

## **Objectors' Brief in Reply to Quaker Valley School District's Brief in Support of Application for Approval of a Special Exception**

The Objectors submit this Reply in response to the post-hearing brief of Quaker Valley School District ("QVSD" or the "School District"). The primary purpose of this Reply is to address the School District's misapplication of the proper standard and blatant and intentional misrepresentation of the applicable case law.

### **I. Introduction**

Knowing that the requirements necessary to achieve a special exception set forth in the applicable Leet Township Ordinance cannot be met and knowing that the mountains of record evidence elicited during weeks of evidentiary hearings contradict the School District's position and demonstrate that the special exception should not be granted, QVSD has concocted a standard for reviewing special exceptions that is contrary to the well settled law of the Commonwealth of Pennsylvania and plain logic.

**The standard is clear and Pennsylvania law is unambiguous – in order for the special exception to be granted, QVSD must meet the requirements set forth in the Leet Township Ordinance.**<sup>1</sup> *See Edgmont Tp. v. Springton Lake Montessori School, Inc.*, 622 A.2d 418, 419 (Pa. Commw. Ct. 1993) (finding school was not entitled to special exception where applicants failed to present evidence detailing how the school would be in compliance with the requirements necessary to obtain a special exception) (emphasis added). For the reasons set forth in the

---

<sup>1</sup> In considering the standard and whether or not QVSD has met the requirements of the Leet Township Zoning Ordinance, the amount of money spent to purchase the proposed site and the investment in the consideration and potential construction of the proposed school is irrelevant. All that is required to be evaluated is if QVSD has complied with the Ordinance and the Objectors submit that the Board must not consider any other factors.

Objectors' post-hearing brief, and others, QVSD cannot meet this standard and the exception request must be denied.

QVSD argues that because section 27-301 of Leet Township's Municipal Code lists "schools" as a type of "Special Exception" that is eligible for permitted use in AAA Residence Districts, that the proposed school ought to be presumptively permitted, so long as it is no more onerous than any other "school." In doing so, the School District contends that the explicit requirements for approving special exceptions, found in Part 6 of the Township's Municipal Code, are "merely requests [for] background information," rather than conditions necessary for approval of use.<sup>2</sup>

This argument blatantly disregards the regulatory structure of Leet Township's Municipal Code governing the process for use approval of special exception applications.<sup>3</sup> It is also contrary to Pennsylvania law. There are a set of requirements that QVSD must meet in order for the Zoning Hearing Board to approve use for a school as a special exception. Applicants are unable to satisfy the necessary criteria, so they have improvised an interpretation of the law that is unavailing.

The same cases that QVSD cites in support of its interpretation of the "standard," illustrate the futility of its argument. In addition, the School District's attempt to paint Objectors' arguments as issues for the "development" stage, rather than the "use" approval stage, is similarly illogical. QVSD's position would obviate the need for a hearing altogether, while rendering the distinction for "special exceptions" meaningless.

---

<sup>2</sup> QVSD's Brief in Support of Application for Approval of a Special Exception, pg. 13 [hereinafter "QVSD Brief"].

<sup>3</sup> Chapter 27 of Leet Township's Municipal Code governs Zoning Requirements. Part 6 covers Special Exceptions in particular and lists 13 requirements for approval. In addition to Part 6, various provisions throughout the Chapter touch on special exceptions, including § 27-301 (listing categories of uses eligible for special exceptions); § 27-701 (describing required performance standards for all uses, including special exceptions); and § 27-809 (explaining that the role of the Township Board of Commissioners is to grant or deny special exceptions pursuant to the express standards and criteria found elsewhere in the Chapter (namely, the 13 requirements found in Part 6)).

## **II. Standards and Compliance Requirements for Granting a Special Exception**

To be granted a special exception, an applicant (here, QVSD) must present evidence demonstrating compliance with *all relevant ordinances*. See *Edgmont Tp.*, 622 A.2d at 419-20 (emphasis added). The applicant must prove not only that the proposed use is of a type permitted by the special exception, but also that the proposed use complies with all applicable ordinance requirements. See *Mulligan v. Zoning Board of Adjustment*, 495 A.2d 647, 649-50 (Pa. Commw. Ct. 1985).

Leet Township Ordinance No. 2019-02 (“the Ordinance”) provides a detailed set of procedures for approval of uses by special exception.<sup>4</sup> Part 6, § 1.2(A) of the Ordinance states that the Zoning Hearing Board (“ZHB”) “shall not approve an application for a use by special exception unless and until” applicants provide a written application which satisfies a set of 13 requirements.<sup>5</sup> Section 1.2(D) clearly states that the applicant has both the duty of initially presenting evidence to support their request, as well as the burden of persuading the ZHB that the proposed use satisfies the specific requirements listed for granting the special exception.<sup>6</sup>

## **III. The School District Misstates the Standard for Permitting Special Exceptions**

The School District has concocted a standard for special exception requests that disregards Pennsylvania law as well as the plain language of the Ordinance. QVSD argues that the Ordinance “merely requests background information,”<sup>7</sup> and that in the absence of criteria for evaluating their application, a school is presumptively permitted as a special exception.<sup>8</sup>

---

<sup>4</sup> Ordinance No. 2019-02 repealed and replaced the entirety of Part 6 of Chapter 27 of the Leet Township Code of Ordinances, which governs “Special Exceptions and Conditional Uses.” The Commissioners of Leet Township did so “to provide the Township with a comprehensive Ordinance regarding the regulations and requirements for special exceptions within the Township.”

<sup>5</sup> Ordinance No. 2019-02, Part 6 § 1.2(A).

<sup>6</sup> Ordinance No. 2019-02, Part 6 § 1.2(D).

<sup>7</sup> QVSD Brief, pg. 13.

QVSD's argument centers on the semantic differences between Part 6 of the Municipal Code before and after the Ordinance amended the language. Applicants argue that the repealed language set out mandatory requirements, while the amended language does not.<sup>9</sup> They argue that Part 6 "does not include specific criteria for schools" and describe the 13 requirements in §1.2(A) as "topics" that simply need to be addressed in the written application for a special exception.<sup>10</sup>

A common sense reading of the 13 requirements thwarts this interpretation. For example, requirement (9) states that "[t]he special exception shall be approved by the Zoning Hearing Board . . . after public hearing as in the case of variances and exceptions."<sup>11</sup> Likewise, requirement (13) states that "[t]he 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."<sup>12</sup> These provisions are clearly requirements for approval, not "topics" that applicants must address.<sup>13</sup> There would be nothing *to address*. They are parameters for approval of special exception use (i.e. *requirements*). QVSD's own brief makes that clear. In addressing these 13 requirements, they provide no responses to (9) or (13); instead describing one as a "procedural matter" and the other as simply recognizing the Board's authority.<sup>14</sup>

Despite any differences in language after Part 6 was amended, the Ordinance makes clear that the Township Commissioners' intent in changing the language was not to render the approval

---

<sup>8</sup> QVSD Brief, pg. 8. Applicants argue that because § 27-301 includes "schools" as a type of "special exception," that a school is presumptively permitted so long as it is an ordinary school. If this were the case, there would be no reason to enumerate "special exceptions" at all.

<sup>9</sup> QVSD Brief, pg. 13.

<sup>10</sup> *Id.*

<sup>11</sup> Ordinance No. 2019-02, Part 6 § 1.2(A)(9).

<sup>12</sup> Ordinance No. 2019-02, Part 6 § 1.2(A)(13).

<sup>13</sup> While it is true that § 1.2(A) requires applicants to address these requirements in their application where they warrant responses, these 13 requirements are *also* criteria that must be found for approval by the Board. These purposes are not mutually exclusive.

<sup>14</sup> QVSD Brief, pgs. 16-17.

process for special exception use a mere formality, as the School District apparently believes. Rather it was “to provide the Township with a comprehensive Ordinance regarding the regulations and **requirements** for special exceptions within the Township.”<sup>15</sup> The 13 requirements listed in section 1.2(A) of the Ordinance are therefore mandatory, and the burden falls on the Applicants to demonstrate compliance with each one in order to be permitted special exception use for the school. As explained more fully in Objectors Post-Hearing Memorandum, QVSD has failed to meet these requirements.

#### **IV. The School District Misinterprets the Case Law that They Cite as Support for their Incorrect Standard**

Applicants for special exceptions in Pennsylvania must first satisfy the requirements set out in any applicable ordinances. *See Edgmont Tp.*, 622 A.2d at 419-20. Each of the School District’s own cases cited in support of their standard undercuts the School District’s position and, instead, emphasizes that the first step in evaluating a special exception request is to ask whether applicant satisfied all requirements found in the applicable ordinance(s).

For example, QVSD cites language from one opinion, which states 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.**” *Broussard v. Zoning Bd. Of Adjustment of City of Pittsburgh*, 907 A.2d 494, 499 (Pa. 2006) (emphasis added); *see also Ness v. Zoning Hearing Bd. of York Twp.*, No. 1118 C.D. 2013, 2014 WL 31440, at \*2 (Pa. Commw. Ct. Jan. 6, 2014) (providing a similar definition that QVSD also cites).

Schools are a type of use that is expressly permitted under § 27-301, but the School District has not satisfied the “certain conditions” detailed in Part 6, § 1.2(A) of the Ordinance.

---

<sup>15</sup> Ordinance No. 2019-02, pg. 1.

In *Broussard*, the Supreme Court explained that “[w]hen a landowner applies to municipal authorities for a special exception, the zoning board's function is to determine that such specific facts, circumstances and conditions exist which comply with the standards of the ordinance and merit the granting of the exception.” 907 A.2d at 499 (citing *Kotzin v. Plymouth Twp. Zoning Bd. Of Adjustment*, 149 A.2d 116, 117-18 (Pa. 1959)) (internal citations omitted).

If, as the School District contends, the mere listing of “schools” as a type of special exception in § 27-301 were all that were necessary to permit such use, it would obviate the fact-finding process and leave no mechanism for the ZHB to ensure compliance with the Ordinance. There would be no need for the ZHB to hold a hearing at all. Clearly, this is not what the Pennsylvania Supreme Court had in mind and it is quite obviously not what Leet Township had in mind when it passed the Ordinance amending Part 6 of the Municipal Code.

The School District also cites *Heck v. Zoning Hearing Bd. for Harvey's Lake Borough*, 397 A.2d 15 (Pa. Commw. Ct. 1979), which similarly betrays them. The Court in *Heck* explained that **“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.” *Id.* at 18 (emphasis added). The School District takes for granted that it has satisfied the first clause of this sentence. QVSD has not proven that the proposed use is permitted because they have not met the requirements set forth the Ordinance regarding approval of use for the school.

QVSD devotes much of its argument to the burden-shifting nature of special exceptions, but fundamentally misunderstands that no burdens can shift until the Applicants meet their initial burden under the Ordinance. As explained in another case cited by the School District, “[t]he applicant for the proposed use has both the duty to present evidence and the burden of persuading

the board that the proposed use **satisfies the objective requirements of the ordinance** for the grant of a special exception.” See *Greaton Properties v. Lower Merion Twp.*, 796 A.2d 1038, 1045 (Pa. Commw. Ct. 2002). The Township’s Commissioners included this language, nearly word-for-word, in § 1.2(D) of the Ordinance, to describe the burden on applications for special exceptions.

QVSD cites four additional cases to support their artificial rule for reviewing special exceptions. The School District relies on *Konyk* for the position that the mere inclusion of a type of use in the list of enumerated special exceptions essentially creates a presumption in favor of granting an application, where the usage would not be abnormal. However, QVSD, once again, omits key prefatory language that explains that for these presumptions to attach, applicants must first comply with the provisions of the zoning ordinance. *Zoning Hearing Bd. of Upper Darby Twp. v. Konyk*, 290 A.2d 715, 719 (Pa. Commw. Ct. 1972) (“[A]pplicant, **once having shown that his proposed use is within the provisions of the zoning ordinance**, is entitled to the grant of a special exception unless there is ‘legally sufficient competent evidence to support a finding that the granting of such exception would be adverse to the public interest.’”).

The School District made similar omissions in other case cites. See *Sunnyside Up Corp. v. City of Lancaster Zoning Hearing Bd.*, 739 A.2d 644, 650 (Pa. Commw. Ct. 1999) (“[O]nce 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 . . .”); *Kern v. Zoning Hearing Bd. of Tredyffrin Twp.*, 449 A.2d 781, 783 (Pa. Commw. Ct. 1982) (“An applicant, by showing that the proposed use is permitted by special exception and that it complies with the specific requirements of the ordinance . . .”).

The School District's reliance on *Schatz v. New Britain Twp. Zoning Hearing Bd. of Adjustment*, 596 A.2d 294 (Pa. Commw. Ct. 1991) is even less availing. Not only did the Court discuss the same sort of prefatory language, in doing so, it also contrasted the facts there with the situation in *Appeal of Baird*, 537 A.2d 976 (Pa. Commw. Ct. 1988), which highlights the importance of applicants complying with the specific requirements of any applicable ordinances:

In *Baird*, this Court determined that the applicant did not meet the specific requirements for a special exception, because “[t]here were no plans or specifications submitted to show compliance with dimensional requirements applicable to buildings within the SR-2 district.” In the present matter, Schatz submitted plans of the property showing that the proposed use complied with the special requirements regarding lot size and adequate parking.

596 A.2d at 297. This alone demonstrates that the mere inclusion of a category of permitted uses does not, in itself, mean that use is presumed. Where an ordinance imposes specific requirements on applicants to be granted approval for use, applicants must meet those requirements before any presumptions will arise.

Finally, the School District places particular emphasis on *Appeal of O’Hara*, 131 A.2d 587 (Pa. 1957), which bears some factual similarities to the situation here. However, QVSD’s reliance in misplaced. The Ordinance here sets out specific general criteria for evaluating a special exception, whereas the ordinance in *O’Hara* included no such specific criteria.<sup>16</sup> The ZHB here has more particularized criteria to rely on in evaluating whether applicants have met their burden, than did the zoning board in *O’Hara*.

---

<sup>16</sup> The Ordinance stated that the Board has the power “to hear and decide special exceptions to the terms of this Ordinance in such cases as are herein expressly provided for, in harmony with the general purpose and intent of this Ordinance, with power to impose appropriate conditions and safeguards.” *O’Hara*, 131 A.2d at 594. The Court found that the Board abused its discretion in denying a special exception based on this broad language.



## V. Development Issues are Inextricably Intertwined with Use Approval

The District devotes a fair amount of attention to the distinction between “use” approval and “development” approval. They misguidedly argue that the issues that Objectors have raised (traffic, grading, etc.) are inappropriate at the “use” approval stage, and will only be relevant if this process moves to the “development” stage. However, the issues that Objectors raise, while in some cases overlapping with development concerns, pertain to the requirements for use, as set out in the Ordinance itself at § 1.2(A), as well as other sections of the Township’s Municipal Code.<sup>17</sup>

The two are inextricably intertwined by virtue of the plain language of the Ordinance. They are not matters that can simply be deferred to a later date because they might also implicate development. As explained in Objectors’ Post-Hearing Memorandum, there are a number of issues the proposed school presents related to traffic, noise, the harmony of the neighborhood, etc., which relate not simply to the development of the land, but the long-term use as well.

## VI. Conclusion

For all the reasons stated in this Brief, as well as those in Objectors’ Post-Hearing Memorandum in Opposition to the Application of Quaker Valley School District for a Special Exception, Objectors submit that the application should be denied.

---

<sup>17</sup> Section 27-701 sets out Performance Standards for usage in Leet Township. That provision states that “No use, land or structure in any district shall involve any element or cause any condition that may be **dangerous, injurious or noxious** to any other property or persons in the Township.”

January \_\_, 2022

Respectfully Submitted,

/s/ Louis A. DePaul

Louis A. DePaul (Pa. I.D. No. 93823)

ECKERT SEAMANS CHERIN &  
MELLOTT, LLC

600 Grant Street, 44<sup>th</sup> Floor

Pittsburgh PA, 15219

(412) 566-6000 (telephone)

(412) 566-6099 (facsimile)

ldepaul@eckertseamans.com

*Counsel for Objectors*