

BEFORE THE LEET TOWNSHIP ZONING HEARING BOARD

**QUAKER VALLEY SCHOOL DISTRICT'S  
BRIEF IN SUPPORT OF  
APPLICATION FOR APPROVAL OF A SPECIAL EXCEPTION**

In Re: Application of Quaker Valley School District for Approval of a Special Exception to Permit a Public High School ("Application") on 108 +/- acres at 200-210 Camp Meeting Road ("Property")

**A. FACTUAL BACKGROUND/SUMMARY**

Quaker Valley School District ("School District") filed an Application with the Leet Township Zoning Hearing Board ("ZHB") on or about March 24, 2021 for the use of 108 acres on Camp Meeting Road ("Property") as a public high school. The Application was filed under the Special Exception requirements of the Township Zoning Ordinance.

The Township Zoning Ordinance expressly provides that a school may be operated in the AAA Residence District (See 27-301 1.A. Special Exceptions); the Property is located in the AAA Residence District.

The School District's Application requests use approval. Approval for development of the property was not requested. The School District met with the Planning Commission prior to meeting with the Zoning Hearing Board for preliminary sketch plan review showing the development activity. Prior to pursuing a formal approval for development activity, the School District must first seek use approval by the ZHB as required under the Township Zoning Ordinance.

In the course of the many hearings before the ZHB, objections and comments relating to the impact of the School District's Application were focused on development issues. No objections were made directly related to students attending class or participating in outdoor school-related activities on the school grounds, i.e. the permanent activity that will occur on the Property.

The Zoning Ordinance does not include any general or specific criteria for school use in the AAA Residence District.

The objections or comments made by the general public in opposition to the request were limited in scope. The objections were focused on storm water management, geotechnical issues, grading activity and traffic issues on existing public roads. Storm water management, geotechnical issues, grading activity and traffic are development issues to be reviewed by the Township Planning Commission and Commissioners.

Leet Township has not participated in the hearing. The Township understands that it will have a full opportunity to review the development issues when the Application for Land Development is filed. Likewise, Leetsdale Borough has withdrawn any objection to the use request. Leetsdale Borough understands that it will have a full opportunity to review stormwater and traffic when an

Application for Land Development is filed with the Borough. As noted on Exhibit 2/SP3, the improvements at Beaver Street and Camp Meeting Road, and some of the stormwater discharge, are located within Leetsdale Borough and subject to the Borough's review.

## **B. SUMMARY LEGAL ARGUMENT**

The School District's pending Application before the ZHB requests approval of the use of the property as a school. The Application does not request any approval for development, and the grant of the request will not authorize any development activity on the property.

The request before the ZHB is limited to allowing a school use on the property. Through the many hearings, the ZHB allowed everyone to provide whatever objection or testimony they felt important. There were no objections or comments relating to how students attending class at a school on the Property, or participating in any related school use, would impact any surrounding property or the community.

All of the objections were related to development activity, which will be reviewed at a later stage of the proceedings, not before the ZHB. The Township has a very detailed Subdivision and Land Development Ordinance, Grading and Excavating Ordinance, and Storm Water Management Ordinance governing development issues, including storm water management, grading and excavating, conservation issues and traffic. These development issues will be thoroughly reviewed by the Township at a later stage of the proceedings.

Although there are no specific or general criteria set forth in the Zoning Ordinance relating to a Special Exception for school use, an objecting party may raise objections based on the very strict criteria set forth by the Pennsylvania Supreme Court and numerous Commonwealth Court Decisions. That procedure provides as follows:

1. Any objector must specifically identify a negative impact caused by the use of the property (not development).
2. The objector then must demonstrate that the impact includes an impact greater than the impact that would be expected by using the property for the designated use, in this case, a school.
3. In the event that the objectors raise an objection that demonstrates an impact greater than would be expected from a school, then the School District would have an opportunity to respond. In this case, no such objection was ever raised indicating any impact from the operation of Quaker Valley High School on the Property that would be greater than the expected impacts from any other school.

In the event any such objection would have been raised, a very stringent standard must be met before the use can be denied. Specifically, the ZHB would be required to find that there was a high degree of probability that the school use would present a substantial detriment greater than what is normally expected from the use of a school.

Throughout these proceedings, the only testimony provided related to the ordinary impacts that would be expected from a school. No testimony or evidence was presented demonstrating how any of the impacts would be greater to the adjoining residents or community than would otherwise be expected from a school.

Under long-standing Pennsylvania case law, a Special Exception (in this case a school) specifically identified in the Ordinance by the Township Commissioners when the Ordinance was adopted creates a strong presumption that the health, welfare and safety of the community would not be adversely affected by that use. That presumption can only be overcome if there is a demonstration that there is a high degree of probability that there would be a substantial detriment greater than that normally expected.

**ARGUMENT 1:     **Distinction Between Use Issues Versus Development Issues****

In evaluating the School District's Application in light of the many hours of testimony regarding objections based on development issues, the first point of clarification must be the distinction between approval of the use compared to approval of development activity. The School District's Application is strictly limited to a request for a Special Exception approving the use of a school on the property. The Application does not request or otherwise seek any approval for development activity.

The law in Pennsylvania is clearly set forth in *In Re: Thompson*, 896 A.2d 659 (2006) as follows:

*Special exception or conditional use proceedings involve only the proposed use of the land, and do not involve the particular details of the design of the proposed development. Schatz v. New Britain Township Zoning Hearing Board of Adjustment, 141 Pa.Cmwlth. 525, 596 A.2d 291 (1991) \*\*\* In Schatz, we held that a zoning board could not reject an application for a special exception as not being in the best interest of the community because the application did not address the issues of adequate sewage capacity, storm water management or water supply requirements. We held that "such issues are to be addressed further along the permitting and approval process. Zoning only regulates the use of land and not the particulars of development and construction." Schatz, 596 A.2d at 298.*

In addition, the unreported case of Ness v. ZHB of York Township, 2014 WL 31440 (2014) stated:

*Submission of engineering designs and full plans satisfying all land development requirements is not required at the special exception stage, as such details are properly addressed later in the permitting and approval process.*

In recognition of this well-accepted statement of the law, the Township Zoning Ordinance expressly provides that development activity will be approved by a review by the Township Planning Commission and Commissioners. Part 6, Special Exceptions and Conditional Uses, Section 1, 2.F. of the Township Zoning Ordinance provides as follows:

- F. If land development plan approval is required for the use by special exception, the application for approval of a land development plan required by the Township Subdivision and Land Development Ordinance shall be submitted to the Township Planning Commission following approval of the use by special exception by the Zoning Hearing Board.*

The Township has adopted extensive regulations and requirements related to development activities, such as storm water management, grading, traffic and conservation issues. Development activities are covered under Chapter 22, The Township of Leet Subdivision and Land Development Ordinance, Chapter 23, The Township of Leet Storm Water Management Ordinance, and Chapter 8, The Township of Leet Grading and Excavating Ordinance.

These Ordinances require detailed plans and specifications relating to all of the development activities. These detailed plans are not required to be submitted to the Zoning Hearing Board, and have not been submitted to the Board for review. At a later stage in these proceedings, when the School District files an Application for Land Development Approval, the Township will review these detailed plans, assisted by professional engineers engaged by the Township to represent the Township's interest.

The current Application before the Zoning Hearing Board is strictly limited to confirming that the School District may locate a school on the site, subject to all development activity being reviewed by the Township Planning Commission and Commissioners under the standards set forth in the development Ordinances.

An approval under the current Application will not grant the School District any right to undertake any grading or excavation activity, stormwater diversion or traffic improvements. All of these items are subject to land development approval, and not the subject of this request.

## **ARGUMENT 2: Standard of Review**

Perhaps the most important issue in reviewing a Special Exception is understanding the overall concept of a Special Exception and the standard of review when an application comes before the ZHB.

As explained at closing argument, Ryan on Zoning is a well-respected reference source on zoning issues, updated yearly through 2021. The references to this source do not suggest excerpts from Ryan on Zoning constitute the "law" but rather that the excerpts provide a very helpful neutral summary of the law as established by case law, the MPC and local ordinances.

### **A. What is a Special Exception?**

In the context of zoning, the phrase "special exception" is a term of art. Unfortunately, the words do not accurately describe the concept, as a "special exception" is neither "special," nor an "exception" to the Ordinance. See Ryan on Zoning, Section 5.1.1.

A “special exception” is a permitted use under the zoning ordinance. The only difference between an “as of right” permitted use and a special exception use is the procedure followed. In an “as of right” situation, the zoning officer reviews compliance with the zoning ordinance and issues a permit. In the case of a special exception, a hearing is required before the Zoning Hearing Board to review compliance with the zoning ordinance. If the applicant meets the criteria, then the “special exception” use must be approved.

The concept is more fully explained in Ryan on Zoning, Section 5.1.1. The following is a pertinent excerpt from Section 5.1.1:

*Designating a use as a special exception use or conditional use, each being a type of permitted uses, represents a determination by the legislative body that the use is consistent with public health, safety and welfare, like any other permitted use. Boards and courts will, and indeed must, defer to the legislative judgment that a compliant application will have no adverse effect on the public health, safety and welfare. Boards and courts have no legal power to override the legislative judgment of the municipal governing body that adopted the ordinance making a use a special exception use or conditional use and setting the requirements and considerations for that use. This is one sense in which the special exception and conditional use must be viewed as a permitted use.*

*For the same reason, objectors may not successfully argue, and courts do not have discretion to decide, that a use allowed by special exception or conditional use, and complying with the ordinance’s specific and general requirements and considerations, should not be allowed in the zoning district designated for that use in the zoning ordinance.*

A sampling of Appellate Court Cases which are the basis of Ryan’s summary are as follows, with the bold emphasis added:

1. Broussard v. Zoning Board of Adjustment, 907 A.2d 494 (PA Supreme Court 2006):

*“Initially, we note that a special exception in a zoning ordinance is a use which is **expressly permitted** in a given zone so long as certain conditions detailed in the ordinance are found to exist. See Appeal of Rieder, 410 Pa. 420, 422, 188 A.2d 756, 757.*

2. Heck v. ZHB for Harvey’s Lake Borough, 397 A.2d 15 (Pa.Cmwlt. 1979):

*“At the outset we note that a special exception is not an exception to a zoning ordinance but a use which is **permitted** unless, under the circumstances, such use would adversely affect the community, Brunner v. Zoning Hearing Board, 12 Pa.Cmwlt. 109, 315 A.2d 359 (1974), and once an applicant for a special exception proves that the proposed use is a **permitted** one the burden falls upon a protestant to prove that the use would constitute a detriment to public health, safety,*

or welfare, *Copechan Fish and Game Club v. Zoning Hearing Board*, 32 Pa.Cmwlth. 415, 378 A.2d 1303 (1977).

3. Greaton Properties v. Lower Merion Twp., 796 A.2d 1038 (Pa.Cmwlth. 2002).

*"A special exception is not an exception to a zoning ordinance, but rather a use, which is **expressly permitted**, absent a showing of a detrimental effect on the community. Manor Healthcare Corp. v. Lower Moreland Township Zoning Hearing Board, 139 Pa.Cmwlth. 206, 590 A.2d 65 (1991).*

4. Ness v. ZHB of York Twp., 2014 WL 31440 (2014) unreported stated:

*"A special exception is not an exception to the zoning ordinance, but is, rather, a permitted use allowed so long as standards specified in the ordinance are met."*

#### **B. What is the Standard of Review for Approval of a Special Exception?**

The mere existence of a special exception use reflects the Township's recognition that the use is acceptable in the zoning district where authorized. In authorizing the use (as a special exception), the Township made a legislative decision to accept the impacts normally associated with the use authorized.

Ryan on Zoning (§5.26) makes the following observation:

*Accordingly, if a zoning ordinance is drawn rationally, a decision to permit a use by special exception reflects a legislative judgment that the degree of impact necessarily flowing from the use does not materially affect the public interest, and will not justify a denial of the use. The most common error of protestants and of zoning boards in special exception cases is the failure to recognize that the existence of the special exception itself represents a legislative determination that degree of impact is permissible.*

The PA Supreme Court recognized this rule many years ago in Appeal of Archbishop O'Hara:

*[T]he ordinance which classifies this area as an 'AA' residential district specifically provides that land situated therein may be used for 'educational, religious, and philanthropic' purposes. The use of the land for any such purpose would naturally result in an increase in traffic and the framers of this ordinance certainly must have taken heed of this factor in the preparation of the ordinance... Appeal of Archbishop O'Hara, 131 A.2d 587, 596 (Pa. 1957).*

PA Commonwealth Court has followed this rule over the ensuring years. The following provide a sampling of Commonwealth Court holdings on the issue, with bold emphasis added.

1. Konyk case.

*The Legislature in providing for special exceptions in zoning ordinances has determined that the impact of such a use of property does not, of itself, adversely affect the public interest to any material extent in normal circumstances, so that a special exception should not be denied unless it is proved that the impact upon the public interest is greater than that which might be expected in normal circumstances. Zoning Hearing Board v. Konyk, 290 A.2d 715, 718 (Pa. Commw. Ct. 1972).*

2. Kern case.

*An applicant, by showing the proposed use is permitted by special exception and that it complies with the specific requirements of the ordinance, identifies the proposal as one which the municipal legislative body has determined to be appropriate in the district and therefore presumptively consistent with the health, safety and general welfare of the community (citation omitted). Kern v. Zoning Hearing Board of the Township of Tredyffrin, 449 A.2d 781, 783 (Pa. Commw. Ct. 1982), cited with approval in Appeal of Martin, 529 A.2d 582 (Pa. Commw. Ct. 1987).*

3. Sunnyside Up case.

*...once the applicant for a special exception has met the burden of persuading a zoning hearing board that the proposed use satisfies the objective requirements of the ordinance, this Court has stated that a presumption arises that the proposed use is consistent with the health, safety and general welfare of the community (citation omitted). The burden then shifts to the objectors to rebut that presumption by proving to the zoning hearing board that to **'a high degree of probability that the proposed use will substantially affect the health, safety and welfare of the community' greater than what is normally expected from that type of use and not just speculation of possible harms.** (citation omitted). Sunnyside Up Corporation v. City of Lancaster Zoning Hearing Board, 739 A.2d 644, 650 (Pa. Commw. Ct. 1999).*

4. Schatz case.

*Our review of the record reveals further, that the Township did not meet its burden of proving that the proposed use will have an adverse effect on the general public. The evidence presented by the Township amounted to the fears of the neighboring residents, and such speculation of harm, without more, cannot sustain the objectors' heavy burden. "Mere speculation is not sufficient. **The objectors must prove that there is a high degree of probability that a result not normally generated by this type of use will obtain.**" (citation omitted) Schatz v. New Britain Twp. Zoning Hearing Board, A.2d 294, 298 (Pa. Commw. Ct. 1991).*

**C. School Use as a Special Exception in the AAA Residence District**

The current Zoning Ordinance, at Section 27-301 1.A., expressly permits schools in the AAA Residence District as a special exception. By approving this use in the AAA Residence District, the Township Commissioners acknowledged that allowing a school in the AAA Residence District would not be detrimental to the health, welfare or safety of the community. The decision to allow a school is well supported by the obvious benefits associated with a school in the community, especially a high school.

When considering whether to build a new school, the impact is much more than constructing four walls and a roof. This new Quaker Valley High School will be a center for the community. Not only will it be a state-of-the-art facility for students, meeting today's and tomorrow's technological, academic programs, accessibility, and sustainability standards, but it will also be a space that makes our community proud, serving as a facility not just for school activities but for community programs, performances, and competitions. Community members can use visitor spaces, enjoy a theatre production, or see friends and neighbors at an event.

The benefits are many, including this short but not exhaustive list of benefits:

- New construction means everything will be fully ADA compliant.
- Updated technology that ensures students will have access to current demands, so they are ready to meet the needs of the future.
- Outdoor spaces, outdoor classrooms, trails, and access to water systems and wetlands that provide creative learning environments and center wellness spaces for students.
- Safety is a priority when designing a space, and new construction allows for new camera systems, captured vestibules, access controls that do not impede the flow of the learning day, and new sprinkler and alarm systems.
- The challenges brought on by the COVID-19 pandemic highlighted a need for updated and efficient systems. In addition to electrical and utility systems, HVAC systems will be brand new, allowing for increased air flow, filtration, and ventilation.
- The new site is close to the community and has no parking limitations, visitor access limitations, and the traffic congestion that currently exists at the current school site on Beaver Street.
- Trails that are accessible to community members for outdoor recreation.
- Tree buffers ensures an aesthetically pleasing view that is protected from environmental factors.
- Designed to be welcoming for community members to attend artistic, musical, cultural, and events and serve as a point of pride for the community.
- A new school makes our district competitive for new families to relocate to our area and increases property values for our homes.
- Building with sustainable features and the high environmental standards.

Simply put, these benefits, features, and updates cannot exist in a renovated building that lacks adequate space by any measure. Outdated buildings require so much more than cosmetic upgrades to allow for a functional learning space. Older heating and cooling, electrical, technological systems are no longer as safe for students. A newly constructed building will not only be safer

and meet today's codes and standards for our students, but it will be ADA compliant, allowing all students and staff to fully engage with the space rather than being excluded from it. The school can go from being an outdated building, far past its intended lifespan, to something that is a source of pride in the community.

We respectfully suggest all of these factors support the decision to allow schools in the AAA Residence District. Also, it is very common to find that schools are permitted in residential districts: that's where the students reside.

**D. Summary of Standard of Review**

As the Zoning Ordinance expressly permits a school as a Special Exception (See: 27-301 1.A. Special Exception) in the AAA Residence District, Quaker Valley High School is a permitted use and presumptively does not adversely impact the health, welfare and safety of the community.

Objectors may challenge that presumption, however, objectors have an extremely difficult burden which was not met in this case. Objectors must raise an objection based on an adverse impact that results in a high degree of probability that the use will present a substantial detriment greater than what is normally expected.

The objectors did not raise any adverse impact related to the use of the property by students for educational purposes. Objectors raised impacts related to development, not use.

Assuming, *arguendo*, that the development impacts raised are applicable, these impacts are all ordinary and expected impacts of any development of a school. No testimony or evidence was presented at any time asserting a greater impact than would be expected from the development of any school.

**E. Conclusion**

The key questions to ask in reviewing the request for Special Exception are stated as follows:

1. Have the objectors raised any adverse impacts related to the use of the property for the Quaker Valley High School? (not development issues)
2. If so, will these adverse impacts cause a substantial detriment to the community?
3. If so, will these adverse impacts cause a substantial detriment to the community greater than the adverse impacts from some other high school?
4. Lastly, is there a high degree of probability (not a mere possibility) that the adverse impact will cause a detriment to the community beyond the adverse impact from some other high school?

All 4 of these questions must be answered in the affirmative to deny the Special Exception. Objectors have failed to present any evidence on any of these 4 key factors. The record contains

no evidence that the Quaker Valley High School will cause any impact beyond the expected impact from any high school on the Property. All of the impacts raised by the objectors are impacts expected from any school use. Objectors must identify an impact not expected from a typical school use. No such impact was identified.

**ARGUMENT 3: Appeal of Archbishop O’Hara Case**

As cited in Argument 2.B., the principal PA Supreme Court case addressing the standard of review on special exceptions is Appeal of Archbishop O’Hara, 131 A.2d 587 (Pa. 1957). A review of the facts in Appeal of Archbishop O’Hara provides compelling rationale supporting the School District’s request in this case.

Appeal of Archbishop O’Hara involved a Special Exception application requesting approval to permit a Catholic high school in Philadelphia in a congested neighborhood. Objectors raised many of the same issues raised during the hearing in this case, however, all were rejected by the PA Supreme Court. A summary of the objections appears in the Court’s opinion at 131 A.2d 587, 596:

*The learned court below specifically set forth its reasons for the refusal of this application. These reasons were an anticipated increase of traffic with attendant dangers and hazards to the public, a change in the quiet residential character of the district with a slight depreciation in property values, expense to the township, inadequacy of the site for the school and the availability of another site for the purpose.*

After a thorough review of each of these objections, all were rejected by the PA Supreme Court as a legitimate basis for denying a special exception. Select excerpts from the Appeal of Archbishop O’Hara case follow, with bold emphasis added:

A. Traffic. As to traffic, the Court confirmed that any development of any kind would increase traffic to some degree. The Court recognized this increased traffic must have been considered when school use was listed as a permitted special exception in the zoning district.

*The court found that the proposed use would increase traffic, which under the circumstances, would create dangers and hazards and be adverse to the public safety. In connection with this finding certain facts must be considered. The ordinance which classifies this area as an ‘AA’ residential district specifically provides that land situated therein may be used for ‘educational, religious and philanthropic’ purposes. The use of the land for any such purpose would naturally result in an increase in traffic and the framers of this ordinance certainly must have taken heed of this factor in the preparation of the ordinance. 131 A.2d 587, 596*

\*\*\*\*

*Any traffic increase with its attendant noise, dirt, danger and hazards is unpleasant, yet, such increase is one of the ‘inevitable accompaniments of suburban progress and of our constantly expanding population’ which, standing alone, does not*

*constitute a sufficient reason to refuse a property owner the legitimate use of his land. 131 A.2d 587, 596.*

\*\*\*\*

*It is not any anticipated increase in traffic which will justify the refusal of a 'special exception' in a zoning case. The anticipated increase in traffic must be of such character that it bears a substantial relation to the health and safety of the community. A prevision of the effect of such an increase in traffic must indicate that not only is there a likelihood but a **high degree of probability** that it will affect the safety and health of the community, and such prevision must be based on evidence sufficient for the purpose. Until such strong degree of probability is evidenced by legally sufficient testimony no court should act in such a way as to deprive a landowner of the otherwise legitimate use of his land. 131 A.2d 587, 596*

B. Change in Character of the Neighborhood. The Court confirmed long-standing law that neither aesthetic reasons, nor stabilization of property value, constitute a basis for denying a special exception.

*There is nothing in the contemplated use of this site of land by appellant which would depreciate or change the character of this neighborhood any more than would the establishment of any other school, church or philanthropic institution in the district. The conclusion reached in the court below in this respect would exclude any school from this district, a conclusion contrary to the language of the ordinance. No property owner is misled in this respect for every person purchasing a home site or a home in this district does so with notice contained in the ordinance that someday a school, a church or a philanthropic institution might be erected in the neighborhood. 131 A.2d 587, 597*

C. Public Expense. In this case, some objectors raised concerns about the impact to the Township budget. The same objection was raised in Appeal of Archbishop O'Hara. The Court rejected that argument.

*The court finds also that the expense which would be occasioned to the township by reason of the consequent widening of streets, the placement of sidewalks and street lighting is a factor to be considered. What relationship this factor bears to the standards set forth for granting or refusing a special exception—the health, morals and safety of the community—is beyond comprehension. Any use of this site would affect consequentially the township in that it would require the widening of streets, etc. As a matter of fact, appellant has offered of record to assume part of any attendant expense by widening at least a portion of Royal Avenue at its own expense, providing for off-highway parking and placing sidewalks along the main artery of traffic. This reason bears no relationship to the only standards which must guide the board or the court in their exercise of discretion. 131 A.2d 587, 597*

In this case, the School District has agreed to realign Camp Meeting Road, and add turn lanes at the new entrance. Again, the expected consequences of a special exception use cannot be the basis

of rejecting that use.

D. Inadequacy of Site / Other Available Sites. Many objectors argued that other sites are more suitable, or that this site is not adequate. The PA Supreme Court soundly rejected this position.

*The last two reasons assigned for the denial of this application are the inadequacy of the site for the type of proposed school and the fact that appellant owns another site more suitable, in the court's opinion, for the proposed use. Neither reason furnishes an appropriate basis for the denial of this use. 131 A.2d 587, 597*

\*\*\*\*

*The availability of another site as a reason for the denial of a proposed use is novel in zoning cases. The fact that appellant owns another site which in the court's opinion is more suitable is irrelevant. No court is empowered to substitute its judgment for that of a multiple site owner and, in effect, direct which of several sites is to be used by him for a particular purpose.*

E. Summary. The PA Supreme Court summarized its rejection of each objection as follows:

*An analysis of the reasons advanced by the court for denying this application indicates that the court erred in refusing to allow the proposed use. Three reasons assigned by the court—the cost to the township, the availability of another site, the inadequacy of the present site—bear no relationship to the only standards which must guide the court in the exercise of its discretion and therefore the court clearly exceeded its powers and abused its discretion in this respect. A fourth reason—the effect on the character of the neighborhood—has already been ruled by this court insufficient: *Medinger's Appeal, supra*. A fifth reason—the anticipated increase in traffic—falls by reason of the fact that the evidence is insufficient to show a high degree of probability that the anticipated increase in traffic will adversely affect the health or safety of the community.*

The Court confirmed that the special exception to allow a high school was permitted and summarized its rationale as follows:

*The denial of this application would be an unnecessary, unwarranted and unreasonable intermeddling with applicant's ownership of this property under the label of the preservation of the health and safety of the community. 131 A.2d 587, 599.*

The case before this ZHB involves essentially the same facts as Appeal of Archbishop O'Hara. Accordingly, the special exception must be granted.

**ARGUMENT 4: No General or Specific Criteria Apply to the Review of the Special Exception**

Part 6 of the Zoning Ordinance applies to Special Exceptions in Leet Township. Part 6 was amended in its entirety by Ordinance No. 2019-02. Part 6 of the Amended Ordinance does not include any specific criteria for schools. In addition, pursuant to the Amended Part 6, no general criteria is enumerated in the Ordinance which applies generally to all uses.

Part 6 of the Amended Ordinance requires that a written Application address 13 different topics. This low threshold only requires the Application to include an explanation as to these matters but does not identify the matters as criteria that must be reviewed by the Board.

In contrast, the Ordinance provision replaced by Ordinance No. 2019-02 expressly required conditions to be met to grant the Special Exception. See Appendix "A" for the repealed provision of the Ordinance which expressly states: "The following additional requirements must be met for the granting of a Special Exception." That provision was repealed, however, with Ordinance No. 2019-02 and replaced by a provision that only requires that the Application provide information involving a variety of items. See Appendix "B". The revised Part 6 does not set forth any required general criteria; it merely requests background information.

Accordingly, the objectors incorrectly assert that the 13 items in Part 6A are general criteria that must be met and that the School District had the burden of proving these items. That is incorrect. The School District's only obligation was to address these issues in the Application, which the School District did at great length. No objection was made, nor any testimony presented, that would suggest that the School District did not meet its burden of addressing these issues in the Application as required by the Ordinance.

A strict reading of the Ordinance discloses that the School District met all conditions of the Special Exception by filing a completed Application addressing the issues in Part 6A.

**ARGUMENT 5: All 13 Items in Part 6, 2.A. Were Addressed by the Written Application and are Satisfied**

As set forth in the foregoing Argument, the only criteria to be met is that the School District address these 13 criteria in its Application, which it did at great length. Nonetheless, for purposes of argument, assuming that the 13 items are general requirements of the Zoning Ordinance, the objectors bear the burden of raising an issue that demonstrates that there will be a high probability that the use of the property will cause a greater impact than otherwise expected from a school use.

In *Bray v. Zoning Board of Adjustment*, 410 A.2d 909, Pa.Cmwlt. 1980, Judge David Craig clearly set forth the criteria. On matters of general detrimental effect, Judge Craig held that objectors had both the duty and the burden of proving that there was a general detrimental effect from the Special Exception beyond that ordinarily expected. The Judge found that the Ordinance could shift the burden to the applicant but only after objectors raised a specific objection related to how the use could detrimentally impact the community. Judge Craig summarized the law as follows:

*General detrimental effect, e.g., to the health, safety and welfare of the neighborhood:*

*Objectors have both the duty and the burden; the Ordinance terms can place the burden on the applicant **but cannot shift the duty.***

No testimony or evidence was presented indicating how students attending class on the Property would negatively impact the surrounding community. The objectors focused on grading and excavating issues, geotechnical issues, storm water issues, conservation issues and traffic improvements. All of the foregoing are development issues that will be thoroughly reviewed by the Township Planning Commission and Commissioners.

The School District respectfully submits that no legitimate objection was raised based on general detriment because, in fact, the existence of a school at this location will have a very positive impact on the community, not a negative impact. Many of the participants testified that home values would increase in the surrounding neighborhood, and would increase overall in the Township and the School District as a whole when a new high school is built within the community. No impact beyond what would normally be expected was raised by any objector.

Again, the School District satisfied its obligation by addressing these matters in the Application and is not further required to address these criteria. Nonetheless, the School District provides the following direct responses to each of the 13 criteria:

1. *A current property survey indicating all existing and proposed structures and all proposed construction, additions or alterations on the site in sufficient detail to determine the feasibility of the proposed development and compliance with all applicable requirements of this chapter.*

RESPONSE: A perimeter survey with descriptions was submitted with the Application.

2. *A written statement showing compliance with the applicable express standards and criteria of this article for the proposed use.*

RESPONSE: The Zoning Ordinance does not establish any express standards or criteria applicable to a school.

3. *In the case of a plan that meets the criteria, a traffic impact study prepared in accordance with the requirements of the Township.*

RESPONSE: A traffic impact study (TIS) dated March 18, 2021 prepared by David E. Wooster and Associates was submitted with the Application and authenticated by testimony of Mr. Chuck Wooster during the hearing. See further response relating to traffic in Arguments 3 [page 10] and 6 [page 17].

4. *The application fee.*

RESPONSE: The Application fee was paid in full.

5. *A detailed statement demonstrating how the special exception will be beneficial to the public at the proposed location.*

RESPONSE: A lengthy description of the benefits to the public at the proposed location was set forth in the Application and also supported by the testimony and evidence submitted at the hearing. In addition, virtually everyone admitted that a new high school was needed within the School District and that such new facility would be of great benefit to the community.

6. *That the special exception shall be more suitable at the proposed location than on other properties in the same district because of the size, shape, topography, surroundings and physical condition of the proposed location.*

RESPONSE: This is the only site within the AAA Residence District in Leet Township suitable for the high school due to size and topography. The comparison is the AAA Residence District, not the School District in its totality, nor the Township in its totality. This provision calls for comparison within “the same district”. In the context of a zoning ordinance provision, a “district” can only mean one of the zoning districts in the Township. This provision applies to all Special Exceptions, not just schools, hence it cannot be interpreted to mean “school district”. The only testimony on the suitability within the AAA Residence District was from Mr. Jon Thomas who confirmed that this was the only site within the AAA district suitable for a school. (*See Transcript at Appendix “C”.*)

7. *That the special exception shall not involve any element or cause any element or condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with the performance standard of § 27-701.*

RESPONSE: The use of the property for school purposes, i.e. students attending class and participating in activities on the Property, will not pose any dangerous, injurious or noxious impact on any other property or persons. Objectors were primarily focused on physical alterations to the site during construction, which does not involve the permanent use of the site. Physical alteration of the property deals with development issues which are separately reviewed under other Ordinances. The objectors misplace their argument that development issues will cause a negative impact. Development issues are temporary in nature during construction. Objectors’ witnesses confirmed that the risk was during construction and development, not after the school was completed and in operation. (*See, for example, Transcript at Appendix “D”.*) Further, as explained in Argument 2 [page 4], the objectors are required to raise an impact that has a high probability of causing a substantial detriment greater than using the Property as a school under normal circumstances. Ordinary and expected impacts were considered by the Township Commissioners when the Zoning Ordinance was adopted permitting the school use in the AAA Residence District. See Argument 3 [page 10] and Argument 6 [page 17] regarding traffic. The School District’s

use will comply with the performance standards of § 27-701 (see School District Exhibit 8, letter from Mr. Jon Thomas).

COMPARE: Objectors argue a literal reading of this section providing that if any risk at all exists, then the Special Exception must be denied. If objectors were correct, no special exception could ever be approved under any circumstance. Every use has the *possibility* to have a negative impact. Case law repeatedly confirms that the standard requires that there must be a greater adverse risk than what was to be expected, not a determination that there may be some risk.

8. *That the special exception shall be sited, oriented and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties.*

RESPONSE: The school will be sited on the property in harmonious relationship with surrounding grounds by creating a very significant landscape buffer against all other properties. There will not be an immediate impact relating to aesthetic impact on adjoining properties because of this substantial buffer. This use will have a significantly reduced impact on adjoining properties compared to a residential development which would encroach much closer to adjoining land, or a PRD under Chapter 17 which allows a density of 2 units per acre (216 units) spaced 25 feet apart.

9. *The special exception shall be approved by the Zoning Hearing Board, hereinafter referred to as "Board," after public hearing as in the case of variances and exceptions.*

RESPONSE: This section recites a procedural matter rather than a "requirement".

10. *The special exception must also meet all special regulations or conditions, if same are set forth, for a particular special exception.*

RESPONSE: This appears to be a repeat of item No. 2 above.

11. *Traffic. In a residential district, for approval of a special exception, the use shall abut a public street, except where the applicant agrees to pave and widen existing roads as required by the Planning Commission. In Commercial and Manufacturing Districts, all uses shall abut public streets.*

RESPONSE: The only traffic requirement, other than submission of a traffic impact study, is that the property front on a public road. This property fronts on Camp Meeting Road and will provide two separate access points on Camp Meeting Road. See Argument 6 [page 17] regarding traffic.

12. *The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.*

RESPONSE: The proposed plan, Exhibit 2/SP3, shows the addition of turn lanes on Camp Meeting Road to better manage traffic, and expansive parking on site to avoid any parking

on Camp Meeting Road or any other problems relating to traffic congestion. Traffic congestion will be fully addressed by the turn lanes. All parking will be managed on site and not on any existing public streets. See Argument 6 regarding traffic.

13. *The Board may make such other and additional conditions and safeguards as they deem necessary to protect the best interests of the surrounding property or neighborhood.*

RESPONSE: Number 13 does not address requirements but just recognizes the Board's authority to impose conditions provided those conditions are related to the use of the property not development of the property.

See Argument 7: Issue 16 / RESPONSE [page 24], citing Mark West v. Cecil Twp., 184 A.2d 1048 (2018). Conditions must relate to a specific standard created by the zoning ordinance. As the School District meets all standards, no conditions are appropriate.

Notwithstanding the foregoing, the School District suggests that a condition that the School District shall be required to submit a land development plan to the Township for review would be accepted. This is required in any event, but to make it abundantly clear to all, this condition would be the only appropriate condition to this approval.

#### **ARGUMENT 6: TRAFFIC**

The only credentialed expert offered by any objector was Dr. Jim French, who provided some information relating to traffic. In addition, the only "objective" criteria arguably found within the general requirements of the special exception provision of the Ordinance involve traffic. Accordingly, this section of the brief is intended to address traffic issues and clarify and explain how the School District fully met all requirements relating to traffic.

As explained in Argument 4, there are no general requirements to be met under the revised Zoning Ordinance relating to special exception review. Nonetheless, there are three traffic-related items to be covered in the Application. Those items were not only covered in the Application, but clearly supported by the testimony and evidence submitted at the hearing. Those three items are addressed as follows:

Part 6, 2.A., Item (3) states: "In the case of a plan that meets the criteria, a traffic impact study prepared in accordance with the requirements of the Township."

A full and complete traffic impact study ("TIS") was prepared by David E. Wooster and Associates under the guidance of Mr. Chuck Wooster. That study was prepared after consultation not only with the Township, but with Leetsdale Borough and Allegheny County. The traffic impact study met all of the criteria set forth by Leet Township, Leetsdale Borough and Allegheny County. Accordingly, the TIS was prepared and submitted in accordance with Item 3. See Appendix "E", transcript of Thursday, July 15, 2021 at pages 69-72.

No objection was made that the TIS did not meet appropriate standards. In fact, Dr. French stated in referencing the proposal made by the School District, "So to me it's one of those things where,

yes, everything meets the minimums, ...” See transcript of the hearing on September 17, 2021 at page 147, attached as Appendix “F”. Dr. French argues that the minimum should be exceeded, however, the minimums are safety standards as established by Allegheny County, Leetsdale Borough and Leet Township, and presumably PennDOT as PennDOT standards are part of the industry standard followed in preparing a TIS. The School District respectfully suggests that these governmental entities would not adopt “minimums” that were anything but safe for all level of drivers, including both the elderly and students.

Part 6, 2.A., Item 11 states, in part, as follows: “In a residential district, for approval of a special exception, the use shall abut a public street, ...”

In this case, as shown on Exhibit 2/SP3 and testified by Mr. Wooster at page 70 of Appendix “E”, the property abuts Camp Meeting Road, a public road controlled by Allegheny County.

Accordingly, this requirement is met.

Part 6, 2.A., Item 12 reads as follows: “The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.”

Exhibit 2/SP3 shows a realignment of Camp Meeting Road with turn lanes to control traffic on Camp Meeting Road. No parking whatsoever is contemplated on Camp Meeting Road. All traffic will be directed onto the high school campus while controlling internal circulation of traffic with an abundance of parking. Traffic will not back up onto Camp Meeting Road, and no parking will be required outside of the school campus. See Exhibits 16 and 17 for sketch plan of intended road improvements at the new high school entrance and at Camp Meeting Road and Beaver Street.

No evidence was presented by anyone suggesting otherwise.

Accordingly, even if these three items were considered requirements, the School District complied. No testimony or evidence was presented that would suggest that the School District did not comply with these requirements. Even if anyone raised an objection, they would need to assert that there was a high probability that the impact would cause a substantial detriment to the community in excess of any detriment expected from the normal use as a high school.

Dr. French provided a report and extensive testimony, but did not provide any evidence or testimony indicating how the use as a Quaker Valley High School would create a detrimental impact greater than use of the property for any other high school. Specifically, Dr. French did not, in any way, meet the very strict burden of providing any testimony that would suggest that the impact from this school would have a high probability of causing a substantial detriment in excess of the impact normally expected from a school use on this site.

In fact, all of Dr. French’s testimony related to the impact expected from a high school. Dr. French referred to Center for Disease Control data which is general data that applies to all student drivers of any sort. There was no evidence from the CDC or otherwise that the student drivers at Quaker Valley School District were different than any other student drivers. As indicated in other Arguments in this Brief, the standard is whether there would be an impact greater than otherwise

expected. When the Township Commissioners provided that a school could be located on this site, and abutting Camp Meeting Road, the Commissioners acknowledged that student drivers would use Camp Meeting Road. They made a policy decision that Camp Meeting Road was a safe road to access a school. That is further buttressed by the fact that on the westerly side of Camp Meeting Road schools are permitted as an as-of-right use, including the existing D.T. Watson School which regularly uses Camp Meeting Road for access.

In addition, Dr. French only found two (2) reported accidents over a five (5) year period (see transcript of September 17, 2021 hearing at page 158, Appendix “G”). The School District confirmed that one-third of the existing school bus traffic and approximately 1/3 of the student drivers currently use Camp Meeting Road, in addition to all of the traffic on the existing D.T. Watson, and Encompass Health. Yet there were only two (2) reported accidents in five (5) years.

Chuck Wooster, in rebuttal to Dr. French’s testimony, confirmed in his report submitted as Exhibit 15, that the accident rate per travelled mile on Camp Meeting Road was actually less than the statewide average.

Accordingly, no evidence was presented that suggests that there will be some extraordinary impact along Camp Meeting Road because of the development of Quaker Valley High School. Any and all impacts are expected and therefore approved by the inclusion of the school as a special exception in the AAA Residence Zoning District. Dr. French did not raise any impacts that would not exist at any other typical location in Western Pennsylvania. He merely cites the inexperience of student drivers, as confirmed by the CDC. These are all considered in creating standard traffic engineering criteria, both by PennDOT and local municipalities, such as the Allegheny County, Leet Township and Leetsdale Borough.

CONCLUSION: No evidence was introduced to support the notion that the traffic impact related to opening Quaker Valley High School would be any greater than the impact of any other high school.

#### **ARGUMENT 7:      RESPONSE TO ZHB INQUIRIES**

By email dated December 14, 2021, Solicitor Vince Restauri suggested a list of issues that should be addressed. Accordingly, these issues are set forth below followed by the School District’s response thereto.

*ISSUE 1.      What is the relationship between Leet Township Ordinance Part 6, §2A (application) and §2D (burdens of proof, health, safety, welfare)? (attached)*

RESPONSE: This issue is addressed in Argument 2 [page 4], Argument 4 [page 13] and Argument 5 [page 13]. Bray v. ZBA, 410 A.2d 909 provides the controlling law. As to general detriment, the applicant bears the burden of proof only after an objector raises specific detriment that results in a substantial impact. Because general detriment is such a very broad and vague category, the courts first place the duty of raising such an impact on any objector. Section 2D shifts the burden of persuasion, but only after an objector has met its duty to raise an impact that is greater than the impact ordinarily expected by the use.

Bray provides the explanation as to why the duty must always remain on the objector as to proving the public interest will be adversely affected as follows:

*Where the ordinance attempts to place upon the applicant a burden of proof even more vague in its nature, we have refused to give it effect. In Cherbel Realty Corp. v. Zoning Hearing Board, 4 Pa.Cmwlth. 137, 285 A.2d 905 (1972), where the ordinance purported to place upon the applicant the "burden of proof" to show that the special exception would be "in harmony with the general purpose(s) and intent" of the zoning ordinance, we said:*

*This language is so vague that the lower court was correct in concluding that the applicant's only burden was to prove that its request for special exception conformed to the requirements of the ordinance and that the opposition to the exception must carry the burden of proving that the proposed use would be contrary to the public interest." 4 Pa. Cmwlth. at 139, 285 A.2d at 906.*

*ISSUE 2. By filing this application, has QVSD waived objections to §2A items being considered by ZHB?*

RESPONSE: No. To the contrary, as explained in Argument 4 [page 13], the only requirement in Section 2A is to address those items in the Application. The criteria to be met is that an explanation be provided in the Application as to each item. Each item does not constitute criteria to be met, but rather a request for information required for a completed Application. As explained in the Brief, the repealed Part 6 (Special Exception) included enumerated criteria to be met. The mandatory language setting criteria was removed in the revised Part 6.

Further, to the extent any of the 2A criteria includes broad, vague requirements, the burden of raising specific harm rests with the objectors. See the Response to Issue 1 above.

*ISSUE 3. Does "more suitable" in the application under §2A(6) require, or at least open the door for, ZHB to evaluate and compare other possible school sites, and to evaluate and compare this site for non-school uses?*

No. This issue is addressed in Argument 5 (6) [page 15]. First, the ZHB cannot consider any site outside Leet Township under any circumstance. The ZHB jurisdiction does not extend beyond the Township line. In addition, the School Code provides exclusive jurisdiction to the School Directors to select school sites. Section 5-508 of the School Code provides that upon an affirmative vote of a majority of all members of board of school directors, the board may locate new buildings or change the location of old ones. The QVSD Directors unanimously decided to relocate the Quaker Valley High School to the Property.

Next, as explained in the Brief, the comparison, if enforceable, is limited to a review of the most suitable site in the AAA district only. The only testimony on this issue was from Jon Thomas, confirming that there are no other suitable sites in the AAA district.

Next, as this provision is very broad and vague, the duty to identify another site within the AAA district is on an objector. No objector identified any other site in the AAA District, or for that matter anywhere in the Township, that would be more suitable. See Response to Issues 1 [page 19] and 2 [page 20] relating to objectors burden.

Finally, and most importantly, the only comparison permitted is a comparison to the impacts expected from any school against the impacts from the Quaker Valley High School. Only if the comparison finds a high probability that there will be an impact greater than expected, that would cause a substantial detriment, can a comparison be undertaken.

*ISSUE 4: Is §2D consistent with Pennsylvania appellate case law, particularly regarding burdens of persuasion?*

RESPONSE: Yes. The Bray case summarizes PA law on this issue, as explained in Argument 5 above. There are two burdens involved: presentation of evidence identifying a substantial adverse impact greater than expected (“duty”), and persuasion burden (“burden”). The persuasion burden is moved to the School District by 2D, however, 2D does not move the duty burden. Bray confirms that even if the ordinance attempted to shift the duty burden, that would not be permitted.

As explained above, the School District’s burden of persuasion applies only after an objector meets its duty burden to raise a substantial adverse impact greater than expected by use as a school. In this case, no such impact was raised.

Again, as explained in Argument 1 [page 3], the substantive adverse impact must be related to the use of the site, not development issues, and must be an impact greater than normally expected (see Argument 2).

*ISSUE 5: What standard of proof (preponderance? clear and convincing? other?) applies to disputed facts in a special exception case?*

RESPONSE: Objectors have a very high burden. As addressed in Argument 2 [page 4], objectors must demonstrate to a high degree of probability that the Quaker Valley High School use will present a substantial detriment greater than what is normally expected from a school use.

This burden was not met.

*ISSUE 6: Does QVSD’s pending application request approval of other buildings besides the school itself, and if so, on what basis (Permitted use? Special exception? Ancillary use? Other?)? Can ZHB grant approval of the school—but deny approval of any other buildings without prejudice to filing future ZHB applications for them if required by law or Ordinance?*

RESPONSE: The School District’s Application is for approval of a school and related administrative offices. The final design is not complete, however, the general area of the school buildings is shown on Exhibit 2/SP3. The issue before the ZHB relates to the use of the property,

not the design of buildings that will be used to conduct that activity. The final design will be reviewed by the Planning Commission.

*ISSUE 7. Does Pennsylvania law favor approval of special exceptions with imposition of conditions and safeguards ("conditions"), rather than outright rejection of a special exception application?*

RESPONSE: Pennsylvania law favors approval of Special Exceptions without conditions. A Special Exception is a permitted use which must be granted absent a showing that there is a high degree of probability that the use will present a substantial detriment greater than what is normally expected. A condition is only appropriate if the condition mitigates a detriment concerning the use (NOT development).

*ISSUE 8. Does the application present an enforceable commitment from QVSD to have a usable access road (other than Camp Meeting Road) for emergency vehicles?*

RESPONSE: No. Exhibit 2/SP3 does not include any access points other than the two access points on Camp Meeting Road. With two access points located some distance apart, an emergency plan can be developed (during the land development process) in coordination with the Township Police and Fire representatives. A single catastrophic event cannot cut off access to the school. In such an event, traffic would be diverted away from the catastrophe using the access drive most appropriate.

*ISSUE 9. Is it abnormal for a school on a steep windy road like Camp Meeting to have only one access road for students, staff and emergency vehicles?*

No. First, Camp Meeting Road is properly posted as to speed and road conditions to make it safe. The average accident rate on Camp Meeting Road is lower than statewide averages. Second, with two entrances, Camp Meeting Road will not likely be travelled in its entirety by all visitors. Students/teachers/others travelling south will likely enter at the top entrance; those travelling north will likely enter at the lower entrance. Third, the Township already authorizes Camp Meeting Road to be used "as of right" for schools. D.T. Watson uses Camp Meeting Road and is permitted "as of right" to do so. Likewise, when the ordinance was adopted allowing schools in the AAA Residence District, the Township essentially determined that Camp Meeting Road was a safe road to accommodate school traffic.

*ISSUE 10. What limiting factors apply to imposing conditions? If price/cost is a limiting factor, does evaluating such costs open the door for ZHB to consider all financial aspects of the project?*

RESPONSE: The ZHB has a very limited range of what may be considered in imposing conditions. Price/cost is not a limiting factor. Any condition must address an adverse impact caused by the use of the property as a school. No conditions may be imposed relating to development activity. No objector raised any impact by students attending class in a school building. All impacts raised are impacts normally expected, and involve development activity.

*ISSUE 11. Is degree of risk/threat to public health, safety and welfare measured by one or more of the following: (a) number of people/properties allegedly at risk? (b) extent of damage if risk materializes, even if only to a handful of properties/people? (c) likelihood that risk will materialize? (d) insurability and cost of insurance for the risk? (e) other?*

RESPONSE: The ZHB may consider health, safety and welfare issues only to the extent an objector raised an issue identifying a risk greater than that expected by use of a school on the property. By identifying school use as a special exception in the Ordinance, a presumption is created that the use as a school is consistent with the health, safety and welfare of the community. (See Argument 2, page 4) Before any analysis regarding health, safety and welfare can be undertaken, objectors had to identify an impact greater than what would normally be expected. No such impact was identified. All testimony and evidence identified the impacts normally expected. The Township already considered those impacts by allowing a school as a special exception.

The limited function of the ZHB is to serve as a “safety valve” in the event an applicant proposed a school that would cause impacts beyond what is expected from a normal school. For example, consider the unexpected impacts that might occur if an applicant proposed a school for tractor trailer driver students providing an on-site training course, and providing on-road training originating on this site. Such a use would cause impacts not expected, which then could be reviewed by the ZHB. In the present case, we respectfully suggest that the impacts from a public high school are precisely the impacts expected from use as a school

*ISSUE 12. Which community or neighborhood is within the ambit of risk for special exception purposes—Leet Township only, township-wide, not limited to adjacent/surrounding the site? Adjacent/surrounding properties only, regardless of Township? People who themselves (or whose children or grandchildren) use the school regardless where they reside in QVSD? Other?*

RESPONSE: The community must be limited to the area surrounding the property, and must include only property that is directly impacted by the use. The community cannot extend beyond the property owners who have standing. This is strictly a zoning issue assessing impacts on adjoining owners. The benefits to the overall community rest within the jurisdiction of the School Board in selecting a site for the Quaker Valley High School. More importantly, as explained above, a presumption exists that a school on this site is in the best interests of the health, safety and welfare of the community.

*ISSUE 13. Does “detriment” mean “net detriment” (benefits versus harm)? If so, is the arithmetic of benefits compared to harm, limited to the same people on both sides of the equation? Or is it measured in some other way—e.g., benefits to community compared to risk of harm to a few people or properties? Or is “detriment” a self-contained concept that does not implicate an accompanying benefit analysis at all?*

RESPONSE: Any analysis of detriment must necessarily involve a net analysis comparing the benefits to the detriment. That analysis, for purposes of zoning, must be an analysis on a

community-wide, overall basis. Any zoning restriction at all is a “detriment” on an individual owner basis, however, zoning is permitted for the overall net benefit of the community.

Notwithstanding the foregoing, the ZHB does not need to engage in that analysis for this Application. As explained above, the proposed school at this site is presumptively not detrimental to the health, safety or welfare of the community. No objector asserted any adverse impact to the community greater than an expected use of the property for a school. Accordingly, no extraordinary impact was presented for the ZHB to review.

*ISSUE 14. How much inconvenience to the public is required for it to rise to the level of being a substantial public health, safety and welfare detriment? Is filing and litigating an insurance claim for property damage different from, or the same as, inconvenience?*

RESPONSE: The response to Issue No. 13 above essentially also responds to this inquiry. The analysis must be a net analysis, and will be unique to each situation. In this case, however, no objector raised any impact greater than any impact expected from use as a school. Accordingly, the presumption that the use is not a detriment to the health, safety and welfare of the community was not challenged. The ZHB will not need to conduct any comparative analysis.

*ISSUE 15. Is the different Ordinance treatment of “schools” in the AA district (across Camp Meeting Road from AAA district) in contrast to the AAA district, meaningful?*

RESPONSE: The difference in treatment is minimal. As explained in Argument 2, a Special Exception is a permitted use, subject to conditions in the Ordinance. The Township Zoning Ordinance does not impose any conditions on a school use as a special exception. Accordingly, the Township treats schools in each district almost the same. The only difference is that in the AAA Residence District, interested parties are given the opportunity to review the application and object if the school use will cause unexpected impacts greater than normally expected. In the absence of such greater impact, the uses are both permitted.

In addition, the treatment of school as an “as of right” use in AA Residence District along Camp Meeting Road further confirms that Camp Meeting Road is presumptively a safe means of access to schools.

*ISSUE 16. If ZHB grants the application with conditions, may it lawfully impose a condition requiring the land and building to be made available for use by non-students at reasonable times and on reasonable terms set by the School Board?*

RESPONSE: No. The control of school facilities resides strictly with the elected School Directors under the PA School Code. The Directors have, and must retain, full control of the public school facilities. There exists no basis for creating, essentially, a permanent “public easement” on School District property. Such a condition does not address or mitigate any adverse impact, hence it is not appropriate or authorized. Circumstances change as time passes. The School Directors must have complete control to address circumstances as they occur, and on a speedy basis. The School Directors must retain the right to control who may enter and use its

facilities, exercising its best judgment as to the health, safety and welfare of its students and the community in general.

In addition, Mark West v. Cecil Twp., 184 A.2d 1048 (2018) clarifies the standards relating to what conditions may be imposed. The case states:

at 1058, “A reasonable condition must (1) relate to a standard in the applicable zoning ordinance or in the MPC and (2) be supported by evidence in the record...”

at 1061, “A board may not attach a condition to a special exception which essentially serves a non-zoning purpose.”

The Zoning Ordinance makes no reference to allowing a school use to be conditioned on being open to use by non-students, accordingly any such condition is not permitted.

Finally, no evidence was presented relating to any adverse impact greater than would be expected from use as a high school, hence no conditions are appropriate as no adverse impacts exist which require mitigation.

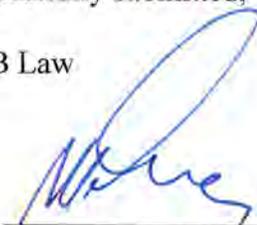
**C. CONCLUSION**

For the reasons set forth above, the School District’s Application for Special Exception should be granted.

Respectfully submitted,

GRB Law

By:



Donald J. Palmer, Esquire  
Daniel F. Gramc, Esquire

REPEALED BY ORDINANCE 2019-02

*Township of Leet, PA  
Thursday, December 30, 2021*

## Chapter 27. Zoning

### Part 6. SPECIAL EXCEPTIONS

#### § 27-601. Special Exceptions.

[Ord. 168, 7/10/1978, § 601]

1. The following additional requirements must be met for the granting of a special exception:
  - A. The special exception must be found to be beneficial to the public at the proposed location.
  - B. The special exception is more suitable at the proposed location than on other properties in the same district because of the size, shape, topography, surroundings and physical condition of the proposed location.
  - C. The special exception shall not involve any element or cause any element or condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with the performance standard of § 27-701.
  - D. The special exception shall be sited, oriented and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties.
  - E. The special exception must be approved by the Zoning Hearing Board, hereinafter referred to as "Board," after public hearing as in the case of variances and exceptions.
  - F. The special exception must also meet all special regulations or conditions, if same are set forth, for a particular special exception.
  - G. Traffic. In a residential district, for approval of a special exception, the use must abut a public street, except where the applicant agrees to pave and widen existing roads as required by the Planning Commission. In Commercial and Manufacturing Districts, all uses shall abut public streets.
  - H. The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.
  - I. The Board may make such other and additional conditions and safeguards as they deem necessary to protect the best interests of the surrounding property or neighborhood.

APPENDIX A

CURRENT SPECIAL EXCEPTION PROVISIONS  
PER ORDINANCE 2019-02

the construction or authorize the occupancy described in the application for conditional use approval is submitted within 12 months of said approval, unless the Board of Commissioners, in its sole discretion, extends conditional use approval upon written request of the applicant received prior to its expiration. The maximum extension permitted shall be one twelve-month extension.

2. Approval of uses by special exception. The Zoning Hearing Board shall hear and decide requests for uses by special exception. The Zoning Hearing Board shall not approve an application for a use by special exception unless and until:

A. A written application for approval of a use by special exception is submitted to the Township. The application shall indicate the section of this chapter under which approval of the use by special exception is sought and shall state the grounds upon which it is requested. The application shall include the following:

- (1) A current property survey indicating all existing and proposed structures and all proposed construction, additions or alterations on the site in sufficient detail to determine the feasibility of the proposed development and compliance with all applicable requirements of this chapter.
- (2) A written statement showing compliance with the applicable express standards and criteria of this article for the proposed use.
- (3) In the case of a plan that meets the criteria, a traffic impact study prepared in accordance with the requirements of the Township.
- (4) The application fee.
- (5) A detailed statement demonstrating how the special exception will be beneficial to the public at the proposed location.
- (6) That the special exception shall be more suitable at the proposed location than on other properties in the same district because of the size, shape, topography, surroundings and physical condition of the proposed location.
- (7) That the special exception shall not involve any element or cause any element or condition that may be dangerous, injurious or noxious to any other property or persons, and shall comply with the performance standards of § 27-701.
- (8) That the special exception shall be sited, oriented and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties.

- (9) The special exception shall be approved by the Zoning Hearing Board, hereinafter referred to as "Board," after public hearing as in the case of variances and exceptions.
  - (10) The special exception must also meet all special regulations or conditions, if same are set forth, for a particular special exception.
  - (11) Traffic. In a residential district, for approval of a special exception, the use shall abut a public street, except where the applicant agrees to pave and widen existing roads as required by the Planning Commission. In Commercial and Manufacturing Districts, all uses shall abut public streets.
  - (12) The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood.
  - (13) The Board may make such other and additional conditions and safeguards as they deem necessary to protect the best interests of the surrounding property or neighborhood.
- B. Written notice of the public hearing shall be sent by first class mail to all property owners within 300 feet of the perimeter of the property for which the application is submitted.
  - C. A public hearing pursuant to public notice requirements shall be conducted by the Zoning Hearing Board within 60 days of submission of a complete and properly filed application unless the applicant has agreed in writing to an extension of time.
  - D. In proceedings involving a request for a use by special exception, both the duty of initially presenting evidence and the burden of persuading the Zoning Hearing Board that the proposed use is available by special exception and satisfies the specific or objective requirements for the grant of a use by special exception as set forth in this chapter rest upon the applicant. The burden of persuading the Zoning Hearing Board that the proposed use will not offend general public interest, such as the health, safety and welfare of the neighborhood, rests upon the applicant.
  - E. In considering an application for approval of a use by special exception, the Zoning Hearing Board may prescribe appropriate conditions and safeguards in conformity with the spirit and intent of this article. A violation of such conditions and safeguards, when made a part of the terms and conditions under which approval of a use by special exception is granted, shall be deemed a violation of this chapter.
  - F. If land development plan approval is required for the use by special exception, the application for approval of a land development plan required by the Township Subdivision and Land Development Ordinance shall be

- 1 BY MR. GRAMC:
- 2 Q. John, is this a copy of the zoning map for  
3 Leet Township?
- 4 A. Yes, it is.
- 5 Q. Can you identify on that map where the AAA  
6 zoning district is?
- 7 A. The AAA zone is in the white. It's all in  
8 this area, and it's also in this area over  
9 here where the Walker Park is, but I wanted to  
10 differentiate where the park is, but it's also  
11 AAA.
- 12 Q. Thank you. Is the site we're talking about  
13 tonight within that AAA district, and could  
14 you show us where is it?
- 15 A. The site we are talking about is surrounded by  
16 this red line, and it's over in this corner of  
17 the site and it falls entirely within the AAA.
- 18 Q. Okay, are there any other sites in the AAA  
19 district that would be suitable for this high  
20 school project?
- 21 A. No.
- 22 Q. And could you identify generally -- there are  
23 a couple of larger parcels on the zoning map?
- 24 A. I started by looking at the Allegheny County  
25 GIS site that they have, and it gives you the

1 property line, and then you can click on the  
2 lot information. It takes you to the  
3 Allegheny County assessment. It gives you the  
4 number of acres from there, and that's what I  
5 did.

6 It seems kind of on the down low,  
7 but that was my source of information. So I  
8 looked at the large site areas. I'm  
9 calling -- I don't know what you officially  
10 call it here in the area. I call it the maple  
11 house site, 42 acres. So that was one of the  
12 larger sites.

13 I looked at another site. Up here  
14 is -- I call it the Miller site, 25.18 acres.  
15 And then over here at the top on the border is  
16 what I called the Skrabut site, and that, I  
17 will note, is different from the Skrabut site  
18 that Jeff looked at in his study, to the  
19 extent that the Skrabut site that Jeff looked  
20 at over in the area of Bell Acres.

21 So these were the three sites that  
22 I saw in the AAA that were closest to having  
23 enough acreage to being able to do the  
24 project.

25 Q. On those sites, do they all share the same red

1 bed soils?

2 A. To my knowledge, everything in this whole  
3 township does.

4 Q. Okay.

5 A. And I don't care what map you look at, just  
6 look at the elevation maps, it's just about  
7 all the same elevation in Leet Township until  
8 you get to Leetsdale.

9 Q. On those potentially alternative sites --  
10 the project site, there was testimony that  
11 site had access via Camp Meeting Road, an  
12 Allegheny County road. What would the access  
13 be to those other sites?

14 A. I don't know. This one I assume you would  
15 have to go through the park because the road  
16 is over here (indicating). This one, I  
17 suppose you would have to get some kind of  
18 access back through this little road that's  
19 coming in.

20 Q. The site that we're here with tonight compared  
21 to those sites, which site has the best  
22 vehicle access?

23 A. Clearly this site, what was formerly known as  
24 the tall site, which is now the Quaker Valley  
25 School District site.

1 Q. Looking at each of those sites, are there  
2 topographical issues that would prevent them  
3 from being fully developed to get a 40-plus  
4 acre for the school?

5 A. Well, yeah, in as much as this is only 42  
6 acres. You know, I don't see how you would do  
7 that and still get your contours back for the  
8 contours that surround the property.

9 You need a buffer between your  
10 development area and the neighbors so that you  
11 can make the transition and not impose weird  
12 surface flow conditions onto their site.

13 So if you are grading right up to  
14 the property line, no, that works the other  
15 way. You work from your property line in, and  
16 it makes your development area smaller. That  
17 kind of restriction didn't really exist on the  
18 site under consideration.

19 Q. Okay. So with this AAA zoning district, which  
20 site do you identify as the most suitable for  
21 the high school project?

22 A. As I said, clearly the site that is circled in  
23 red, and that's the site that is under  
24 discussion here tonight.

25 MR. GRAMC: I have no further

1 the safe use of the building by its occupants  
2 come into play?

3 A. Once you exceeded all the hurdles of all the  
4 criteria getting to that point, we say that  
5 site is suitable for this development, for  
6 this usage, then those risks -- then you  
7 analyze those risks as well. But the risk  
8 you're describing has to be identified and  
9 quantified well before.

10 The slide is not going to occur when the  
11 building is on there. The slide is going to  
12 occur when the earth is disturbed to the  
13 degree it's going to be disturbed. You know,  
14 Walmart building wasn't on that site when it  
15 slipped down onto the highway. It's the day  
16 after they blasted the site. That's where  
17 your risk of the majority of the erosion risk  
18 exists.

19 Q. So in your experience, if that school were  
20 built on this site, there is little, if any,  
21 risk it would landslide. The landslide risk  
22 is while it's being prepared and built.

23 A. That's the majority of the risk, that's  
24 correct.

25 Q. That's important, at least to me. So are you

1 the board. We did not bring a couple boxes of  
2 copies for that.

3 MR. RESTAURI: That's fine.

4 MR. GRAMC: It is quite  
5 voluminous.

6 MR. RESTAURI: Thank you.

7 BY MR. GRAMC:

8 Q. Chuck, you're familiar with the SP-3 plan  
9 which is the general scope of the kind of  
10 school that Quaker Valley intends to construct  
11 on this site?

12 A. I am.

13 Q. And you've seen the site and viewed the site?

14 A. I have.

15 Q. Now you prepared the traffic impact study.

16 Did you do that with any guidance from  
17 Allegheny County or the township?

18 A. We did.

19 Q. Could you explain that process?

20 A. We had a scoping meeting, generally traffic  
21 studies for transparency. The scope of the  
22 traffic studies are reviewed with the agencies  
23 that would be involved. In this case, access  
24 is being proposed via Camp Meeting Road which  
25 is owned and maintained by Allegheny County,

- 1 and it is in the township and also involves  
2 bordering townships so we contacted the  
3 Leetsdale Borough, Leet Township and Allegheny  
4 County relative to reviewing the scope of  
5 traffic study. The scoping meeting was  
6 virtual but included the municipal engineer  
7 that services both Leet and Leetsdale as well  
8 as representatives of Allegheny County and our  
9 firm.
- 10 Q. And was a criteria for the traffic study  
11 agreed upon at that meeting?
- 12 A. It was.
- 13 Q. And did you perform the traffic study in  
14 accordance with that criteria?
- 15 A. We did.
- 16 Q. Does the site that we're talking, 108 acre  
17 site that we're talking about, abut on a  
18 public road?
- 19 A. It does.
- 20 Q. And what road is that?
- 21 A. Camp Meeting Road.
- 22 Q. How many access points are proposed to the  
23 school from Camp Meeting Road?
- 24 A. There are two access points via Camp Meeting  
25 Road.

1           you can see to get out, but you can't see much  
2           further than what you need to see out.

3                         So to me it's one of those things  
4           where, yes, everything meets the minimums, but  
5           does anything exceed the minimum by some great  
6           measure of safety that would help a kid out as  
7           they are trying to get out of here? I don't  
8           really think so. And I think the accumulation  
9           of all things that are just meeting the  
10          minimums without a great measure of safety,  
11          maybe for you and I that's okay. For kids, I  
12          don't think so.

13       BY MR. DePAUL:

14       Q.   Mr. French, I guess one last thing. In your  
15       expert opinion, would building a school there  
16       and the related traffic impact on Camp Meeting  
17       Road be a detriment to the health, safety and  
18       welfare of the individuals in Leet Township,  
19       particularly those in close proximity to the  
20       school?

21       A.   Yes.

22       Q.   And why is that?

23       A.   I think it elevates the risk of crashes there.  
24       Most certainly it does. I think you've got a  
25       facility that's not a good road for a high

- 1 A. I would tell you I don't know until I look at  
2 it because that wall is still in the way. It  
3 may buy you another 100 feet, it may buy you  
4 200 feet. You know, you have to see what it  
5 is to know what it is.
- 6 Q. You indicated there is crosswalk markings  
7 missing, pavement markings that were missing.  
8 Can't those all be fixed by putting them on  
9 the road?
- 10 A. Signing and pavement markings? Absolutely.
- 11 Q. Did you search for any crash data on this road  
12 at all?
- 13 A. I examined crash data that was provided to me.  
14 I saw two crashes in five years, I believe,  
15 two reportable crashes.
- 16 Q. So all these existing problems and you found  
17 two accidents in five years.
- 18 A. Right, that's right. Two reportable crashes.  
19 Those are the only ones where the police would  
20 be called.
- 21 Q. Do you recall -- that's fine. But you  
22 actually went over, in your discussion, ways  
23 to fix a lot of these problems.
- 24 A. Oh, yeah, I think some of them you can and  
25 some of them you can't. And the downgrade to