory when a conditional use is pending. The only way the ZHB can exercise that authority is when, as in the present case, the zoning officer makes a “determination” with respect to the accessory use. So, in this case, the accessory nature of the Appellant’s proposed use is before the ZHB solely because Mr. Houchins made a determination of the kind he did not make in the case of the 2022 CU Application. It is that determination that is the subject of our exclusive jurisdiction. 53 P.S. §10909.1(a)(3); Code §155-11.2 B(1)(a)[2].

That is not to say that the ZHB has the power to modify its *Kohelet 2016* conditions to permit the Appellant’s requested expanded religious uses, but merely that, in this instance, we have the exclusive jurisdiction to whether the uses proposed in the 2025 CU Application constitute an “institutional accessory use” to Kohelet’s educational institution. While our decision on that legal issue may be binding on the BOC in its conditional use hearing, it does not compel the BOC to modify the conditions we imposed in *Kohelet 2016* and allow the Appellant’s requested uses, bearing in mind that those 2016 conditions expressly precluded third parties from conducting religious activities on the Property.

The Appellant’s Failure to Timely Appeal the January 31 Determination

Section 914.1(b) of the MPC provides that “All appeals from determinations adverse to the landowners shall be filed by the landowner within 30 days after notice of the determination is issued. 53 P.S. §10914.1(b).¹⁰ The Appellant did not appeal Mr. Houchins’ January 31, 2025

⁹ The Appellants cite *In re Thompson*, 896 A.2d 659 (Pa. Cmwlth. 2006) as authority for its claim, offering a purported quotation from that case in support. *In re Thompson* did not even involve a zoning officer or a zoning board; and the quotation does not appear in the opinion. The case actually stands for the proposition that the Township governing body can determine the meaning of the zoning ordinance in a conditional use application.

¹⁰ “Landowner” includes “a lessee if he is authorized under the lease to exercise the rights of the landowner.” 53 P.S. §10107(a) (“Landowner”). At the hearing in this matter, Ms. Groen, Kohelet’s representative, stated that Kohelet supported the Appellant’s Appeal. [N.T. pp. 25-29] The lease between Kohelet and the Appellant grants the Appellant access to the Property for the uses at issue in this Appeal. [Exhibit A-1, pp. 2-4]

determination until Ms. Geiser submitted her letter accompanying the Appeal filed on March 26, wherein she stated:

[Appellant] has decided to pursue the zoning appeal for the determination issued by the Township dated February 26, 2025, and to the extent necessary, the determination issued January 31, 2025. Please accept this letter as a request that the Zoning Hearing appeal for the zoning determinations dated January 31, 2025, and February 26, 2025, be scheduled before the Lower Merion Township Zoning Hearing Board.

Letter dated March 26, 2025, Geiser, Esq. to Mr. Houchins (emphasis added).

The Appeal, insofar as it sought review of the January 31 determination, was untimely under MPC §914.1(b). “Failure to appeal a zoning officer’s determination within 30 days results in the determination becoming binding and unappealable. *In re Provco Pinegood Sumneytown, LLC*, 216 A.3d 512, 518 (Pa. Cmwlth. 2019) (emphasis added).

Mr. Houchins’ January 31 determination stated, in part:

[I]t is my opinion the expanded use [i.e., the 2025 CU Application] does not qualify as an Institutional Accessory use. The proposed new use is not subordinate or dependent on the existence of the primary use, therefore, would be a new primary use. The property is zoned IE1 which does not permit religious use. Leasing the property to a separate religious organization constitutes a separate religious use.

January 31, 2025 Letter to the Appellant. That determination is “binding and unappealable.” *In re Provco, supra*. The ZHB, therefore, holds that the uses described in the Appellant’s 2025 CU Application do not meet the Zoning Code’s definition of “institutional accessory use.”

The Appeal from the February 26 Determination

Mr. Houchins issued a second determination on February 26, 2025. In it, he stated:

After careful consideration, it is my opinion the expansion of the Saturday Sabbath prayers offered by The Merion Stiebel from 90 attendees to 200 attendees and the increase of Holiday Prayers from 3-4 times a year to 13 times a year for no more than 200 attendees is acceptable as an institutional accessory use to Kohelet Yeshiva High School. However, the addition of the other proposed uses listed in

the [2025 CU Application] would be considered a separate religious principal use due to the increase in hours of operation and number of participants utilizing the property. Only with Zoning Hearing Board approval would a second principal religious use be permitted on an IE1 zoned property.

Zoning Officer Determination, February 26, 2025.

In exercising our jurisdiction over appeals from determinations of the Zoning Officer, the Zoning Code gives the ZHB the authority to “Reverse or affirm, wholly or in part, or modify the . . . determination appealed from” and to “Make such order, requirement, decision or determination as ought to be made. Code §155-11.2 B(2)(a) and (b). We affirm Mr. Houchins’ February 26 determination in part and in reverse in part.

In assessing whether the uses proposed in the Appellant’s 2025 CU Application amount to an “institutional accessory use,” we begin by observing that the question is not whether any one of the individual religious activities listed in that Application is, standing alone, an “institutional accessory use” to an educational institution. The question before the ZHB is whether the religious use represented by the combined activities described in the Application is an “institutional accessory use.”

We are guided in answering that question by the Commonwealth Court’s summary of the law in *Hess v. Warwick Township Zoning Hearing Board*, 977 A.2d 1216 (Pa. Cmwlth. 2009). In *Hess*, the landowner claimed that keeping 21 dogs on their property as pets was accessory to the owner’s residential use. While acknowledging that keeping dogs as pets is certainly customarily incidental to a residential use, the Court relied on a number of factors to find that keeping 21 dogs as pets is not. The Court engaged in a thorough examination of the cases that explored whether a use was “customarily incidental” to a principal use. It then summarized:

The term “customarily incidental” can neither be ignored as meaningless nor can it be subjected to proof in each case by some standard quantum of empirical evidence that has not been and probably cannot be articulated. The proper application of

“customarily incidental” in any particular case must respect the need for an understandable legal standard and yet allow for the flexibility necessary to the term’s reasonable application in a variety of circumstances....

“Customarily incidental” is best understood as invoking an objective reasonable person standard. Under this standard, we may look not only at how frequently the proposed accessory use is found in association with the primary use (if such evidence is available, it certainly is relevant) but also at the applicant’s particular circumstances, the zoning ordinance and the indications therein as to the governing body’s intent regarding the intensity of land use appropriate to the particular district, as well as the surrounding land conditions and any other relevant information, including general experience and common understanding, to reach a legal conclusion as to whether a reasonable person could consider the use in question to be customarily incidental. This approach respects the need for an understandable legal standard and the flexibility that is a necessary component of the analysis.

Id. at 1224 (emphasis added). Based on this standard, we affirm Mr. Houchins’ determination that the religious use of the Property by the Appellant for Saturday morning Sabbath prayers and Holiday Prayers is an institutional accessory use.

The BOC already approved the Saturday morning Sabbath prayers for no more than 90 attendees with attendees not permitted to drive as an institutional accessory use of the Property. Board of Commissioners Resolution No. 2022-22, August 1, 2022.¹¹ The Appellant proposes in this Appeal to merely increase the maximum number of attendees at those services to 200. Given that the attendees will not drive and that the activity will be entirely within the beit midrash, we see no qualitative difference between the request in this Appeal and the request approved by the BOC in 2022. We find significant in this regard not only that the attendees will not drive, but that the Appellant’s witnesses testified that the requested maximum attendance limit is “more aspirational,” and that their group wants to remain small. [e.g., N.T. pp. 103-105, 115-116, 182] As for the Holiday prayers, the ZHB already approved that activity (although hosted by Kohelet) for up to four times a year for 200 attendees. *Kohelet 2016*, Finding of Fact No. 48. We find that

¹¹ The ZHB also found Sabbath prayer services (conducted by Kohelet) five times a year to be part of the educational use of the Property in *Kohelet 2016*.

the addition of nine more days a year to those services is also not qualitatively different from what we found in *Kohelet 2016* to be part of the educational use of the Property. And so in applying the standard in *Hess*, we consider the limited number of attendees, the small size of the Appellant's congregation, the prohibition on driving to the Property, and Kohelet's role in providing security and we find that a reasonable person could conclude that in this particular circumstance, the use of the Property by the Appellant for Saturday morning Sabbath prayers and 13 Holiday prayer services is customarily incidental to the use of the Property as an educational institution.

With regard to the Friday and Saturday evening Sabbath prayer services, we reverse Mr. Houchins' determination. In fairness to Mr. Houchins, the Appellant amended its request in regard to those services after he made his determination. At the hearing the activity was reduced by the Appellant from three hours for 150 attendees to 1.5 hours for 60 attendees. [N.T. pp. 90-91] We find that the addition of this activity to those religious activities already discussed does not change our characterization of the Appellants' overall religious use of the Property as customarily incidental to use of the Property as an educational institution. First, we already approved Sabbath prayer services on the Property (with no distinction between Friday and Saturday or morning and evening) five times a year for up to 150 attendees in *Kohelet 2016*, again as part of the educational use of the Property. And, as already noted, the BOC approved as a modification to *Kohelet 2016* Saturday morning Sabbath prayer services for up to 90 attendees. We also accept the testimony of the Appellant's witnesses that the "full" 25-hour Sabbath prayer service includes Friday and Saturday evening, and that "a lot of people don't come out" for the afternoon/evening services compared to the Saturday morning services. [e.g., N.T. pp. 59-60, 69-72]

To summarize, the ZHB finds that the combined religious activities of (1) Saturday morning Sabbath prayer services from 8:30 am to 1:00 pm for no more than 200 attendees; (2)

Friday and Saturday evening Sabbath prayer services for less than 1.5 hours for less than 60 attendees; and (3) Holiday prayer services beginning one hour before sundown, lasting no more than three hours, for no more than 200 attendees is an institutional accessory use to the use of the Property as an educational institution.

In all other respects, we affirm Mr. Houchins' February 26, 2025 determination. To be clear, that means that the addition of the life event celebrations, Selichot prayers, and daily morning prayers would cause the Appellant's religious use of the Property to no longer be an institutional accessory use, but would render it a principal religious use of the Property, prohibited by the Zoning Code. Code Ch. 155 Table 5.3. Uses for Institutions. We note that the Appellant withdrew its appeal as to the Selichot prayers and the daily morning prayers. Mr. Houchins' February 26, 2025 determination is, therefore, binding with regard to those activities in any event. With specific regard to the life event celebrations, we find that the addition of those activities to what we have already found to be accessory would alter our characterization of the Appellant's overall use of the Property as "customarily incidental" to Kohelet's educational use. The Appellant's Appeal to the ZHB modified somewhat the 2025 CU Application's description of the proposed celebrations. The 2025 CU Application states that life event celebrations would be no more than six times a year for a maximum of 300 attendees, and that attendees "will walk if [celebrations are] held on Sabbath or Holiday and may otherwise drive." The Appeal states that "Attendees will include Kohelet students or their families" and that the celebrations will be held on Sabbath or Holiday and attendees will not drive. Appeal, ¶6. We observe that this amended description of the celebrations does not explicitly limit attendees to Kohelet students or families. Even more importantly, Rabbi Rosensweig testified at the hearing that the entire Lower Merion community would come to the celebrations:

So, for example, bar mitzvah, someone's kid is turning 13, then we get mobbed with like the whole community comes. Because even though there's no overlap of the kids in the same school, everyone has some overlapping piece. So, it's true that maybe in our normal services we're pretty tight knit, but then you have these like, blowout weekends when something --- someone's having a celebration.

[N.T. p. 136] Based on this testimony, we find that life event celebrations would involve up to 280 attendees¹² from the "whole community." And the Appellant has no mechanism to compel those attendees to walk to the Property. This, along with the factors we discuss below, leads the ZHB to conclude that adding the life event celebrations to the other religious activities that the Appellant proposes to engage in would cause the Appellant's use to no longer be an institutional accessory use to the educational use on the Property.

Our first consideration is the material difference between the services that the Appellant's small congregation would attend, and the celebrations that are open to the community. As Rabbi Rosensweig stated, "it's true that maybe in our normal services we're pretty tight knit, but then you have these like, blowout weekends when something --- someone's having a celebration." [N.T. p. 136] *Cf.*, *Mitchell v. Zoning Hearing Board of the Borough of Mt. Penn*, 838 A.2d 819 (Pa. Cmwlth. 2003) (accessory use of elementary school gym held not include other students in the district or the neighboring community). Second, the ZHB is mindful of the substantial changes made when the BOC amended the zoning ordinance in 2020. Whereas under the former ordinance religious uses and "private educational institutions" were both permitted by special exception in every residential district in the Township (and some others as well), under the new Zoning Code there is only one zoning district where both private schools (by conditional use) and religious uses (by special exception) can be lawfully located: the Bryn Mawr Village 2 District. Code Ch. 155 Table 5.1. Uses. And while religious uses can be located as of right or by special exception in 18

¹² At the hearing, the number of attendees at these celebrations was reduced from 300 to 280 to reflect the maximum capacity of the beit midrash. [N.T. pp. 75-77]

zoning districts, private schools are permitted as of right in three (the Institutional Education Districts) and by conditional use in one (Bryn Mawr Village 2). This is evidence that after 90 years of experience with the former zoning ordinance and the ZHB's interpretation of that ordinance, the BOC intended to change the landscape for the interaction between private schools and religious uses. Third, there was no evidence produced at the hearing to prove that it is customary to have third-party religious services and third-party "life event celebrations" at a K-12 private school.¹³ Based on these factors, and guided by the discussion in *Hess* of how to apply them, we reiterate our conclusion that no reasonable person would consider the Appellant's combined religious activities to be customarily incidental to a K-12 private school. Thus, adding the life event celebrations to the other religious activities that the Appellant proposes to engage in would cause the Appellant's use to no longer be an institutional accessory use to the educational use on the Property.

In sum, the ZHB interprets Mr. Houchins' January 31, 2025 determination to mean that the combination of all the religious activities proposed in the Appellant's 2025 CU Application constitute a prohibited principal religious use of the Property. As we have held, that determination is binding. Likewise, we interpret Mr. Houchins' February 26, 2025 determination to mean that the combination of Friday and Saturday evening Sabbath prayers, life event celebrations, Selichot

¹³ We note that the Appellant's legal memorandum to the ZHB on the accessory use and "customarily incidental" issues contains a number of miscitations and mischaracterizations of caselaw. *Brickstone Realty Corporation*, 789 A.2d 333 (Pa. Cmwlth. 2001) is cited for the proposition that a "school's use of property for after-hours community meetings and events was accessory." *Brickstone* involved a special exception request to locate a hotel in a commercial district, not accessory uses; and the quoted passage does not appear in the opinion. Appellant cites *Appeal of Hoover*, 607 A.2d 290, 292 (Pa. Cmwlth. 1992) as holding that "An accessory use is one which is subordinate and customarily incidental to the principal use of the property. The test is not one of absolute necessity, but rather reasonable association with the principal use, established by common, habitual, and long practice." Not only is the citation to the case wrong (it should be 608 A.2d 607), but the quote does not appear at all in the case, which deals with an appeal from a permit for a sewage treatment plant. Finally, the Appellant cites *Bailey v. Zoning Board of Adjustment*, 801 A.2d 492, 497 (Pa. Cmwlth. 2002) as holding that an accessory use "need not be indispensable, but must be commonly, habitually, and by long practice established as reasonably associated with the principal use." *Bailey* is actually a Supreme Court case and the quoted passage does not appear on the cited page. In fact, *Bailey* involved an appeal from the issuance of a permit for an apartment complex. Accessory uses are nowhere mentioned in the opinion.

prayers, and daily morning prayers added to his stated approval of the increased attendance at Saturday morning Sabbath prayers and the increased number of Holiday prayer services would constitute a prohibited principal religious use of the Property. Except for the Friday and Saturday evening Sabbath prayers, we agree with Mr. Houchins and conclude further that adding the life event celebrations alone would have the same effect.

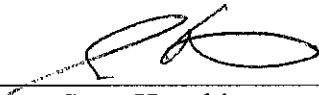
Appellant's Religious Freedom Claim

The Appellant alleges in its legal memorandum of law to the ZHB, citing the Religious Land Use and Institutionalized Persons Act ("RLUIPA") that "any attempt to prohibit or unduly restrict [Appellant's] religious activities—when they are subordinate, customary, and incidental to the school's mission—would not only contravene the Township Code and established Pennsylvania precedent, but could also raise serious concerns under federal law. Appellant's Memorandum, p. 29. The Appellant's Appeal did not raise any religious freedom claims, and no religious freedom claims were mentioned or argued at the hearing. Any such claims are, therefore, waived. Moreover, the Appellant's memorandum of law does not state how the Appellant's exercise of its religious freedom is "substantially burdened" by the Zoning Code (which allows religious uses in 18 zoning districts) or by any particular action that might be taken on its Appeal. Where a landowner fails to state under which of the two prongs of "substantial burden" on religious exercise the landowner is proceeding, a RLUIPA claim must be dismissed as "ill-developed." *Allentown Victory Church v. City of Allentown*, No. 22-2817, 2024 WL 3439772 *6 (3d Circuit, July 17, 2024).

ORDER

AND NOW, this 20th day of November, 2025, after consideration of the Appellant's Appeal, ~~the testimony and evidence produced at the hearing, and the Appellant's legal~~ memorandum, it is hereby ORDERED, for all the reasons set forth, and to the extent set forth in the foregoing opinion, that the determination of the Zoning Officer dated February 26, 2025 regarding the religious uses of the Property at 223 North Highland Avenue is AFFIRMED in part and REVERSED in part.

Members Vale and Masucci, and Alternate Member Imms participating, all voting "aye."
Alternate Member Phillips participated in the hearing and deliberations, but not in the decision.

Attest: 

Scott Houchins
Secretary



Township of Lower Merion
A FIRST CLASS TOWNSHIP

AGENDA ITEM INFORMATION

COMMITTEE: Building & Planning

ITEM: **AUTHORIZATION TO ADVERTISE PROPOSED ORDINANCE - CHAPTER 155, ZONING - BALA VILLAGE AMENDMENTS - Z-26-001**

Consider for recommendation to the Board of Commissioners authorizing the Township Secretary to advertise a public hearing and notice of intent to adopt an Ordinance to amend the Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article II, Definitions, § 155-2.1, Definitions of Terms, to delete the definition for "Place of Assembly," and also create new definitions for "Commercial Event Center" and "Entertainment Venue"; amend Table 5.1, Uses, to provide for Religious as a special exception ("S") Institutional Use within the CAD District; amend Table 5.1, Uses, to delete any reference to Place of Assembly and also permit both Commercial Event Center and Entertainment Venue as permitted Commercial Uses In The NC, VC, TC, LI, RHR, BMV (Limited To 1, 3, 4), And CAD-BV Districts; Amend Table 8.1, Minimum Parking Requirements, to delete any reference to Place of Assembly and any corresponding parking regulations; amend Table 5.3, Use Regulations, to provide for Religious as an Institutional Use permitted by special exception in the CAD-BV District along Bala Avenue between City Avenue and Cynwyd Road subject to certain specific criteria provided herein; amend Table 5.3, Use Regulations, to allow Residential Uses on the ground floor of building facing Bala Avenue except between Montgomery Avenue and Union Avenue.

PUBLIC COMMENT

ATTACHMENT(S):

[Bala Village Amendments Ordinance](#)

[Issues Briefing - Bala Ave Amendments Z-26-001](#)

[Bala Village Amendment Slides](#)

AN ORDINANCE

NO. _____

AN ORDINANCE To Amend The Code Of The Township Of Lower Merion, Chapter 155, Entitled Zoning, Article II, Definitions, § 155-2.1, Definitions Of Terms, To Delete The Definition For “Place Of Assembly,” And Also Create New Definitions For “Commercial Event Center” And “Entertainment Venue”; Amend Table 5.1, Uses, To Provide For Religious As A Special Exception (“S”) Institutional Use Within The CAD District; Amend Table 5.1, Uses, To Delete Any Reference To Place Of Assembly And Also Permit Both Commercial Event Center And Entertainment Venue As Permitted Commercial Uses In The NC, VC, TC, LI, RHR, BMV (Limited To 1, 3, 4), And CAD-BV Districts; Amend Table 8.1, Minimum Parking Requirements, To Delete Any Reference To Place Of Assembly And Any Corresponding Parking Regulations; Amend Table 5.3, Use Regulations, To Provide For Religious As An Institutional Use Permitted By Special Exception In The CAD-BV District Along Bala Avenue Between City Avenue and Cynwyd Road Subject To Certain Specific Criteria Provided Herein; Amend Table 5.3, Use Regulations, To Allow Residential Uses On The Ground Floor Of Building Facing Bala Avenue Except Between Montgomery Avenue And Union Avenue.

The Board of Commissioners of the Township of Lower Merion hereby ordains:

Section 1. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article II, Definition, § 155-2.1, Definitions, is hereby amended to delete the definition for Place of Assembly and then create the definitions for Commercial Event Center and Entertainment Venue, each as follows:

COMMERCIAL EVENT CENTER

A commercial conference facility or the like, which provides various business activities such as meetings, networking, demonstrations, exhibitions, training sessions, and associated entertainment and recreation on a temporary basis.

ENTERTAINMENT VENUE

A commercial facility for major sports facilities, theaters, cinemas, performing arts centers, and the like, excluding adult entertainment.

Section 2. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Table 5.1, Uses, is hereby amended to provide for Religious as a Special Exception (“S”) Institutional use within the CAD District.

Section 3. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Table 5.1, Uses, is hereby amended to delete any reference to Place of Assembly and also provide for both Commercial Event Center and Entertainment Venue as Permitted (“P”) Commercial uses within the NC, VC, TC, LI, RHR, BMV (limited to 1, 3, 4), and CAD-BV Districts.

Section 4. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Table 8.1, Minimum Parking Requirements, is hereby amended to delete any reference to Place of Assembly and the corresponding regulations and replace with both Commercial Event Center and Entertainment Venue as a Use with same regulations.

Section 5. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Table 5.3, Use Regulations, is hereby amended so that the regulation (1) for Row House, Multifamily (small) and Multifamily (large) in the CAD-BV District is revised to read as follows:

Residential uses are not permitted on the ground floor of buildings facing City Avenue, facing Bala Avenue between Montgomery Avenue and Union Avenue, or facing Cynwyd Road.

Section 6. The Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Table 5.3, Use Regulations, is hereby amended provide for Religious as an Institutional Use permitted by Special Exception in the CAD-BV District subject to the following:

Shall only be authorized as a special exception subject to the following regulations:

- (1) Shall only permitted only along Bala Avenue between City Avenue and Cynwyd Road.
- (2) Shall be of compatible scale, size and intensity to neighboring commercial properties in order to maintain the goals and objectives of the District, as provided for in § 155-6.8.A.
- (3) Shall be separated by 500 feet from any other Religious use.
- (4) Between Cynwyd Road and Union Avenue facing Bala Avenue:
 - (a) A minimum of 80% of the ground floor primary front façade must be devoted to active ground floor commercial use.
 - (b) The floor area devoted to the required ground floor

commercial use shall be a minimum depth of 40 feet

Section 7. Nothing in this Ordinance or in Chapter 155 of the Code of the Township of Lower Merion, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Chapter 155 prior to the adoption of this amendment.

Section 8. Nothing in this Ordinance or in the Code of the Township of Lower Merion, as hereby amended, shall be construed to affect any suit or proceedings in any Court, any rights acquired or liability incurred, any permit issued, or any cause or causes of action existing under the said Code of the Township of Lower Merion prior to the adoption of this amendment.

Section 9. The provisions of this Ordinance are severable, and if any section, sentence, clause, part, or provision thereof shall be held illegal, invalid, or unconstitutional by any Court of competent jurisdiction, such decision of this court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this ordinance. It is hereby declared to be the intent of the Board that this ordinance would have been adopted if such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

Section 10. This Ordinance shall take affect and be in force from and after its approval as required by law.

Approved by the Board of Commissioners of the Township of Lower Merion this _____ day of _____, 20_____.

BOARD OF COMMISSIONERS OF THE
TOWNSHIP OF LOWER MERION

Todd M. Sinai, President

ATTEST:

Jody L. Kelley, Secretary

TOWNSHIP OF LOWER MERION

Building & Committee

Issue Briefing

Topic: Authorization to Advertise Proposed Ordinance - Chapter 155 - Bala Village Amendments - Z-26-001

Prepared By: Chris Leswing, Director, Building & Planning Department

Date: June 30, 2026

I. Action To Be Considered by the Board:

Authorize the Township Secretary to advertise a public hearing and notice of intent to adopt an Ordinance to amend the Code of the Township of Lower Merion, Chapter 155, entitled Zoning, Article II, Definitions, § 155-2.1, Definitions of Terms, to delete the definition for “Place of Assembly,” and also create new definitions for “Commercial Event Center” and “Entertainment Venue;” amend Table 5.1, Uses, to provide for Religious as a special exception (“S”) Institutional Use within the CAD District; amend Table 5.1, Uses, to delete any reference to Place of Assembly and also permit both Commercial Event Center and Entertainment Venue as permitted Commercial Uses In The NC, VC, TC, LI, RHR, BMV (Limited To 1, 3, 4), and CAD-BV Districts; Amend Table 8.1, Minimum Parking Requirements, to delete any reference to Place of Assembly and any corresponding parking regulations; amend Table 5.3, Use Regulations, to provide for Religious as an Institutional Use permitted by special exception in the CAD-BV District along Bala Avenue between City Avenue and Cynwyd Road subject to certain specific criteria provided herein; amend Table 5.3, Use Regulations, to allow Residential Uses on the ground floor of building facing Bala Avenue except between Montgomery Avenue and Union Avenue.

II. Why This Issue Requires Board Consideration:

Authorization to advertise zoning code amendments requires Board approval.

III. Current Policy Or Practice (If Applicable):

CAD-BV City Avenue District - Bala Village (CAD-BV) regulations are established under Zoning Code § 155-6.8. Currently, ground floor commercial uses are required throughout the entire CAD-BV district and institutional uses are not permitted in the CAD-BV district.

IV. Other Relevant Background Information:

On July 8th the Building and Planning Committee will consider Zoning Code amendments to the Bala Village District to:

1. Remove the definition for Place of Assembly and add definitions for Commercial Event Center and Entertainment Venue to clarify the intended commercial use of properties such as the Bala Theatre,
2. Permit Commercial Event Center and Entertainment uses, in the Bala Commercial Corridor,
3. Permit Religious Uses by Special Exception between Cynwyd Road and City Avenue on Bala Avenue,
 - a. Require a 500' separation between religious uses in the district,
 - b. Require that Religious Uses located between Cynwyd Road and Union Avenues devote 80% of the ground floor primary front façade to active commercial uses for a depth of 40', and
4. Permit Residential Uses on the ground floor between Union Avenue and City Avenue on Bala Avenue.

The proposed zoning amendments were reviewed by the Planning Commission on April 6th, June 1st, and June 29th. Over the course of three meetings the Planning Commission received significant public comment and refined the legislation by focusing on the larger planning objectives of ensuring that Bala Village remains a walkable neighborhood-oriented commercial district with a variety of uses and that new development is of a scale and intensity that complements that surrounding residential context.

Towards this end, the Planning Commission recognized that the Bala Village District between Montgomery Avenue and City Avenue has two distinct character areas comprised of a retail core and commercial transition area and that each character area should have specific standards. In total, the proposed changes to the Bala Village District along Bala Avenue:

- Defines the area between Montgomery Avenue and Union Avenue as a traditional, retail core by requiring active ground floor commercial use for all uses. The retail core is characterized by small lots with attached commercial buildings containing storefronts located close to the build-to-line. The proposed zoning changes require that uses in the retail core be commercial or mixed-use with active ground floor commercial uses.
- Establishes the area between Union Avenue and City Avenue as a transitional area by permitting a variety of uses but not requiring active ground floor commercial use. In the transitional area mixed-use is permitted, but mixed-use is not required. The transitional area is characterized by deep, narrow lots with older commercial buildings set back far from the build-to-line by large parking lots. In Bala Village new buildings are required to be between 20' and 25' from the build-to line. The proposed zoning changes are intended to ensure that the redevelopment of this area complements the existing single-family residential uses on the opposite side of Bala Avenue.

- Religious Uses are proposed as a Special Exception use between Cynwyd Road and City Avenue. The area of proposed religious uses spans both the retail core and the transitional area. The proposed zoning changes would require that religious uses be consistent in form with the retail area and the transition area depending upon which area the religious use is located. Religious uses located in the Retail Core between Cynwyd Road and Union Avenue would be required to have active ground floor commercial uses consistent with other uses in the retail core. Religious uses located in the Transitional Area between Union Avenue and City Avenue would not be required to have active ground floor commercial uses, consistent with other uses in the transitional area.

V. Impact On Township Finances:

There is no immediate impact on Township finances.

VI. Staff Recommendation:

Staff recommends that the Building and Planning Committee authorize the advertisement of the proposed Bala Village zoning amendments for adoption as presented.



LOWER MERION

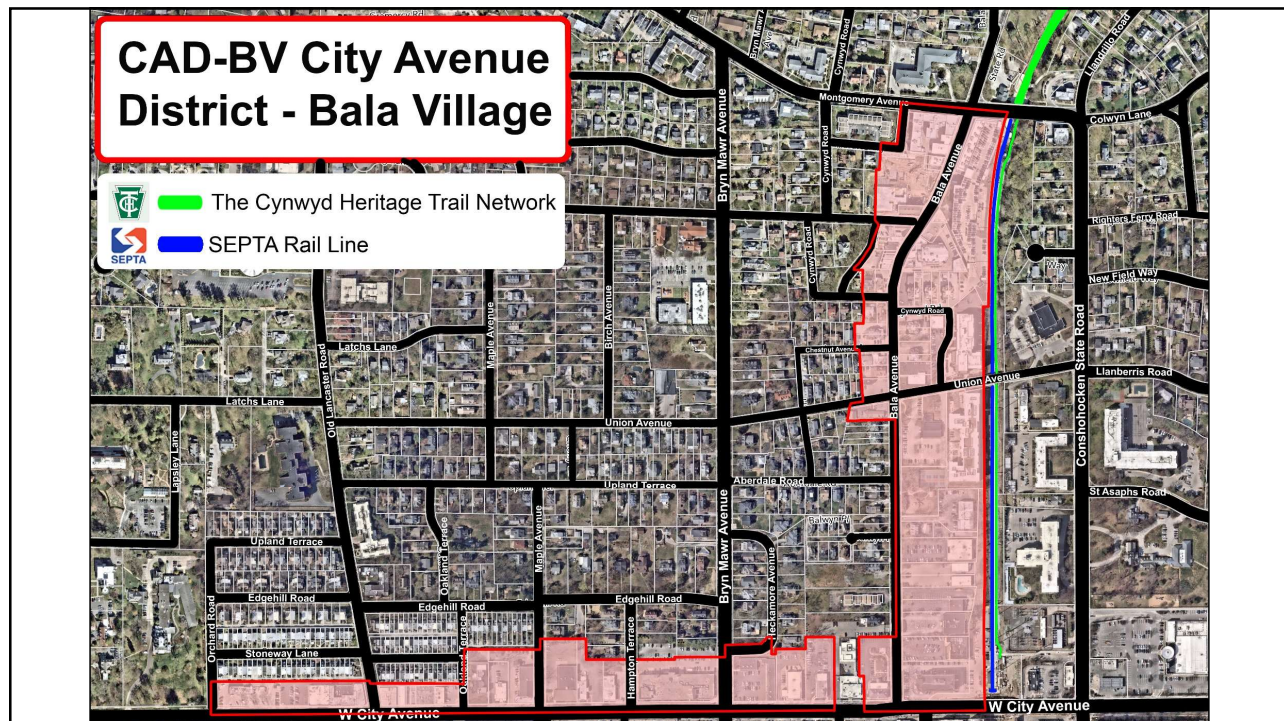
MONTGOMERY COUNTY, PENNSYLVANIA

A First-Class Township

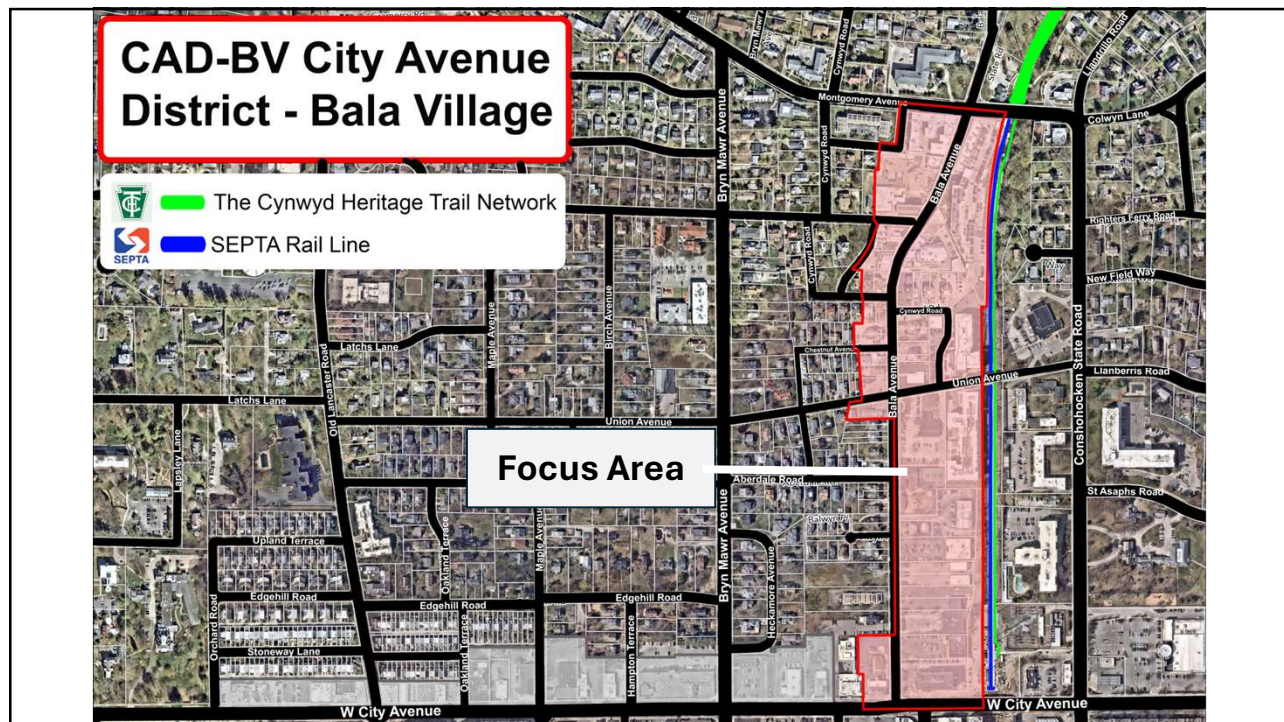
Agenda Item #

Code Amendment – Bala Village Amendments Z-26-001

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Definitions

- Amend definitions to:
 - delete Place of Assembly.
 - Create definitions for **Commercial Event Center** and **Entertainment Venue**.

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Proposed Amendment 1

Permit religious uses between Cynwyd Road and City Avenue by Special Exception

- Require Special Exception approval from the Zoning Hearing Board for religious uses.
- Applicants for Special Exception approval must demonstrate that proposed religious uses are consistent in mass, scale and intensity as any retail commercial uses within 500’.
- Require a 500’ separation between religious uses, and

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Proposed Amendment 1

Permit religious uses between Cynwyd Road and City Avenue by Special Exception

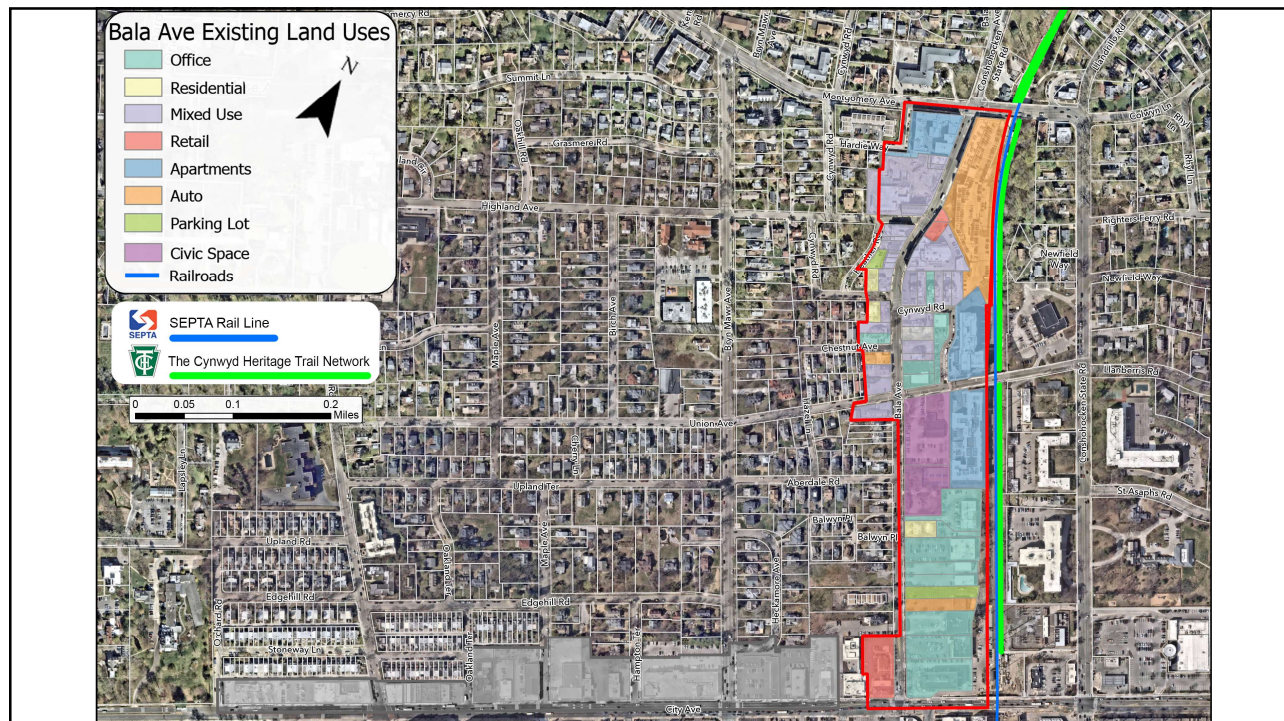
- Require Religious Uses located between Cynwyd Road and Union Avenue to provide:
 - A minimum of 80% of the ground floor primary front façade must be devoted to active ground floor commercial use.
 - The floor area devoted to the required ground floor commercial use shall be a minimum depth of 40 feet.

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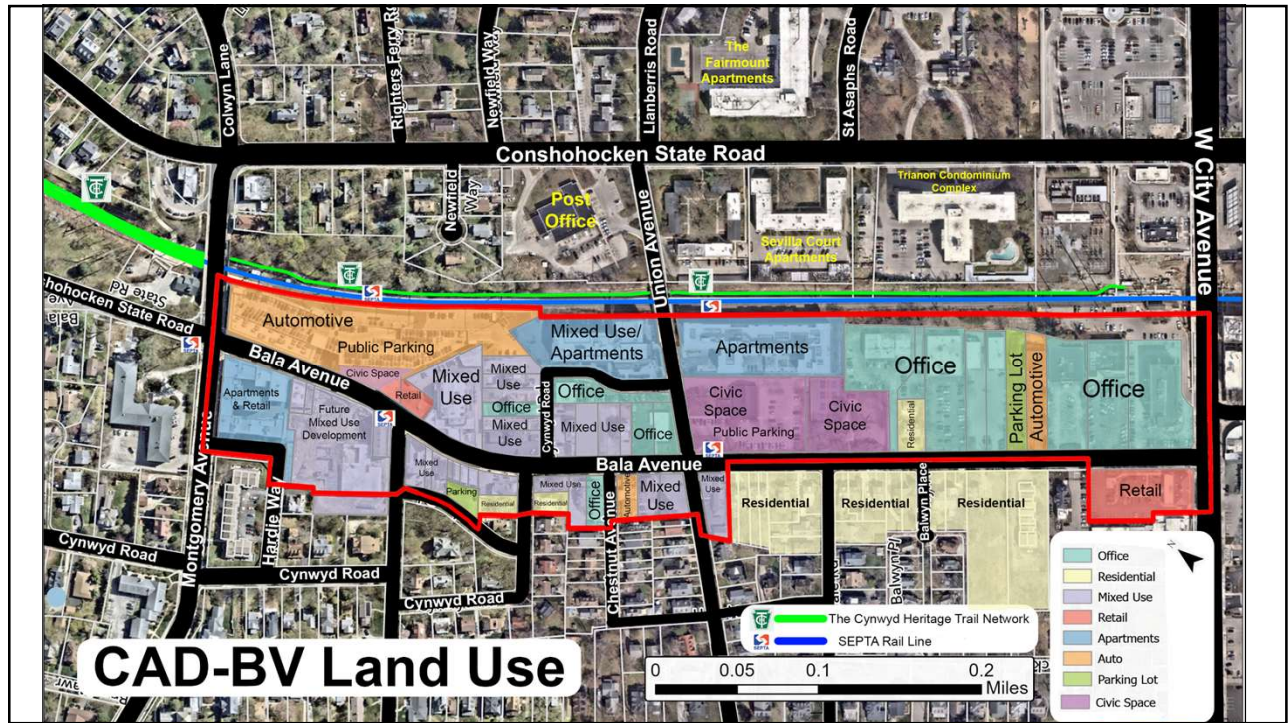
Proposed Amendment 2

Remove the requirement prohibiting ground-floor residential use between Union Avenue and City Avenue along Bala Avenue.

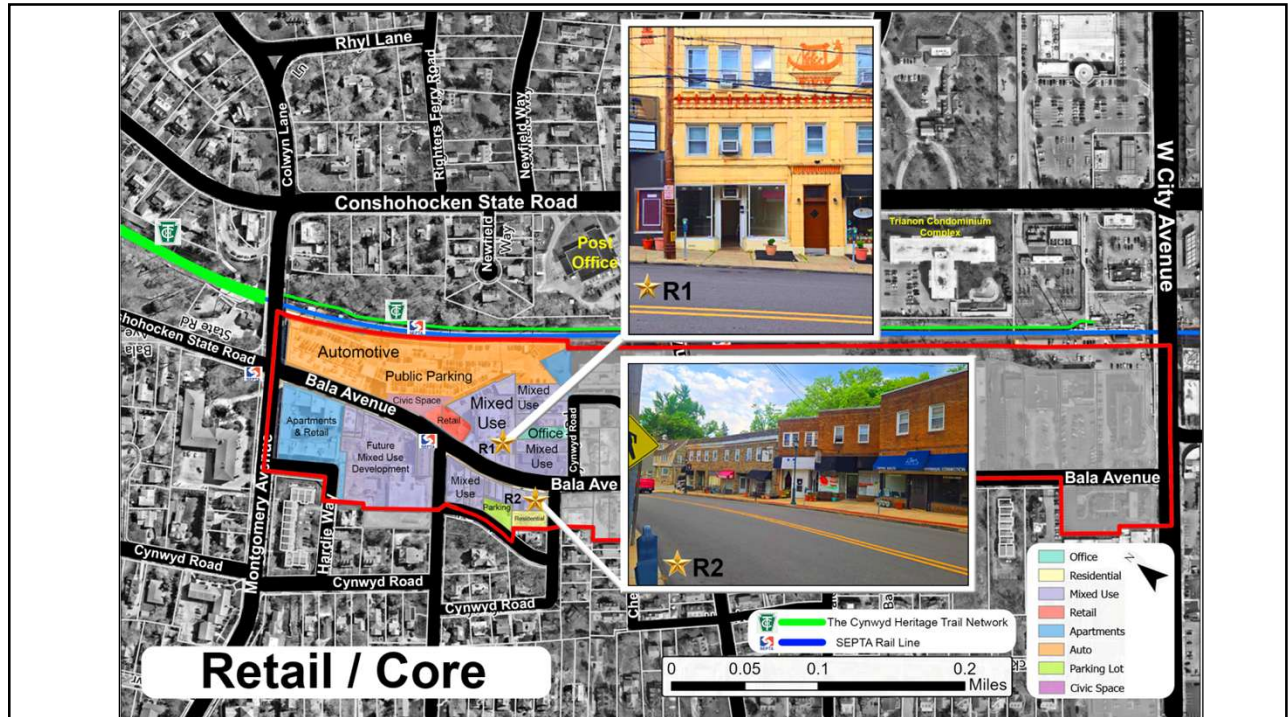
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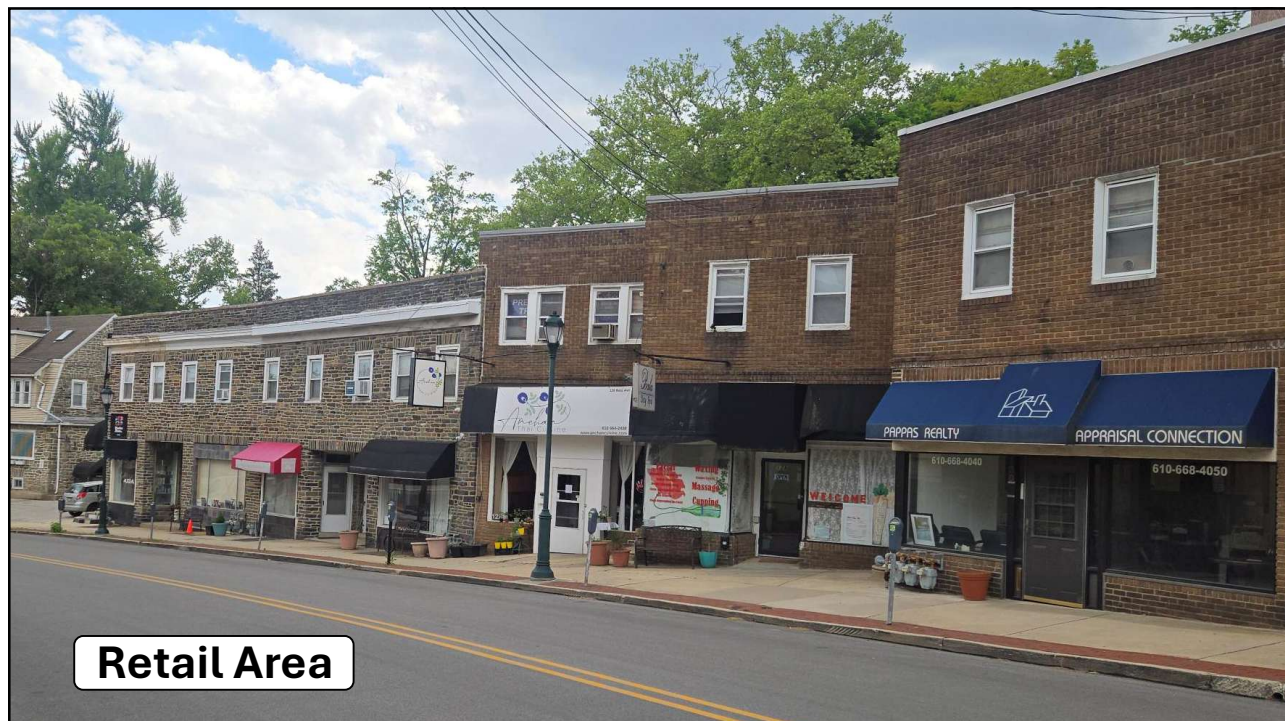
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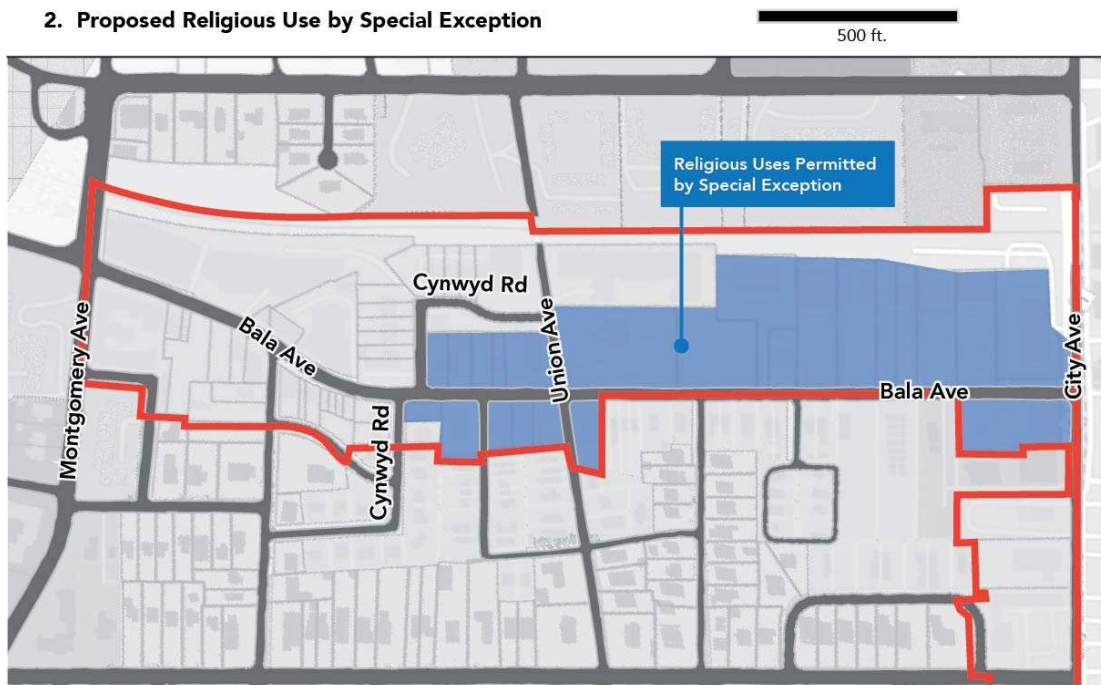
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1. Existing Conditions



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2. Proposed Religious Use by Special Exception



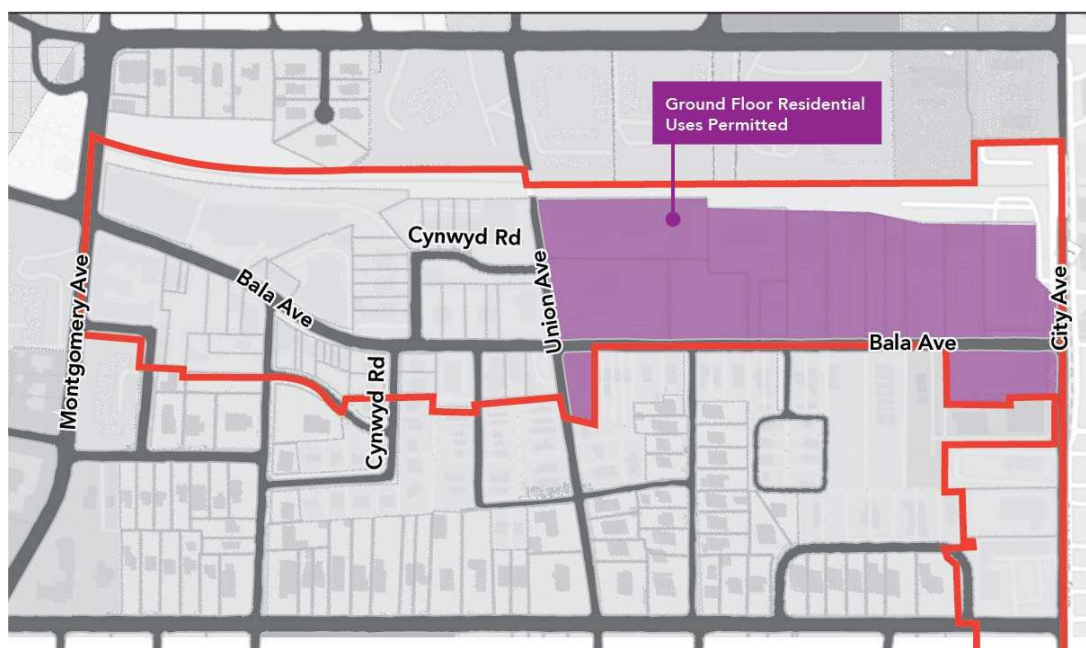
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3. Ground Floor Active Commercial Use Requirements For Religious Uses



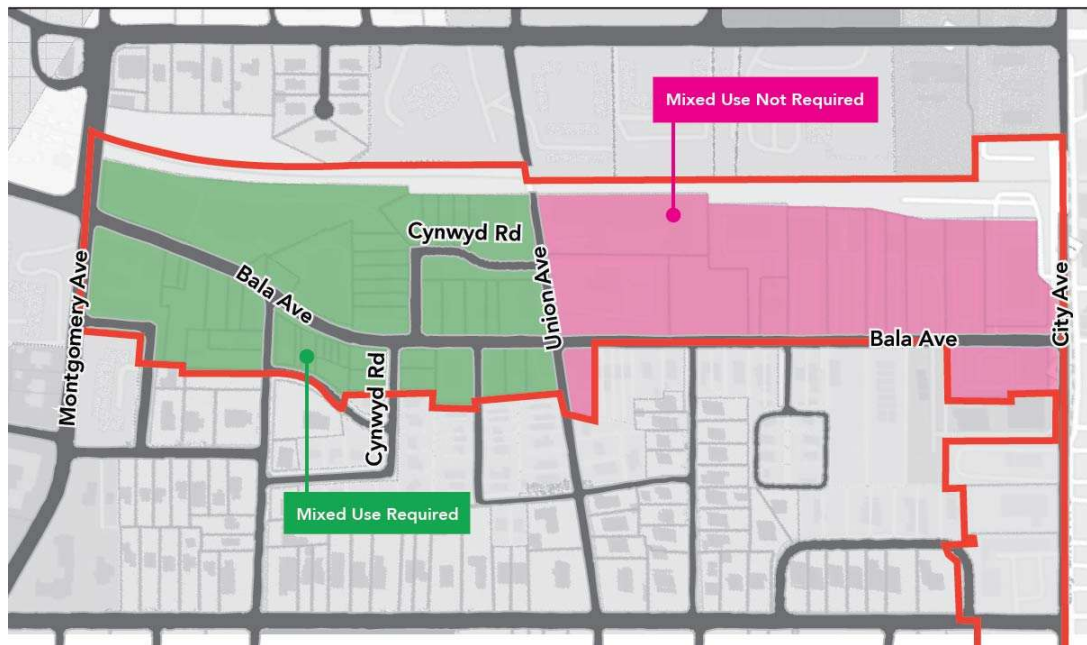
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4. Residential Uses Permitted on Ground Floor



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5. Summary - Mixed Use Requirements



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Summary

- The proposed zoning changes require that uses in the retail core be commercial or mixed-use with active ground floor commercial uses.
- In the transitional area mixed-use is permitted, but mixed-use is not required. The proposed zoning changes are intended to ensure that the redevelopment of this area complements the existing single-family residential uses on the opposite side of Bala Avenue.

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Summary

- Religious Uses are proposed as a Special Exception use between Cynwyd Road and City Avenue.
- The area of proposed religious uses spans both the retail core and the transitional area.
- The proposed zoning changes would require that religious uses be consistent in form with the retail area and the transition area depending upon which area the religious use is located.
- Religious uses located in the Retail Core between Cynwyd Road and Union Avenue would be required to have active ground floor commercial uses consistent with other uses in the retail core. Religious uses located in the Transitional Area between Union Avenue and City Avenue would not be required to have active ground floor commercial uses, consistent with other uses in the transitional area.

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Staff Recommendation

- Staff recommends that the Building and Planning Committee authorize the advertisement of the proposed Bala Village zoning amendments for adoption as presented.

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