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## Three Bala Plaza restriction to expire

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There were more technical explanations, but Lower Merion Commissioner Brian McGuire put it most directly when he commented why the township could not try to keep an old restriction on development of a major parcel in the newly rezoned City Avenue district.

"We don't have a leg to stand on" legally, he said. "Not even close."

With that, the board voted reluctantly but overwhelmingly July 18 to direct the township solicitor to draft documents to terminate a covenant placed on the Three Bala Plaza property 31 years ago.

Only Commissioner Cheryl Gelber voted no on the motion, calling it "distressing" that the township had apparently given up its power to prevent development on roughly four acres of established green space when it enacted the new zoning.

Commissioners had a week earlier tabled action on a petition by the property owner Bala Plaza Property Inc. to lift a restriction that dated to 1981, a move that seemed to take most by surprise.

(It was clarified last week that the covenant was not technically a deed restriction. It was never recorded in a deed for the parcel, but appears in a note on the recorded subdivision plan.)

As reported earlier, a restriction to hold the oddly shaped area at the corner of St. Asaph's and Monument roads as open space was placed because development on the adjoining Two Bala Plaza property exceeded a Floor Area Ratio limit under its existing commercial zoning. Its FAR is .69, while the limit was .5. In the trade-off, the FAR on Three Bala remained lower than .5.

With the adoption of the

City Avenue Regional Center District zoning in April, however, the FAR for mixed-use buildings such as those on Two Bala was increased to .7. The parcel now complies with zoning.

Some commissioners, hoping to retain the green, somewhat wooded space on the Three Bala property, last week asked if the township had any legal obligation to lift the restriction.

The answer was unequivocal. As Commissioner Phil Rosenzweig, a real-estate attorney explained, with the rezoning, "That restriction is voidable anyway, if the developer wanted to bring forward a [development] plan." It could have the covenant removed, whether the board acted to lift it or not.

Township solicitor Gilbert High backed up that opinion.

"The condition that created that plan note has ceased to exist," Rosenzweig said. "Our own action [in adopting the zoning] obviated the need for the note."

Gelber, who had voted against rezoning, again voiced her concern that, while it aims to revitalize the City Avenue corridor, the density of development it permits could lead to overdevelopment.

In public comment, Leslie Greenberg, a Merion resident who had participated in the many hearings and workshops on

the rezoning ordinance, told the board the information about the covenant came out of the blue.

"After many months of meetings and discussions, a restriction was never mentioned. I think that's unconscionable," he said.

While the lifting of the restriction could result in development on that specific four acres, Bala Cynwyd Commissioner George Manos said the City Avenue zoning includes open-space requirements that the property owner will have to meet.

"To retain [a restriction] on one property would favor other properties," he remarked, and added, "To be consistent with the ordinance, all properties should be subject to the same criteria."

A decision for the board, he said, is "Did we mean the new criteria we established or not?"

Rosenzweig cautioned that just because the covenant is removed doesn't mean the existing open space will disappear.

"I think it is very detrimental to the community and the ordinance to anticipate that removal of a note on a plan is going to lead to mass destruction of all this open space," he said. "It's hysteria, and it's not fair to the owner."