

BEFORE THE LEET TOWNSHIP ZONING HEARING BOARD

Re: Application of Quaker Valley School District for Special Exception
200-210 Camp Meeting Road

Brief in Support of Quaker Valley School District's
Application for Approval of a Special Exception

Throughout much of 2021, the Leet Township Zoning Hearing Board (the “Zoning Hearing Board”) held a series of hearings through which it offered a public forum for the discussion and deliberation of issues related to the use of the 200-210 Camp Meeting Road site for a new Quaker Valley High School. The Zoning Hearing Board’s openness to the viewpoints and perspectives of all self-identified stakeholders throughout these months is commendable. In light of the sheer volume of information and opinions presented at these hearings, however, several issues irrelevant to the narrow determination to be made with regard to the special exception sought by Quaker Valley School District have been considered. This brief seek to focus attention on (i) the appropriate scope of the Zoning Hearing Board’s consideration of the special exception sought by Quaker Valley School District, (ii) the scarcity of evidence that the proposed use of the land for a new public high school would negatively impact the health, safety and welfare of the community, and (iii) the evidence presented by a number of community stakeholders regarding the *benefits* of this proposed use to the health, safety, and welfare of the community.

I. The Leet Township Zoning Ordinance Defines the Scope of the Zoning Hearing Board’s Focus Narrowly on the Proposed Land Use, Not the Anticipated Development or Construction on the Land

The 200-210 Camp Meeting Road site proposed as the location for a new high school by the Quaker Valley School District lies within an area defined as a AAA Residence District by Leet Township. Section 27-301 of the Leet Township Zoning Ordinance (the “Ordinance”) lists “schools” among the “permitted principal, accessory and special exceptions” for a AAA Residence District. “Schools” are listed among the permitted special exceptions for this district, with such a special exception defined by Section 27-104 of the Ordinance as “[a] use permitted in a particular zoning district pursuant to the provisions of this chapter and Articles VI and IX of the Pennsylvania Municipalities Planning Code, 53 P.S. §§ 10601 et seq., 10901 et seq.” (italics added). Notably, “[a] special exception is not an ‘exception’ to a zoning ordinance,” but is instead “a permitted use which an applicant is entitled to have, unless the [Zoning Hearing] Board determines, according to the standards in the zoning ordinance, that the use would adversely affect the community.” Berlant v. Zoning Hearing Board of Lower Merion Township, A. 2d 400, 401 (Pa. Commw. Ct. 1971).

In accordance with the requirements stated in Section 27-601 of the Ordinance, the Quaker Valley School District filed a written application with the Zoning Hearing Board for a “use by special exception.” The application required the school district to gather and submit a considerable amount of information for the Zoning Hearing board’s consideration and spurred months of hearings related to the school district’s proposed use of the site through the sought special exception. However, the application for this use by special exception and, therefore, the

focus of this Zoning Hearing Board's determination, remains the proposed use of the site *as a school*, not the proposed land development and/or the construction of edifices and related property improvements on the site.

The Ordinance makes clear that the Zoning Hearing Board's focus must remain on the proposed use of the site (and not on land development or construction issues). Part 6 (Special Exceptions and Conditional Uses), Section 2, Subparagraph F of the Ordinance states:

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.

This section of the Ordinance helps to clarify the appropriate bounds of the Zoning Hearing Board's consideration for a "use by special exception." Use of a property *as a school* within the AAA Residence District must be reviewed and subject to this Zoning Hearing Board's approval through the special exception process, *regardless of whether such use as a school requires land development or construction*, because it is *the property's use as a school* that is the appropriate focus of the Zoning Hearing Board.

In some situations, the Zoning Hearing Board would need to consider the use of a property under a proposed special exception where *no land development or construction* was proposed. In those situations, the Zoning Hearing Board would consider the nature of the proposed use of the site. Upon approval by the Zoning Hearing Board, no issues would need to be considered by the Leet Township Planning Commission. In other situations, such as the situation currently before the Zoning Hearing Board, the property must be developed further in order to accommodate the proposed use of the land. As a result, where the Zoning Hearing Board provides an approval for the proposed land use, the Leet Township Planning Commission would then need to perform a separate analysis and approval regarding proposed development and construction. In both sets of situations, the scope of the Zoning Hearing Board's decision *remains the same*, as this board must consider (and must *only* consider) whether *the proposed use of the land* complies with the Ordinance and relevant state law.

Part 6 (Special Exceptions and Conditional Uses), Section 2, Subparagraph F of the Ordinance makes clear that issues related to land development are subject to scrutiny under a different ordinance (the Leet Township Subdivision and Land Development Ordinance) and by a separate body (the Leet Township Planning Commission) following approval of an application for use of a site by special exception. In this manner, the Ordinance identifies certain limits on the issues to be weighed by the Zoning Hearing Board in this context. Consideration of land development and construction issues by the Zoning Hearing Board when assessing a proposed use by special exception would, therefore, (i) violate the scope of its decision-making authority, as established in the Ordinance, and (ii) infringe upon the authority of the Leet Township Planning Commission, as defined by the Ordinance.

II. The Proposed Use of 200-210 Camp Meeting Road Conforms to the Requirements Associated with the Sought Special Exception under the Ordinance, and Objectors Have Failed to Identify How the Use Proposed for the Special Exception Would Substantially Affect the Health, Safety, and Welfare of the Community to a Degree Greater Than Normally Expected With This Type of Use.

Quaker Valley School District’s proposed use of the 200-210 Camp Meeting Road site as a school explicitly fits within one of the “permitted principal, accessory and special exceptions” for a AAA Residence District provided under Section 27-301 of the Ordinance. As explained in Section 5.1.1. of Ryan on Zoning (the leading secondary source for Pennsylvania zoning law):

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.

In the first instance, the Ordinance does not establish any specific criteria or express conditions for the special exceptions uses of land for a school. Likewise, the Ordinance does not establish any general criteria that must be met by applications for special exception requests. Instead, Part 6 (Special Exceptions and Conditional Uses), Section 2, Subparagraph A of the Ordinance includes a list of thirteen items that must be included in a written application for approval of a use by special exception. In its application, the Quaker Valley School District met its burden of providing a written application that addresses each of these thirteen requirements, including those requirements to include in the application evidence regarding site suitability, the lack of dangerous, injurious, and noxious elements, the compliance with the performance standards found elsewhere in the Ordinance, the proposed use’s “harmonious relationship of buildings and grounds” to nearby properties, and the organization of vehicle access and parking to minimize traffic congestion.

Accordingly, the school district has met its initial burdens with regard to the sought special exception for the proposed use of the site as a school, and the Zoning Hearing Board must find the proposed use as “presumptively consistent with the health, safety and general welfare of the community.” Kern v. Zoning Hearing Board of the Township of Tredyfffin, 449 A. 2d 781, 783 (Pa. Commw. Ct. 1982), *cited with approval in Appeal of Martin*, 529 A. 2d 582 (Pa. Commw. Ct. 1987) (holding that applicants, “by showing the proposed use is permitted by

special exception that it complies with the specific requirements of the ordinance, identified the proposal as one which the municipal legislative body has determined to be appropriate in the district” and therefore meriting such presumptive consistency with these community interests); *see also Appeal of R.C. Maxwell Co.*, 548 A.2d 1300, 1303 (Pa. Commw. Ct. 1988) (“Once the applicant has met his or her burden of proving that the proposed use meets the specific and objective requirements for a special exception under the zoning ordinance, a presumption arises that it is consistent with the health, safety and welfare of the community.”). Furthermore, because the plain terms of the Ordinance “have not expressly placed the persuasion burden regarding general detrimental effects on the applicant, the objectors bear the burden of persuasion as to all general detrimental effects.” *Siya Real Estate LLC v. Allentown City Zoning Hearing Board*, 210 A. 3d 1152, 1160 (Pa. Commw. Ct. 2019); *see also Allegheny Tower Associates, LLC v. City of Scranton Zoning Hearing Board*, 152 A.3d 1118, 1124 (Pa. Commw. Ct. 2017) (holding that the applicant has the burden of persuasion only as to specific requirements, while objectors have the burden as to all general detrimental effects unless the terms of that ordinance shift that burden to the applicant). As a result, it falls to objectors to “rebut that presumption by providing 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.” *Sunnyside Up Corporation v. City of Lancaster Zoning Hearing Board*, 739 A.2d 644, 650 (Pa. Commw. Ct. 1999).

This quote from the court’s opinion in the *Sunnyside Up Corporation* case is particularly instructive on three separate issues:

- 1) The objections to be considered by a zoning hearing board must be related to “the proposed use.”
- 2) The objections must relate to negative consequences of the proposed use that “substantially affect the health, safety and welfare of the community greater than what is normally expected from that type of use.”
- 3) The objections must reflect a “high degree of probability” of such negative consequences (and not “just speculation of possible harms”).

Objectors to this special exception sought by the Quaker Valley School District have largely argued that *the land development and construction* of the school (and not the land’s use as a school) will create detrimental impacts to them and other members of the community. For instance, objectors’ arguments regarding the effect of land levelling and school construction of geologic stability at and around the site do not relate to *the proposed use of the site as a school*. As a result, such considerations are not germane to the Zoning Hearing Board’s assessment of the proposed special exception (and would instead be more appropriately addressed by the Leet Township Planning Commission after the Zoning Hearing Board’s approval of the special exception for use and upon more finalization of the relevant development and construction plans).

Pennsylvania case law has consistently placed on objectors to special exceptions for use the burden of showing that the proposed use is detrimental to public health, safety, and welfare.

Bray v. Zoning Board of Adjustment, 410 A. 2d 909, 911 (Pa. Commw. Ct. 1980), *citing* Appeal of Borden, 87 A.2d 465 (Pa. 1952); Zoning Hearing Board of Upper Darby Township v. Konyk, 290 A. 2d 715 (Pa. Commw. Ct. 1972); Root v. City of Erie Zoning Board of Appeals, 118 A. 2d 297 (Pa. Super. Ct. 1955). Moreover, courts in Pennsylvania have characterized this burden as “a heavy one.” Monroe Land Invs. v. Zoning Board of Adjustment, 192 A. 3d 1, 9-10 (Pa. Commw. Ct. 2018) (quoting Marr Dev. Mifflinville, LLC v. Mifflin Twp. Zoning Hearing Board, 166 A. 3d 479, 483 (Pa. Commw. Ct. 2017)). With regard to this sought special exception, relatively few concerns were raised by objectors regarding the *proposed use of the site as a school*, and none of those objections, when considered in light of both the evidence presented by the objectors and the evidence presented by Quaker Valley School District and other stakeholders supporting the sought special exception, evidence to “a high degree of probability” that the sought use by special exception would result in negative effects to “the health, safety and welfare of the community greater that what is normally expected from that type of use.”

In many respects, this finding is premised on the sought use itself. Quaker Valley School District seeks to build a public high school on this site. The use of this site for a public high school would result in certain outcomes that are “normally expected from that type of use,” including a normal amount of additional background noise in the area and increased use of Camp Meeting Road during hours associated with the school’s operation. Objectors have raised some concerns regarding potential negative consequences related to increased traffic volume on Camp Meeting Road and increased accident risks related to the inherent qualities of this road. However, the reports of the traffic expert presented by Quaker Valley School District have indicated that such consequences are:

- 1) manageable through reasonable means, including potential involvement of a traffic officer near the school property at peak traffic times and permanent enhancements of the intersection of Camp Meeting Road and Beaver Street (through road improvements on property abutting that intersection and owned by the school district);
- 2) not significant impairments to the health, safety, and welfare of the community, and not beyond the type of increased traffic volume to be expected from this type of proposed use for the land (particularly in light of the observed consequences on traffic stemming from other land use and development on Camp Meeting Road); and
- 3) not significantly compounded by the inherent safety characteristics of Camp Meeting Road (as traffic accident data collected by the state of Pennsylvania over multiple years have shown that this section of Camp Meeting Road is the site of fewer serious accidents than road segments of similar type and traffic volume over the same period of time).

In this way, the stated concerns regarding traffic volume and safety in connection with the site’s proposed *use as a school* have been shown to be within the bounds of “normally expected” from the type of use customarily associated with use of land as a school. This conclusion closely parallels the Pennsylvania Commonwealth Court’s determination in

Lindenwood Corp. v. Township of Upper Darby, 297 A. 2d 547, 550 (Pa. Commw. Ct. 1972), in which it repeated the Pennsylvania Supreme Court’s observation from In re Rolling Green Golf Club, 97 A. 2d 523, 526 (Pa. 1953) that:

[a]ny 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.

The other concerns cited by objectors, including concerns regarding changes to soil stability, water drainage, and other environmental impacts, relate to the contemplated land development and construction of facilities needed on the property *if the sought use by special exception is approved*, and are, therefore, not squarely within the scope of consideration by the Zoning Hearing Board.

III. The Proposed Use of 200-210 Camp Meeting Road Would *Positively* Affect the Health, Safety, and Welfare of the Community.

When considering how the use of the 200-210 Camp Meeting Road property would affect the health, safety, and welfare of the community, the Zoning Hearing Board must not consider solely the testimony presented by the objectors regarding their perceptions of negative outcomes that would result from the grant of the special exception sought by the Quaker Valley School District. The Zoning Hearing Board must also consider the considerable evidence of *positive effects* to the community of the proposed use of the site, which was offered through testimony presented by the Quaker Valley School District and many stakeholders from the community who support this proposed use. *See, e.g., Suburban Realty, L.P. v. Zoning Hearing Board*, 2011 WL 10846198, at *7, *27-28 (Pa. Commw. Ct., Sept. 29, 2011) (reviewing testimony presented by a special exception applicant that indicated likely positive outcomes from proposed use and subsequently finding that such testimony served as an appropriate support for the zoning hearing board’s finding that objectors had failed to meet its burden of proving that the proposed use would have a detrimental effect).

First, the Quaker Valley School District has indicated through its presentation of expert testimony and the preliminary plans and reports submitted with its application that its proposed use of the 200-210 Camp Meeting Road property would be associated with marked improvements to the property. While issues related to land development and construction are properly the consideration of the Leet Township Planning Commission following approval of the special exception for use by the Zoning Hearing Board, the school district has explained its planned efforts to address community concerns regarding both (i) certain *pre-existing* issues related to the site’s soil stability, water drainage affecting the site and nearby areas, and traffic issues on Camp Meeting Road, and (ii) certain concerns regarding potential effects of land development and construction on these pre-existing issues. At the least, such testimony indicates that the proposed use of the site as a school is accompanied by potential benefits to be examined more closely by the Leet Township Planning Commission in its potential consideration of land improvement and construction issues.

Second, several members of the Leet Township community provided testimony regarding their perceptions of the benefits to be shared through the proposed use of the 200-210 Camp Meeting Road property as a school. These community members, included residents of Leet Township and other members of the broader community served by the schools of the Quaker Valley School District, shared their views about the suitability of the site for a school and how their lives (and the lives of their children and grandchildren) would be positively impacted by the use of that site as a school. Several Leet Township residents noted that the site's use for a public high school would be a boon of Leet Township, as it would draw new interest in the community and could spur potential homebuyers to consider purchasing houses near the school. These residents also noted how the site's use as a school would offer a unique form of vital infrastructure to the Leet Township community and help to connect its residents in a new manner through both its function as a center for learning and academic advancement and its secondary effects on the area, including the availability for new walking trails around the school campus and potentially to Beaver Street.

The testimony provided by other community members highlighted how the proposed use of the 200-210 Camp Meeting Road property as a school would lead to widespread benefits to many families throughout the Quaker Valley School District. Pointing to the school district's past stewardship of properties similarly used as schools in other parts of the school district and noting the long period of time for which a new high school has been a goal for the school district, this testimony reflected how the proposed use of the 200-210 Camp Meeting Road property as a school would serve interests of many residents of Leet Township and other townships in the school district.

Additional testimony cited the 2021 Quaker Valley School District school board elections as evidence for the community's support of the proposed use of the 200-210 Camp Meeting Road property as a school. This testimony indicated that each of the candidates for these recent school board elections made the proposed school's location and construction a primary focus of their campaigns. In each of these elections, school board candidates supporting the proposed use of the 200-210 Camp Meeting Road property as a school were elected, and candidates not supporting such use were not elected. This electoral consensus was true both throughout the Quaker Valley School District generally and in the two Leet Township voting districts. The testimony regarding these election results and the candidate's focus on the proposed school construction as a primary campaign issue suggests that residents of the Leet Township community and the members of the Quaker Valley School District community also perceive benefits in the proposed use of the 200-210 Camp Meeting Road property as a school.

IV. Conclusion

The Leet Township Zoning Hearing Board has devoted significant time, attention, and resources to consider the proposed use of the 200-210 Camp Meeting Road property as a school. Its hearings offered all interested community members with ample opportunities to share their perspectives and thoughts regarding the special exception sought by the Quaker Valley School District. As it deliberates in the coming days, the Zoning Hearing Board must carefully consider the presented evidence within the scope defined for its decision-making by the Leet Township Zoning Ordinance.

As the Zoning Hearing Board considers the gathered testimony and evidence when determining whether objectors have met their “heavy burden” of proving that:

- 1) the Quaker Valley School District’s sought special exception regarding the 200-210 Camp Meeting Road property’s *proposed use for a public high school*,
- 2) will, *to a high degree of probability*, lead to
- 3) negative consequences that substantially affect the health, safety and welfare of the community greater than what is normally expected from that type of use,

it should weigh the evidence proffered regarding the anticipated consequences of such use (including the benefits to the community projected by the Quaker Valley School District and many interested community members related to this use) and consequently grant the school district with the requested special exception.

Respectfully submitted,



Daniel Miller
K&L Gates LLP
Attorney for Don Birnie, Erin
Cosgrove, Daphne Harris, Janice
Patz, and John Stunda
210 Sixth Avenue
Pittsburgh, PA 15222-2613
Phone: (412) 355-8688