IN RE:
APPLICATION OF
JAMES KERR &
TIFFANI MISENCIK

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

APPEAL NO. 2026-05

DECISION

The Zoning Hearing Board of Tredyffrin Township, Chester County, Pennsylvania (the "Board"), after proper advertisement, met on Thursday, February 26, 2026 and Thursday, March 26, 2026, to hear evidence on the application (the "Application") of James Kerr and Tiffani Misencik (the "Applicants") for the property located at 1548 Overlook Place, Malvern, PA 19355 (UPI No. 43-4-118.8) (the "Property") in the R ½ Residential Zoning District of Tredyffrin Township (the "Township"). The Applicants seek the following variance relief from the Tredyffrin Township Code of Ordinances (the "Code") in order to construct two new decks:

1. Code Section 208-18.B to permit 15.10% building coverage where 10% is the maximum building coverage permitted by the Code and 14.62% building coverage currently exists; and
2. Code Section 208-18.C to permit 34.90% impervious coverage where 15% is the maximum impervious coverage permitted by the Code and 34.58% impervious coverage currently exists; or in the alternate,
3. Code Section 208-99.B(3) to allow for the extension the nonconforming building and impervious coverage to permit the construction.

Present at the hearings were Chairperson Daniel McLaughlin and Alternate Erika Diaz. Also present at the hearings were Erin McPherson, Director of Planning and Zoning and Zoning Officer; and Amanda J. Sundquist, Esquire, Solicitor for the Board.

The Applicants were represented by David L. Black, Esquire. James Haigney, the Applicants' engineer, and Omar Fisher, the Applicants' builder, testified on behalf of the Application. No one appeared at the hearings to seek party status. Raymond and Carol Clarke, 1564 Overlook Place, offered public comment.

At the conclusion of the February 26, 2026 hearing, the hearing was continued to the Board's March 26, 2026 meeting and the record was left open. At the March 26, 2026 hearing, the Board, by a 2 to 0 vote, granted the requested relief. The Applicants waived the time period for issuance of this written decision under the Pennsylvania Municipalities Planning Code (the "MPC").

I. Findings of Fact

1. The foregoing recitals are incorporated herein as if fully set forth.

2. The Board held duly convened hearings and provided proper public notice of the same.

3. The Applicants presented testimony and documentary evidence in support of the Application.

4. The Board admitted the following exhibits as evidence at the hearings:

Board's Exhibits:

Exhibit B-1 Zoning Application, with supporting documentation, dated January 29, 2026;

Exhibit B-2 Proof of Publication of the notice in the *Daily Local News* on February 12, 2026 and February 19, 2026;

Exhibit B-3 Affidavit of Mailing Notice to neighboring property owners on February 11, 2026;

Exhibit B-4 Affidavit of Posting, dated February 11, 2026;

Exhibit B-5 Revised Plan; and

Exhibit B-6 Proof of Publication of the notice in the Daily Local News on March 11, 2026 and March 18, 2026.

Applicants' Exhibits:

Exhibit A-1 Zoning Application;

Exhibit A-2 Deed for Property;

Exhibit A-3 Aerial photograph of Property;

Exhibit A-4 Series of photographs of the rear of the house;

Exhibit A-5 Series of photographs of the current condition of the decks;

Exhibit A-6 Recorded subdivision plan for Valley Creek Farm;

Exhibit A-7 Zoning requirements for the recorded Valley Creek Farm;

Exhibit A-8 Excerpt from the Township's Zoning Ordinance of 1939, amended through April 2, 1990;

Exhibit A-9 Building permit application for swimming pool;

Exhibit A-10 Use and occupancy permit for the house;

Exhibit A-11 Plan for the swimming pool;

Exhibit A-12 Building permit for swimming pool;

Exhibit A-13 Aerial photograph of Property from 1993;

Exhibit A-14 Site plan for proposed deck replacement;

Exhibit A-15 Zoning criteria for proposed deck replacement;

Exhibit A-16 Architectural plans for the proposed deck replacement;

Exhibit A-17 Rendering of proposed deck replacement;

Exhibit A-18 C.V. of James Haigney, Commonwealth Engineers; and

Exhibit A-19 Revised plan.

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

5. The Applicants are the owner of the Property.

6. The Property is located at 1548 Overlook Place, Malvern, PA 19355 (UPI No. 43-4-118.8).

7. The Property is located in the R ½ Residential Zoning District.

8. The Property is an irregularly shaped parcel, with a rear yard that comes to a point.

9. There are precautionary and prohibitory slopes on the Property.

10. The southwest corner of the Property is located within the FEMA Zone AE floodplain.

11. Stormwater on the Property flows toward the FEMA Zone AE floodplain area on the Property which is connected to the Valley Creek watershed.

12. The Property has two access points onto Overlook Place by a semi-circular driveway.

13. Located on the Property is a single-family-home, driveways, walkways, two decks, and a swimming pool.

14. The Property is located within the Valley Creek Subdivision, which was approved by the Township in 1987.

15. Due to changes in the Code, the Property is now nonconforming in regard to lot area, lot width at the building line, minimum front yard setback, building coverage, and impervious coverage.

16. Code Section 208-18.B states: "Building coverage. Not more than 10% of the lot area may be occupied by buildings."

17. The Property currently has 14.62% building coverage.

18. Code Section 208-18.C states: "Impervious coverage. Not more than 15% of the lot area may be covered by impervious surface."

19. The Property currently has 34.58% impervious coverage.

20. The Property and the structures on the Property were in conformance with the Code at the time of construction.

21. There is an existing 173-square-foot deck on the southwest corner of the rear of the existing home.

22. There is an existing 439 square foot deck with stairs on the southern corner of the rear of the existing home.

23. The two existing decks are original to the home.

24. The two existing decks are in poor condition, with deteriorated deck boards and joists, splits in the support columns, and bowing due to load stress.

25. The Applicants propose to remove the two existing decks and set of stairs, and replace them with two new decks.

26. The Applicants propose to remove the existing deck on the southwest corner of the dwelling and replace it with a 192-square-foot deck.

27. The new deck on the southwest corner of the dwelling will have a roof.

28. The Applicants propose to remove the existing deck and steps on the southern corner of the dwelling and replace it with a 470-square-foot deck.

29. A portion of the new deck on the southern corner of the dwelling will have a roof over approximately one half of the deck.

30. The replacement decks will result in 15.10% building coverage, which is an increase of 131 square feet or 0.48% building coverage.

31. The replacement decks will result in 34.90% impervious coverage, which is an increase of 89 square feet or 0.32% impervious coverage.

32. As a result, the Applicants require dimensional variances to permit the proposed decks.

33. In the alternative, the Applicants seek a variance from Code Section 208-99.B(3).

34. Code Section 208-99.B(3) states: "A building which is nonconforming as to the physical requirements of the district in which it is located may be altered or enlarged, provided that the alteration or enlargement itself meets all the requirements of said district or the alteration or enlargement consists of one or more additional stories or parts thereof, within the existing building footprint, not exceeding the maximum height limitation for the district in which the building is located."

35. The proposed decks are slightly larger than the existing decks.

36. The existing decks have a variety of unusual angles which require many columns, whereas the proposed decks are "squared off", which results in less earth disturbance.

37. However, this results in the new decks having a slightly larger footprint than the existing decks.

38. The Applicants propose to mitigate 100% of the additional impervious coverage utilizing an infiltration pit attached to roof drains on the front of the existing home.

39. An operation and maintenance agreement will be recorded.

40. The proposed decks will be consistent with the existing architecture on the Property.

41. At the first hearing, Raymond and Carol Clarke provided public comment.

42. The Clarkes' public comments were focused on stormwater management for the new decks.

43. In particular, the Clarkes requested consideration of additional mitigation regarding the downspouts/gutters for the proposed new decks, given the ultimate flow of stormwater into an exceptional value stream beyond the floodplain.

44. At the second hearing, the Applicants returned with updated stormwater management plans.

45. The updated plans reflect a roof drain infiltration spreader on the south side of the dwelling and additional shrubs.

46. The updated plan is designed to address 1.5 times more impervious coverage than required by the Code.

47. The updated plan also addresses the thermal impact from the new roofing on the decks.

48. Mr. Clarke offered additional public comment, expressing appreciation for the updates made by the Applicants.

49. No one appeared at the hearings to seek party status.

50. Granting the requested variances for building and impervious coverage will not alter the essential character of the neighborhood or be injurious to the neighborhood or otherwise detrimental to the public health, safety, and welfare of the community.

51. Granting the requested variances for building and impervious coverage will not substantially or permanently impair the use or development of adjacent properties.

II. Discussion

Code Section 208-150 empowers the Board to grant variances from the terms of the Code. To be entitled to a variance, an applicant must meet the requirements of Section 910.2 of the MPC (53 P.S. § 10910.2) and Section 208-150.B of the Township Code, which contains the following standards for the grant of a variance:

1. unique physical circumstances peculiar to the subject property, which create an unnecessary hardship to the property;

2. such physical circumstances prevent development of the property in strict conformity with the provisions of the zoning ordinance;

3. the hardship is not self-created;

4. the variance, if authorized, will not alter the essential character of the neighborhood, substantially impair neighboring properties, or otherwise detract from the public welfare; and

5. the variance is the minimum to afford relief.

"The reasons for granting a variance must be substantial, serious and compelling," and "[t]he party seeking the variance bears the burden of proving that (1) unnecessary hardship will result if the variance is denied, and (2) the proposed use will not be contrary to the public interest." Valley View Civic Ass'n v. Zoning Bd. of Adjustment, 462 A.2d 637, 640 (Pa. 1983) (internal citations omitted; alteration added). The Pennsylvania Supreme Court in Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh established a more "relaxed standard" when addressing the "unnecessary hardship" criterion in regard to dimensional variances. 721 A.2d 43, 47 (Pa. 1998).

The law also recognizes the concept of a de minimis variance.

> The grant of a de minimis variance is a matter of discretion with the local zoning board. Segal, 771 A.2d at 95 (emphasis added). A de minimis variance may be granted where the variation requested is minor and rigid compliance with the zoning ordinance is not necessary to protect public policy concerns. Township of Middletown v. Zoning Hearing Board of Middletown Township, 682 A.2d 900,

> 901 (Pa.Cmwlth.1996). There are no set criteria for determining what will be considered de minimis. Instead, the grant of a de minimis variance depends upon the circumstances of each case. Bailey v. Zoning Board of Adjustment of the City of Philadelphia, 569 Pa. 147, 166 n. 21, 801 A.2d 492, 504 n. 21 (2002).

Hawk v. City of Pittsburgh Zoning Bd. of Adjustment, 38 A.3d 1061, 1066 (Pa. Commw. Ct. 2012).

The Property is irregularly shaped, contains steep slopes and FEMA floodplain. Further, the Property and its existing improvements were in compliance with the Code at the time of construction. However, the Property is now nonconforming in regard to lot area, lot width, front yard setback, impervious coverage and building coverage. The Applicants seek to replace two existing decks on the Property with two decks which are generally the same size as the existing decks. The proposed decks are slightly larger than the existing decks, due to construction methods and to limit earth disturbance. The proposed decks will result in 15.10% building coverage, which is an increase of 0.48% building coverage and 34.90% impervious coverage, which is an increase of 0.32% impervious coverage. The increases are minimal. Further, the proposed decks will be in keeping with the architecture of the house. The Applicants have also addressed stormwater management as required by the Code and requested by the Board and neighboring property owners. In particular, the Applicants revisited their stormwater plan and addressed concerns regarding point discharges from downspouts and gutters, thermal impact and recharge. The Board finds the Applicants have met their burden of proof for these *de minimis* dimensional variance.

Because the Applicants have obtained dimensional variances for building coverage and impervious coverage, the required alternate variance from Code Section 208-99.B(3) is not required and is moot.

III. Conclusions of Law

1. The hearings were duly advertised; all required notices were given; and the hearing was duly convened.

2. The Board has jurisdiction over this matter.

3. The Applicants have established entitlement to a *de minimis* dimensional variance from Code Section 208-18.B to permit 15.10% building coverage where 10% is the maximum building coverage permitted by the Code and 14.62% building coverage currently exists.

4. The Applicants have established entitlement to a *de minimis* dimensional variance from Code Section 208-18.C to permit 34.90% impervious coverage where 15% is the maximum impervious coverage permitted by the Code and 34.58% impervious coverage currently exists.

5. As the Applicants have received the required *de minimis* dimensional variances for building and impervious coverages, the requested alternative variance from Code Section 208-99.B(3) is not required and is therefore moot.

The Board, therefore, enters the following:

ORDER

AND NOW, this 23rd day of April, 2026, confirming its oral decision of March 26, 2026, upon consideration of the Application of James Kerr and Tiffani Misencik for the Property located at 1548 Overlook Place, Tredyffrin Township, Chester County (UPI No. 43-4-118.8) to permit the replacement of two decks, IT IS HEREBY ORDERED that the following relief is GRANTED:

1. A *de minimis* dimensional variance from Code Section 208-18.B to permit 15.10% building coverage where 10% is the maximum building coverage permitted by the Code and 14.62% building coverage currently exists.

2. A *de minimis* dimensional variance from Code Section 208-18.C to permit 34.90% impervious coverage where 15% is the maximum impervious coverage permitted by the Code and 34.58% impervious coverage currently exists.

All granted relief is subject to the following conditions:

1. The proposed use and construction shall be in substantial conformity with evidence and testimony presented to the Board.
2. The Applicants shall obtain all required permits and approvals.
3. The Applicants shall comply with all federal, state, county and Township laws, regulations and statutes.

As the Applicants have received the required *de minimis* dimensional variances for building and impervious coverage, the requested alternate variance from Code Section 208-99.B(3) is not required and is therefore MOOT.

ZONING HEARING BOARD OF TREDYFFRIN TOWNSHIP

DANIEL MCLAUGHLIN, Chairperson

ERIKA DIAZ, Alternate Member

Please be advised that Code Section 208-148 states: "Unless otherwise specified by the Zoning Hearing Board, a special exception or variance shall expire if the applicant fails to obtain a building or occupancy permit within 12 months from the date of the decision of the Zoning Hearing Board."