



Commonwealth Court Allows Blending of Impervious Surface Areas Across Districts

by Robert W. Gundlach, Jr.

The Pennsylvania Commonwealth Court recently affirmed a trial court decision to allow blending of the impervious surface regulations across districts. In *In re Appeal of Baldwin School from decision dated July 22, 2004 of Zoning Hearing Board of Lower Merion Twp.*, 2007 WL 2301813 (Pa. Commw. 2007), the court upheld the trial court's decision that when applied to a lot that straddled two districts with differing limits, the regulations applicable to the less restricted district should apply to the whole lot.

The case involved Baldwin School, a private school for girls, which maintains a 25-acre campus in Lower Merion Township. Campus structures include classrooms, a gymnasium, pools, residences, tennis courts, and athletic fields. Approximately 3.4 acres lie in the R-7 district where the township zoning ordinance (Ordinance) limits impervious surface area to 40 percent. The school's other 21 acres lie in the R-3 district where the maximum impervious limit is 28 percent. Most of the existing structures are located on the R-3 portion of the campus. Approximately 29,610 square feet remains available on the R-7 portion for additional impervious cover, while only approximately 4,342 square feet are available on the R-3 section.

Baldwin sought approval to expand its facilities to include, among other things, a new gymnasium, an indoor track, and tennis courts. The development plan called for the relocation of a driveway and lower school playground, the demolition of several structures including a garage, and the addition of 17 parking spaces. The plan called for approximately 24,000 additional square feet of impervious cover in the R-3 portion of the campus. In its application, Baldwin requested a special exception under Section 155-11X of the Ordinance for the expansion of educational facilities. Baldwin also requested a special exception to apply Section 155-8A of the Ordinance regarding "Boundary Tolerances." Section 155-8A states:

Where a district boundary line divides a lot held in single and separate ownership as of January 1, 1983, the regulations applicable to the less restricted district shall extend over the portion of the lot in the more restricted district a distance of not more than 50 feet beyond the district boundary line. The regulations of the less restricted district may extend up to 100 feet beyond the district boundary line when authorized as a special exception.

Baldwin contended that Section 155-8A of the Ordinance allowed the total unused impervious cover available on the campus as a whole to be used on the R-3 portion through "blending."

Following numerous hearings, the zoning hearing board (ZHB) found that:

- the proposed development would not negatively impact the community
- the Baldwin campus as a pre-existing nonconformity already provided less than the number of parking spaces required under the Ordinance, and as such Baldwin only needed to provide additional parking spaces to accommodate the expanded educational facilities
- that the Section 155-8A boundary tolerance provision could not be applied because the Ordinance did not authorize blending.

The ZHB granted the special exception for the expansion of the facilities, but it required that Baldwin meet the impervious limitations of the Ordinance without blending.

Baldwin and several neighbors (protestants) filed cross-appeals to the trial court. The protestants contended that the ZHB had granted the special exception in error, and that Baldwin needed to satisfy the Ordinance's more demanding parking requirements for recreational facilities and auditoriums rather than the requirements for educational uses.

The trial court found that the requirements for the expanded use of an education facility applied, and the ZHB properly implemented Subsection 155-95 AA(3) of the Ordinance that states, "[t]he expansion of any use regulated by this subsection [i.e., "educational uses, including student residence halls, day care and nursery schools"] shall be required to meet these parking standards only for the additional student/participants or additional place of assembly." The court also rejected the protestants' contention that Baldwin needed to satisfy the more demanding parking requirements because the requirement for an educational facility was the most specific to the application.

In addition, the trial court reversed the ZHB's decision regarding Baldwin's request to blend the impervious limitations. The court found that although the Ordinance did not specify whether blending was allowed, the impervious surface limitations were expressed in terms of the *area of the lot* that may be covered – as opposed to the portion of the lot lying in a particular district. By the terms of the Ordinance, Baldwin could blend the impervious limitations in the two districts.

In its decision to reverse the denial of a special exception for the boundary tolerance extension, the trial court rejected a concern that blending "would allow for the creation of a substantially nonconforming lot in the event the Property was subdivided." The court stated that the ZHB could resolve this issue by conditioning any future subdivision approval on bringing each lot into conformity with the impervious surface limitation.

The protestants filed an appeal in the Commonwealth Court, contending that the trial court erred in interpreting the Ordinance to provide for blending of the impervious limitations. However, the Commonwealth Court agreed with the trial court's analysis of the language of the Ordinance and affirmed the trial court's decision in granting the special exception under Section 155-8A to allow blending. In its decision, the Commonwealth Court cited agreement with a previous finding by the Board of Commissioners, who had determined that the purpose of an impervious surface limitation in requiring a minimum area for water to percolate the ground was fulfilled by blending the impervious surface limitation over the entire lot even though the lot falls in two zoning districts.

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