IN RE: APPLICATION OF TREDYFFRIN EASTTOWN SCHOOL DISTRICT

BEFORE THE ZONING HEARING BOARD OF TREDYFFRIN TOWNSHIP, CHESTER COUNTY, PENNSYLVANIA

APPEAL NO. 22-19

DECISION

The Zoning Hearing Board of Tredyffrin Township (the "Board"), after proper advertisement, met on Wednesday, November 20, 2019 to hear evidence on the Application of Tredyffrin Easttown School District (the "Applicant") for an amendment to the Board’s June 27, 2019 Decision and Order in Appeal 10-19 for the property located at 200 Irish Lane, being Tax Parcel No. 43-10F-154 (the "Property") to modify the prior grant of the variance from Section 208-103.C.11 of the Zoning Chapter of the Tredyffrin Township Code of Ordinances (the "Code") to reduce the number of proposed parking space from 128 spaces to 94 spaces, where the Code requires 270 parking spaces.

Present at the hearing were Chairperson Daniel McLaughlin and Members Tara LaFiura, Neill Kling, and Julianne Peck. Also present at the hearing were Michael Pilotti, Senior Building, Code & Fire Official, and Amanda J. Sundquist, Esquire, Solicitor for the Board.

The Applicant was represented by David Falcone, Esquire. Dr. Richard Gusick and Craig Bryson testified on behalf of the application.

Dr. Richard Saunders & Eileen Saunders, 390 Curwyn Lane, Moira McHugh, 49 Oak Lane, Rachel Walker, 40 Oak Lane, Marjorie Waldron, 222 Irish Lane, Tracy Johnson, 23 Lizbeth Lane, and Ryan Gallagher, 29 Oak Lane, were granted party status.

At the conclusion of the hearing, the Board granted the request relief subject to conditions. The Applicant waived the time period for delivery of this written decision.
I. **Findings of Fact**

1. The following exhibits were admitted as evidence at the hearing:

   - **Exhibit B-1** Application with attachments;
   - **Exhibit B-2** Proof of Publication of the notice in the Daily Local News;
   - **Exhibit B-3** Affidavit of Posting of the notice on the Property;
   - **Exhibit B-4** Affidavit of Mailing of notice to the required properties;
   - **Exhibit B-5** Planning Commission recommendation memorandum;
   - **Exhibit A-1** Decision and Order dated June 27, 2019;
   - **Exhibit A-2** Letter Application;
   - **Exhibit A-3** Revised Plan;
   - **Exhibit A-4** Planning Commission recommendation memorandum; and
   - **Exhibit Johnson-1** Photographs.

The Code and Zoning Map are incorporated herein by reference. The exhibits, transcripts and decision of the May 23, 2019 hearing for Appeal 10-19 are incorporated herein by reference.

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

3. The Property is located at 200 Irish Lane, Tax Parcel No. 43-10F-154. (11/20/19 Exh. B-1, 5/23/19 N.T. 3, 6).


5. The owner of record is the Paoli Area School Authority, which has been terminated, so now the Tredyffrin Easttown School District is the owner. (5/23/19 Exh. A-2).

7. The Applicant appeared before this Board on May 23, 2019 for Appeal 10-19, seeking variances and a special exception to permit the expansion of the existing high school facility on the Property. (11/20/19 Exh. A-1).

8. On June 27, 2019, the Board issued a written Decision and Order confirming its oral decision of May 23, 2019 in Appeal 10-19, which included the following Conclusion of Law at (8)(a)(4): “The Applicant has established entitlement to the following relief, provided it complies with the conditions set forth in the Order: variances from ... (4) Section 208-103.C(11) to permit 128 parking spaces ...”. (11/20/19 Exh. A-1).

9. On June 27, 2019, the Board issued a written Decision and Order confirming its oral decision of May 23, 2019 in Appeal 10-19, which included the following Order: “...IT IS HEREBY ORDERED that the relief requested shall be GRANTED, as follows (a) variances from: ... (4) Section 208-103.C(11) to permit 128 parking spaces ...”. (11/20/19 Exh. A-1).

10. Code Section 208-103.C(11) requires the proposed high school expansion project to have 270 parking spaces; the Decision and Order in Appeal 10-19 granted a variance to permit 128 spaces. (11/20/19 Exh. A-1).

11. Subsequent to the Board’s Decision and Order in Appeal 10-19, the Applicant returned to the Township’s Planning Commission as part of the land development application associated with the building expansions. (11/20/19 N.T. 7).

12. The Planning Commission instructed the Applicant to return to this Board to seek a further reduction of parking spaces by at least 32 spaces and to avoid disturbance of the wooded slope in excess of 50%. (11/20/19 N.T. 7, 11/20/19 Exh. B-5, A-4).

13. The disturbance of the wooded slope in excess of 50% would require a waiver from the Planning Commission. (11/20/19 N.T. 20-21).
14. It is the Applicant’s belief that if it does not comply with the Planning Commission’s instructions, the Planning Commission will deny the requested waiver. (11/2019 N.T. 21, 25, 31).

15. The denial of the requested waiver will jeopardize the project. (11/20/19 N.T. 21, 25, 31).

16. The Applicant now seeks to modify the Decision and Order in Appeal 10-19 to reduce the number of parking spaces from 128 to 94. (11/20/19 Exh. B-1).

17. The relief the Applicant seeks is directly responsive to the Planning Commission’s instructions. (11/20/19 N.T. 31-32).

18. The Applicant has redesigned the parking plan for the proposed lot. (Compare 5/23/19 Exh. A-9 with 11/20/19 Exh. A-3).

19. The Applicant has eliminated the disturbance in the wooded slope area to be in compliance with the Code. (11/20/19 N.T. 9-10; 11/20/19 Exh. A-3).

20. The Property is constrained by topography and existing facilities. (5/23/19 N.T. 27).

21. There is no change to the use of the Property as a result of the proposed additions and parking area. (5/23/19 N.T. 52).

22. The Applicant is seeking to expand the high school due to projected student population growth. (5/23/19 N.T. 10).

23. Based on the population studies by the demographer, the Applicant estimates by the 2021-22 school year, it will be at 100% utilization of its regular education classrooms and exceed 100% utilization of its science laboratories. (5/23/19 N.T. 10; 5/23/19 Exh. A-4).
24. One hundred percent utilization significantly impacts the Applicant's educational programs. (5/23/19 N.T. 10).

25. An expansion is necessary to provide appropriate school facilities. (5/23/19 N.T. 46).

26. The proposed building expansion is necessary to permit the Applicant to comply with its State-mandated obligations. (5/23/19 N.T. 18-19).

27. The proposed parking spaces including teacher and staff parking. (5/23/19 N.T. 15, 11/20/19 N.T. 54).

28. The Property is currently nonconforming as to parking. (5/23/19 N.T. 51, 11/20/19 N.T. 29).

29. The Applicant has put a system in place to address the current parking space shortfall, whereby students receive permits for 4 of the 5 days of the week so parking use is staggered. (5/23/19 N.T. 14, 21).

30. The Applicant will continue the staggered student parking program after the building additions are constructed. (5/23/19 N.T. 14, 15).

31. The proposed stormwater facilities will remain complaint; that is, the same stormwater management facilities which were proposed when the Applicant was proposing 128 parking spaces will continue to be provided. (11/20/19 N.T. 29).

32. The Applicant will maintain the same size basins as previously proposed, which in essence, will over-control the stormwater from the 94 spaces. (11/20/19 N.T. 29-30).

33. The proposed landscaping remains fully compliant with the Code. (11/20/19 N.T. 30-31).
34. Less trees will be removed from the Property under the revised plan. (11/20/19 N.T. 36).

35. The hardship that existed as part of Appeal 10-19 continues to exist. (11/20/19 N.T. 32).

36. The Applicant shall continue to comply with all conditions of the Decision and Order of Appeal 10-19. (11/20/19 N.T. 34).

37. Dr. Richard Saunders, 390 Curwyn Lane, was granted party status without objection.

38. Eileen Saunders, 390 Curwyn Lane, was granted party status without objection.

39. Moira McHugh, 49 Oak Lane, was granted party status over the objection of the Applicant.

40. Rachel Walker, 40 Oak Lane, was granted party status over the objection of the Applicant.

41. Marjorie Waldron, 222 Irish Lane, was granted party status.

42. Tracy Johnson, 23 Lizbeth Lane, was granted party status.

43. Ryan Gallagher, 29 Oak Lane, was granted party status over the objection of the Applicant.

44. Bill Bellew offered public comment, including Public Comment-1,

45. The Application will not alter the character of the neighborhood.

46. Granting the Application will not be injurious to the neighborhood or otherwise detrimental to the public health, safety and welfare of the community.
II. Discussion

In order to be entitled to a variance, the Applicant must meet the requirements of Section 910.2 of the Pennsylvania Municipalities Planning Code (MPC), 53 P.S. §10910.2. In summary, Section 910.2 contains the following standards for the grant of a variance: unique physical circumstances peculiar to the subject property which create an unnecessary hardship to the property; such physical circumstances prevent development of the property in strict conformity with the provisions of the zoning ordinance; the hardship is not self-created; the variance, if authorized, will not substantially impair neighboring properties or otherwise detract from the public welfare; and the variance is the minimum to afford relief.

The party seeking a variance bears the burden of proof. Valley View Civic Association v. Philadelphia ZBA, 462 A.2d 637 (Pa. 1983). The Applicant had previously met their burden of proof for a variance from Section 208-103.C(11) to permit 128 parking spaces where 270 parking spaces are required. The Applicant now seeks a further reduction to 94 parking spaces, a dimensional variance. A dimensional variance 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. Financial hardship and economic detriment can be considered under Hertzberg.
The Property in question is constrained by topography and existing facilities. It is already nonconforming as to parking. The Applicant has put in place a number of internal controls to address and minimize student parking, which it has committed to retaining. The Applicant has also committed to compliance with the Township’s stormwater management ordinance, and with the proposed reduced number of parking spaces, the stormwater management facilities are, in fact, over designed.

Further, the Applicant is seeking the requested reduction at the direction of the Planning Commission, and the failure to receive the modification may jeopardize the project. The Applicant has a state-mandated responsibility to provide adequate educational facilities for the projected enrollment of resident students, and it is imperative the project moves forward to permit to comply with their obligations. As such, the Board finds the Applicant has meet its burden for the modification to this variance.

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. Dr. Richard Saunders, 390 Curwyn Lane, was granted party status.

4. Eileen Saunders, 390 Curwyn Lane, was granted party status.

5. Moira McHugh, 49 Oak Lane was granted party status over the objection of the Applicant.

6. Rachel Walker, 40 Oak Lane, was granted party status over the objection of the Applicant.

7. Marjorie Waldron, 222 Irish Lane, was granted party status.
8. Tracy Johnson, 23 Lizbeth Lane, was granted party status.

9. Ryan Gallagher, 29 Oak Lane, was granted party status over the objection of the Applicant.

10. The Applicant has established entitlement to a modification of the Board’s June 27, 2019 Decision and Order in Appeal 10-19 to amend the previously granted variance from Section 208-103.C(11) to permit 94 parking spaces conditioned upon the compliance with the prior conditions of the June 27, 2019 Decision and Order.

ORDER

AND NOW, this 18th day of December, 2019, confirming the Board’s oral decision on November 20, 2019, upon consideration of the Application of Tredyffrin Easttown School District for a modification to the Board’s June 27, 2019 Decision and Order in Appeal 10-19 to amend the previously granted variance from Section 208-103.C.11 to permit 94 parking spaces at the property located at 200 Irish Lane, being Tax Parcel No. 43-10F-154, in the R-1 Residence District of the Township, IT IS HEREBY ORDERED that the relief requested shall be GRANTED, provided the Applicant complies with the prior conditions of the June 27, 2019 Order and Decision.

IT IS FURTHER ORDERED that the following individuals have party status:

1. Dr. Richard Saunders, 390 Curwyn Lane.

2. Eileen Saunders, 390 Curwyn Lane.

3. Moria McHugh, 49 Oak Lane.

4. Rachel Walker, 40 Oak Lane.

5. Marjorie Waldron, 222 Irish Lane.
6. Tracy Johnson, 23 Lizbeth Lane.

7. Ryan Gallagher, 29 Oak Lane.

ZONING HEARING BOARD OF
TREDYFFRIN TOWNSHIP

DANIEL McLAUGHLIN, Chairperson

TARA LaFIURA

NEILL KLING

JULIANNE PECK