

**IN RE:** **BEFORE THE ZONING HEARING BOARD**  
**APPLICATION OF** **OF TREDYFFRIN TOWNSHIP,**  
**DEVON PREPARATORY SCHOOL** **CHESTER COUNTY, PENNSYLVANIA**  
**APPEAL NO. 15-18**

**DECISION**

Devon Preparatory School ("Applicant") has filed an application with the Tredyffrin Township Zoning Hearing Board ("Board") for a variance from §208-23.C (Impervious coverage) of the Tredyffrin Township Zoning Ordinance to install a turf field, which will increase impervious coverage to not more than 44.9%,<sup>1</sup> where 25% is the maximum impervious coverage permitted, on the property located at 363 North Valley Forge Road, Devon, Pennsylvania (UPI No. 43-11A-76) ("Property") in the R-1 Residence District of the Township and such other and further relief as necessary.

The Board, after proper advertisement, opened the hearing on Thursday December 13, 2018. It was continued on the record until Thursday, January 24, 2019,<sup>2</sup> and was then again continued on the record to Thursday, February 28, 2019, where the hearing resumed and the record was closed. Chairperson Daniel McLaughlin and Members Neill Kling and Mark Sheppard heard the application for the Board. Stacey L. Fuller, Esquire appeared as the Board's Solicitor at the December 13, 2018 hearing. Amanda J. Sundquist, Esquire appeared as the Board's Solicitor at the January 24, 2019 and February 28, 2019 hearings. Michael Pilotti, Senior Code Official, appeared on behalf of the Township. The Applicant was represented by

---

<sup>1</sup> The Applicant originally sought impervious coverage of 44.7% but, upon additional surveying and calculations prepared by the project engineer, it revised its request to 44.9% of impervious coverage. *See* 12/13/18 N.T., p. 38.

<sup>2</sup> At the December 13, 2018 hearing, the Applicant requested a continuance on the record until January 24, 2019, in order to provide the Board with documentation from the owner of the subject property to authorize the Applicant to seek zoning relief. The record remained open for the sole purpose of allowing the Applicant to provide information regarding such authorization. *See* 12/13/18 N.T., pp. 85-86, 89-90. The Applicant, by e-mail, requested a continuance until February 28, 2019, which was entered on the record at the January 24, 2019 hearing.

Michael Hill, Esquire. Amy Balog (487 Old Forge Crossing) and Richard Shaffer (167 Pugh Road) sought and were granted party status.

The record was closed at the conclusion of the February 28, 2019 hearing and the hearing was continued to March 28, 2019 for the purpose of rendering a decision.

### **I. Findings of Fact**

1. The following exhibits were admitted as evidence at the hearing:
  - Exhibit B-1: Notice of the December 13, 2018 hearing;
  - Exhibit B-2: Proof of Publication of the notice in the Daily Local News on November 28, 2018 and December 5, 2018;
  - Exhibit B-3: Affidavit of mailing of notice to the required properties;
  - Exhibit B-4: Proof of Posting of the notice on the subject property;
  - Exhibit B-5: Aerial view of subject property from ChescoViews;
  - Exhibit B-6: Zoning Ordinance (by reference);
  - Exhibit B-7: Written continuance to February 28, 2019 meeting;
  - Exhibit A-1: Zoning Hearing Board Application dated November 26, 2018, with narrative;
  - Exhibit A-2: Zoning Exhibit prepared by JMR Engineering, LLC, dated November 26, 2018;
  - Exhibit A-3: Revised Zoning Exhibit prepared by JMR Engineering, LLC, dated December 13, 2018;
  - Exhibit A-4: C.V. of Matthew Bush;
  - Exhibit A-5: Property deed;
  - Exhibit A-6: February 27, 2019 notarized letter from Fr. Negro;
  - Exhibit A-7: February 27, 2019 letter from Reverend Aisa; and
  - Exhibit S-1: Letter to Township dated December 11, 2018 from Mr. Shaffer regarding notification of residents.

The Code and the Zoning Map are incorporated herein by reference.

2. The hearing was duly convened, and the Applicant presented evidence in support of the application.

3. The Applicant is Devon Preparatory School, which has operated a school on the Property since 1956. *See Exhibit A-1; see also 12/13/18 N.T., p. 6.*

4. The Property is owned by the Piarist Order and is used by the Applicant for an all-boys' private Catholic school for 6<sup>th</sup> through 12<sup>th</sup> grade students. *See Exhibits A-2, A-5; see also 12/13/18 N.T., pp. 8, 29, 84.*

5. Father Fernando Negro, the Father General, of the Piarist Order and representative of the Piarist Order, designated Father Francisco J. Aisa to act as property owner of the Property, including the authority to request zoning changes and building on the Property. *See Exhibit A-6.*

6. Father Aisa designated Mr. Kane and Mr. Hill to act as the property owner of the Property, including the authority to request zoning changes and building on the Property. *See Exhibit A-7*

7. The Applicant presented the testimony of Patrick Kane, Director of External Operations for the Applicant who has worked at the school for seven years, and Matthew Bush, civil engineer with JMR Engineering who was accepted by the Board as an expert in civil engineering. *See Exhibit A-4; see also 12/13/18 N.T., pp. 7, 13, 33, 35.*

8. The Property is located at 363 North Valley Forge Road, Devon, Pennsylvania (UPI No. 43-11A-76).

9. The Property is located in the R-1 Residence District of the Township.

10. The Property is located along the east side of North Valley Forge Road and is surrounded by residential uses. *See Exhibit A-1.*

11. Section 208-23.C (Impervious coverage) of the Tredyffrin Township Zoning Ordinance imposes a maximum of 25% impervious coverage for properties with non-dwelling uses in the R-1 Residence District of the Township.

12. The Applicant plans to convert an existing grass athletic field into a turf field and add additional walkways, measuring 162,462 square feet, resulting in 44.9% total impervious coverage on the Property. *See Exhibit A-1; see 12/13/18 N.T., pp. 38-39.*

13. The use of the subject property, specifically the field, will not be different than the current athletic use but, rather, the surface material will be turf instead of grass. *See Exhibit A-1.*

14. Currently, the Property is home to a middle school and high school with land consisting of asphalt paving and grass ground cover. It is improved with school buildings, parking, and soccer and baseball fields. *See Exhibit A-1.*

15. There are currently 45,302 square feet of buildings and 125,555 square feet of blacktop on the Property. *See Exhibit A-3; see also 12/13/18 N.T., p. 80.*

16. Enrollment at the school is generally between 250-300 students, and there are currently 11 school athletic teams. *See 12/13/18 N.T., p. 8.*

17. The Applicant has approximately 72 full- and part-time faculty and staff. *See 12/13/18 N.T., p. 8.*

18. As the Applicant is limited by the size and existing development of the Property to a single field, they need to have multiple teams from both the high school and middle school utilize the field at the same time, creating significant wear and tear on the grass surface. *See Exhibit A-1; see also 12/13/18 N.T., pp. 38-39, 68.*

19. Specifically, two high school and one or two middle school soccer teams utilize the field in the fall as well as two high school and one or two middle school baseball teams in the spring season. *See* 12/13/18 N.T., p. 10.

20. The field which the Applicant seeks to convert to a turf surface is the only field on the Property. *See* 12/13/18 N.T., p. 10.

21. There is no space to expand the field from its current size because there are steep slopes in all directions. *See* 12/13/18 N.T., p. 39.

22. The existing soccer field is smaller than typical regulation field used for high school athletics. *See* 12/13/18 N.T., p. 68.

23. The proposed area of the turf field would be approximately 437 feet by 393 feet at its widest dimensions, or approximately 163,000 square feet in total. *See* 12/13/18 N.T., pp. 39, 66-67.

24. The Applicant cannot turf only a portion of the field without disrupting the playability and use for athletic purposes. *See* 12/13/18 N.T., pp. 69-70, 71.

25. The only portion of the playing field that would not be installed with the turf material would be the pitcher's mound which would remain dirt. *See* 12/13/18 N.T., p. 70.

26. As designed, almost all of the turf area would be used for sports with a slight buffer around the outside of the field as a means of tying the artificial turf into the existing grade and surface. *See* 12/13/18 N.T., p. 67.

27. The Applicant does not intend a corresponding increase in either faculty and staff, student enrollment, visitors and guests, or regularly-scheduled events as a result of construction of the turf field. *See* 12/13/18 N.T., pp. 6, 12.

28. The Applicant presented testimony that the grass field has been so saturated over the past 15 months that it is difficult to operate an athletic program efficiently as the drainage system is not functioning correctly. *See* 12/13/18 N.T., p. 9.

29. Due to the recent worsening conditions, the Applicant uses both an outside vendor and undertakes its own efforts to maintain the field. *See* 12/13/18 N.T., pp. 11, 16.

30. The outside vendor uses products such as Diamond-Tex to help the field drain more quickly. *See* 12/13/18 N.T., p. 18.

31. The Applicant has had to cancel, postpone, and/or move seven athletic games and additional practices to alternative locations in 2018, causing problems for students and families as well as the Applicant's participation in the Philadelphia Catholic League. *See* 12/13/18 N.T., pp. 9, 10.

32. In contrast, there were only approximately two game cancellations due to field conditions in 2017. *See* 12/13/18 N.T., p. 13.

33. Between the costs of internal and external maintenance, transportation to off-site locations, and the rentals of other fields, the Applicant has spent approximately \$162,000 over the past 15 months to allow its students to play their scheduled games. *See* 12/13/18 N.T., p. 11.

34. The poor soil quality, number of storms occurring in close succession, and use by student athletes creates a cycle in which the field cannot be utilized. *See* 12/13/18 N.T., p. 37.

35. In addition, the field is located on a low spot on the Property with the school driveway and North Valley Forge Road, which border the field on the southern and western sides, respectively, sitting up to 12 feet higher than the field. *See* Exhibit A-3; *see also* 12/13/18 N.T., pp. 43-44, 66.

36. The Applicant has made initial plans to improve stormwater conditions, specifically planning a layer of turf with approximately eight to 12 inches of stone underneath the turf and additional stone filtration systems located under the stone in various places around the field. *See* 12/13/18 N.T., p. 39.

37. The increase in stone below the field will make the area more permeable, allowing the water to soak into the ground, and the entirety of the proposed stormwater system will improve that portion of the Property over the current conditions. *See* 12/13/18 N.T., p. 40.

38. There is an existing drainage system that has been in place since approximately 2002, consisting of a swale around the outside perimeter of the field with inlets that pipe to a central junction box behind the second base area of the baseball field to drain the field, which previously worked well to allow the field to be used regularly despite weather events. *See* Exhibit A-3; *see also* 12/13/18 N.T., pp. 15, 18, 40.

39. Soil testing on the Property indicates that the soil is very clay-like with only a limited amount of topsoil and well-drained soil on the very top layer, creating poor drainage conditions. *See* 12/13/18 N.T., pp. 36-37.

40. Mr. Bush testified that the grading of the field is acceptable, and the drainage problems are caused by the poor soil quality which does not let water infiltrate. *See* 12/13/18 N.T., p. 37.

41. The presence of clay soil means that water sits on the field longer than would be expected with other soil. *See* 12/13/18 N.T., p. 44.

42. After submission of the initial application for zoning relief, the Applicant's engineer revised the plan after preparing an updated field survey of recent improvements, which indicate a higher level of existing impervious coverage than previously known and thereby

requiring an amended application increasing the requested impervious from 44.7% to 44.9%. *See* Exhibit A-3; *see also* 12/13/18 N.T., p. 38.

43. The parking and school facilities drain into the same basin as the field. *See* 12/13/18 N.T., p. 41.

44. Water leaving the Property exits the drainage basin to the north into Timber Lane, then into the pond across to the north of Timber Lane, into Trout Creek, and ultimately down to Pugh Road. *See* 12/13/18 N.T., pp. 58-59.

45. The stormwater improvements that would accompany the turf field would result in water reaching the same basin as is currently used but in lesser amounts than currently reaching the basin and in quantities in compliance with Township limitations for volume and peak rate reductions. *See* 12/13/18 N.T., p. 42.

46. The Applicant will prepare a detailed stormwater management design for the Property prior to construction of the improvements but was waiting to obtain zoning relief for the project prior to doing so. *See* 12/13/18 N.T., p. 39.

47. Mr. Bush testified that, in his expert opinion, the soil testing conducted on the Property indicated that the underground improvements, as proposed, will allow the Applicant to meet the stormwater requirements imposed by the Township and improve the current condition of water leaving the Property. *See* 12/13/18 N.T., pp. 53-55.

48. The stormwater system will be designed to accommodate a 100-year storm. *See* 12/13/18 N.T., p. 76.

49. The Applicant considered replacing the clay soil with soil that would better absorb water but the cost of replacing the whole field, along with the depth and quality of the current



57. The field would also be graded at a minor slope, likely measuring approximately half a percent, which would be unnoticeable to users, in order to facilitate drainage. *See* 12/13/18 N.T., p. 46.

58. Water leaving the existing basin will be reduced with the proposed improvements as the water will be held back in the underground systems installed in the fields, improving the current condition of water flow. *See* 12/13/18 N.T., pp. 48, 63.

59. John Balog (271 Rosedale Avenue), Don Naimoil (101 Pugh Road), Richard Shaffer (167 Pugh Road), Amy Balog (487 Old Forge Crossing), and Jennifer Cox (82 Pugh Road) asked questions of the Applicant's witnesses and offered testimony. The neighbors expressed concerns about increased flooding of Trout Creek over the past fifty years with extensive development in the Township, the possibility of more sinkholes, the exacerbation of additional existing problems, and public safety concerns. *See* 12/13/18 N.T., pp. 21, 26, 27, 32, 91-115.

60. Mr. Shaffer raised concerns that residents living along Trout Creek were not notified of the pending application as they live beyond the notification requirements of the Township Zoning Ordinance, which were satisfied. *See* Exhibit B-3; *see also* 12/13/18 N.T., pp. 110-113.

61. Ms. Balog<sup>3</sup> and Mr. Shaffer<sup>4</sup> requested party status, which was objected to by counsel for the Applicant due to their distance from the subject property. The Board hereby grants Ms. Balog's request for party status and grants Mr. Shaffer's request for party status. *See* 12/13/18 N.T., pp. 93, 99, 110-111.

---

<sup>3</sup> Ms. Balog testified that she lives approximately 1½ miles from the Property but that she has experienced three floods, two sink holes, and two water rescues in 11 years of ownership of her property. In addition, she has been advised that she is unlikely to be able to sell her property. *See* 12/13/18 N.T., pp. 93-96.

<sup>4</sup> Mr. Shaffer testified that he lives approximately one mile from the Property and that his property is in a floodplain which is impacted by changes in the stormwater runoff from the Property. *See* 12/13/18 N.T., pp. 110-111.

62. After obtaining zoning relief, the Applicant's next step will be to obtain a grading permit from the Township, which will require a detailed stormwater management plan which will be reviewed by the Township's stormwater engineer and which will not be granted until the plans satisfy the Township Stormwater Ordinance, and obtaining an NPDES permission from the Pennsylvania Department of Environmental Protection and the Chester County Conservation District, which will also have to review and approve the stormwater design. *See* 12/13/18 N.T., pp. 55-56.

63. At the hearing, Mr. Bush and Mr. Kane agreed to a condition of this Decision that the Applicant will satisfy any and all Township requirements, whether by ordinance or the Township Engineer's request, to address stormwater concerns. *See* 12/13/18 N.T., pp. 57, 87.

64. Mr. Bush also testified that, in applying for the grading permit, the Applicant will look at the existing basin to ensure that it is functioning properly and whether any improvements can be made to restore it to its original intended operation. *See* 12/13/18 N.T., pp. 57, 62, 64.

## **II. Discussion**

In reviewing variance applications, the Board is governed by the provisions of §208-150 of the Tredyffrin Township Zoning Ordinance. In consideration of the standards set forth therein, and based on a careful review of the evidence and testimony presented to the Board, it is determined that the Applicant has met the requirements of the Tredyffrin Township Zoning Ordinance and that the relief sought shall not alter the essential character of the R-1 Residence District of the Township.

In requesting an increase in the amount of impervious coverage permitted on the Property, the Applicant seeks a dimensional variance, which requires the Applicant to meet a lesser standard than necessary to obtain a use variance, as established by the Court in *Hertzberg*

*v. Zoning Bd. of Adjustment of City of Pittsburgh*, 721 A.2d 43 (Pa. 1998). In *Hertzberg*, the Supreme Court of Pennsylvania noted that applications for variance relief could turn based on whether the applicant is seeking a dimensional or use variance. “When seeking a dimensional variance within a permitted use, the owner is asking only for a reasonable adjustment of the zoning regulations in order to utilize the property in a manner consistent with the applicable regulations.” *Id.* at 47. The Court held that “the quantum of proof required to establish unnecessary hardship is indeed lesser when a dimensional variance, as opposed to a use variance, is sought.” *Id.* at 48.

The Board finds that the Applicant is constrained in its ability to provide athletic fields for its students typical of a high school facility by the size and location of the Property. The size of the lot and existing improvements result in the Applicant having a single field for its use, and weather and infrastructure conditions have made the use of that field unreliable. The Applicant has functioned as a school on the Property for over 50 years and is constrained in further expansion by the limitations of its location in the R-1 Residence District and the size of the Property. The Applicant is unable to provide additional field space that would otherwise make the proposed construction of an artificial turf field a luxury, instead of necessity. In the present circumstances of this Township, the reasonable use of a property as a middle school and high school requires a location for athletic use. Therefore, the Board finds that the turf field is necessary for the Applicant to enjoy the reasonable use of the Property.

The Board is not unsympathetic to the plight of the neighbors who have suffered the effects of great development in the Township over recent decades, including, specifically, flooding and stormwater damage. However, the Board finds that the proposed stormwater management system to be constructed under the artificial turf field, in addition to the condition

of this Decision that the Applicant complies with all requirements imposed by the Township and its engineer in managing stormwater, which the Applicant has agreed to, will improve the conditions of the Property, including a reduction in the runoff emanating from the Property.

The Board finds that the hardship has not been created by the Applicant and that the variance will not alter the essential character of the neighborhood or the R-1 Residence District, nor substantially impair the appropriate use of adjacent property, nor be detrimental to the public welfare. As addressed above, the Board finds that stormwater conditions of nearby properties will not be worsened, and will quite possibly be improved, by the proposed construction. In addition, the Applicant presented testimony that no increase in the number of faculty, staff, students, guests, visitors or events on the Property will occur as a result of the proposed improvements. The Applicant simply seeks to use the Property as it was previously able to do.

The Applicant presented testimony and answered questions about alternative efforts to address the drainage problems that would not require the variance relief. Specifically, the Applicant testified that the use of a tarp or the wholesale removal and replacement of soil would both be prohibitively expensive and/or impractical efforts without any guarantee of success or improvement in current conditions. In addition, the Applicant offered testimony that installing artificial turf on only a portion of the field would not be a feasible alternative for the athletic use of the field. Therefore, the Board finds that the variance will represent the minimum variance that would afford relief and the least modification possible of the regulation at issue.

The Applicant's request for a variance, as amended, from §208-23.C (Impervious coverage) of the Tredyffrin Township Zoning Ordinance to install a turf field, which will increase impervious coverage to not more than 44.9%, where 25% is the maximum impervious coverage permitted, on the property located at 363 North Valley Forge Road, Devon,

Pennsylvania (UPI No. 43-11A-76) in the R-1 Residence District of the Township shall be GRANTED, subject to the conditions contained in the Order that follows.

### **III. Conclusions of Law**

1. The hearing was duly advertised, all required notices were given, and the hearing was duly convened.
2. The Board has jurisdiction over this matter.
3. Amy Balog (487 Old Forge Crossing) and Richard Shaffer (167 Pugh Road) are granted party status.
4. The Applicant has demonstrated that it is entitled to the variance which has been granted.
5. The granted relief is predicated upon compliance with the conditions set forth in the Order.

The Board, therefore, enters the following:

### **ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2019, upon consideration of the Application of Devon Preparatory School, as amended, for a variance from §208-23.C (Impervious coverage) of the Tredyffrin Township Zoning Ordinance to install a turf field, which will increase impervious coverage to not more than 44.9%, where 25% is the maximum impervious coverage permitted, on the property located at 363 North Valley Forge Road, Devon, Pennsylvania (UPI No. 43-11A-76) in the R-1 Residence District of the Township, IT IS HEREBY ORDERED that the relief requested shall be GRANTED subject to the following conditions:

1. The Applicant shall fully comply with the Township Stormwater Management Ordinance and any requests of the Township Engineer in constructing the improvements and any stormwater management facilities he deems necessary on the Property.

2. The Applicants shall prepare, have approved by the Township, and record a stormwater management operation and maintenance agreement in the Chester County Recorder of Deeds.

3. The Applicant shall comply with the terms of the recorded stormwater management operation and maintenance agreement.

4. Any deed transferring the Property shall state that the conveyance is subject to the stormwater management operation and maintenance agreement and reference the recording information (Book and Page number) where said agreement is recorded.

5. The proposed improvements shall be in conformance with the plans, specifications, testimony and evidence presented to the Board.

6. The Applicant shall comply with all other Township ordinances, rule and regulations and all federal, state, and local laws and regulations.

7. The approved land development plans shall state the conditions of this Order.

ZONING HEARING BOARD OF  
TREDYFFRIN TOWNSHIP

\_\_\_\_\_  
DANIEL McLAUGHLIN, Chairperson

  
\_\_\_\_\_  
NELL KLING

  
\_\_\_\_\_  
MARK SHEPPARD

## DISSENTING OPINION

I cannot join my colleagues in voting in favor of this application. The testimony presented by the witnesses for the Applicant fails to establish an unnecessary hardship exists which would justify the requested dimensional variance.

The Applicant claims it needs the dimensional variance to allow it to cover its playing field with a turf surface because the current grass surface retains too much water after it rains. The school's Director of External Operations, Patrick Kane, testified that in 2018, heavy rains led to the cancellation of approximately seven sporting events because the playing field was too wet for the students to use. The Applicant believes replacing the field's grass surface with a turf one and installing additional storm water management measures will eliminate or greatly reduce the flooding issues it experienced last year.

The Applicant's rationale for why it requires a turf playing field is flawed because the flooding which resulted in the cancellation of the sporting events was shown to be a very recent problem. The school has been using the playing field for 50 years. While seven sporting events were cancelled due to waterlogged field conditions last year, Mr. Kane admitted only two events were cancelled in 2017, and he could not recall any cancellations having happened in earlier years. This testimony shows the school has not experienced an unnecessary hardship because the flooding of its playing field is not only a recent problem, but also very likely a temporary one caused by the unusually high number of rainstorms the region experienced last year.

In addition to there being no unnecessary hardship, I am concerned that the dramatic increase in impervious coverage from a turf playing field may have a harmful impact on residents. The testimony of the Applicant's witnesses revealed that most of the water on the playing field eventually drains into nearby Trout Creek. During the hearing held on December

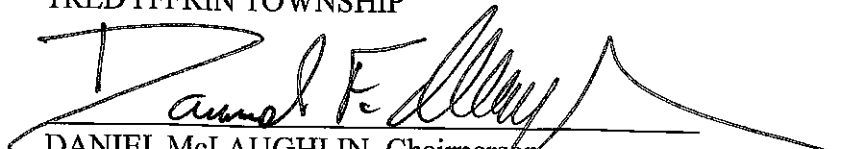
13, 2018, numerous neighbors of the school, as well as residents who live along Trout Creek, testified their homes have suffered water damage due to rainwater traveling downstream from the school and overflowing the banks of the creek. In light of this problem, they all expressed their concern that the increase in impervious coverage will exacerbate the situation by creating more flooding.

The Applicant attempted to address this concern by claiming the new storm water management measures it intends to introduce will improve drainage and lead to a reduction in flooding. The Applicant's expert witness, Civil Engineer Matthew Bush, provided an overview of the drainage and water retention measures to be introduced, which he believes will limit the rate of water flowing into Trout Creek at any one time.

I was not convinced by Mr. Bush's testimony, which came across as speculative. While the proposed storm water management measures might improve conditions, or at the very least, not worsen them, I sensed a lack of certainty in Mr. Bush's explanation concerning the effectiveness of those measures. Absent more solid assurances by the Applicant, I fear allowing it to increase its impervious coverage to 44.9% may actually harm residents living downstream from the school.

In light of the Applicant's presentation, it is clear that it has failed to satisfy the standard required to receive a dimensional variance. Therefore, I must vote to deny this appeal.

ZONING HEARING BOARD OF  
TREDYFFRIN TOWNSHIP

  
DANIEL McLAUGHLIN, Chairperson