

A hearing on this application was held on August 24, 2021.¹ Chairman William F. Connor, III, and Members William H. Howard and Larry “Buzz” Wood heard the application for the Board. Stacey L. Fuller, Esquire, appeared as the Board's Solicitor. Township Manager Eugene C. Briggs, Jr., AICP, CZO; Zoning Officer, Matt Lubitz; and Assistant Zoning Officer, Susanna Smith, appeared on behalf of the Township. The Applicant was represented by John C. Snyder, Esquire. William R. Christman, III, Esquire represented the following individuals, who were granted party status: Anna and Mark Terranova (7 Greenbriar Lane), Chris and Jennifer Franklin (8 Greenbriar Lane), Troy and Ann Moss (10 Greenbriar Lane), Kathe and Peter Morris (11 Greenbriar Lane), Lorelee West (12 Greenbriar Lane), Ron and Barbara Mattson (13 Greenbriar Lane), Catherine Graham (8 Horseshoe Lane), Brian and Debra Lortie (10 Horseshoe Lane), Stephen and Cheryl Harper (214 Pheasant Run Drive), and Laurie Zuccarini (2025 Waynesborough Road) (collectively hereinafter “Neighbors”).² William R. Christman, III, Esquire, also represented Ryan and Swapna Lovin (306 Valley Road), who were denied party status.³ Dana and Brian McElwee (421 Darby Paoli Road) and Patricia and Francis Grey (2011 Waynesborough Road) were not represented by legal counsel and were granted party status.⁴

After receiving the evidence presented by the Applicant and having reviewed the same, the Board makes the following:

¹ At the hearing, the Applicant waived the requirement of §908(10) of the Pennsylvania Municipalities Planning Code that written notice of the Board's decision be provided within 24 hours. *See*, 53 P.S. §10908(10); *see also* N.T., p. 58.

² The following parties live the following distances away from the Property: Anna and Mark Terranova (7 Greenbriar Lane) 920 feet; Chris and Jennifer Franklin (8 Greenbriar Lane) 635 feet; Troy and Ann Moss (10 Greenbriar Lane) 375 feet; Kathe and Peter Morris (11 Greenbriar Lane) 415 feet; Lorelee West (12 Greenbriar Lane) adjacent; Ron and Barbara Mattson (13 Greenbriar Lane) adjacent; Catherine Graham (8 Horseshoe Lane) 1,170 feet; Stephen and Cheryl Harper (214 Pheasant Run Drive) 900 feet; and Laurie Zuccarini (2025 Waynesborough Road) adjacent. *See* N.T., pp. 17-18.

³ Ryan and Swapna Lovin (306 Valley Road) live approximately 2,100 feet from the Property and, on that basis, were denied party status. *See* N.T., pp. 18, 120.

⁴ Dana and Brian McElwee (421 Darby Paoli Road) and Patricia and Francis Grey (2011 Waynesborough Road) each live directly across the street from the Property. *See* N.T., pp. 21-22.

Findings of Fact

1. At the hearing, the following Board Exhibits were admitted into evidence:

Exhibit B-1: Notice of the August 24, 2021 hearing;

Exhibit B-2: Proof of publication in the Daily Local News on August 9, 2021 and August 16, 2021;

Exhibit B-3: Affidavit of mailing of notice, dated August 6, 2021, and a list of individuals and entities to whom notice was mailed:

Exhibit B-4: Proof of posting, dated August 16, 2021;

Exhibit B-5: Letter, dated August 9, 2021, from Kimberly P. Venzie, Esquire, to Township Manager Eugene C. Briggs, Jr., AICP, CZO, containing the recommendation of the Easttown Township Planning Commission;

Exhibit B-6: ChescoViews aerial photograph depicting the location of the subject property;

Exhibit B-7: Easttown Township Zoning Ordinance, by reference; and

Exhibit B-8: Easttown Township Application for Zoning Hearing Board, dated July 13, 2021.

2. At the hearing, the Applicant offered the following exhibits, which were admitted into evidence:

Exhibit A-1: Curriculum vitae of Timothy J. Brennan, P.E.;

Exhibit A-2: 50' Buffer Disturbance Areas Exhibit, prepared by Nave Newell, dated July 7, 2021;

Exhibit A-3: Easttown Township Floodplain Permit, dated June 11, 2021;

Exhibit A-4: 50' Buffer Disturbance Exhibit prepared by Nave Newell, dated July 7, 2021;

Exhibit A-5: Existing Very Steep Slopes Disturbance Exhibit prepared by Nave Newell, dated July 7, 2021;

Exhibit A-6: Existing Very Steep Slopes Disturbance Exhibit prepared by Nave Newell, dated July 7, 2021;

Exhibit A-7: Proposed Very Steep Slope Exhibit prepared by Nave Newell, dated July 7, 2021;

Exhibit A-8: Post Renovation Very Steep Slope Exhibit prepared by Nave Newell, dated July 7, 2021;

Exhibit A-9: Photographs depicting the following:

- (a) 1st hole side mound separating 1st hole and driving range;
- (b) Bank and bunkers by 2nd green;
- (c) Bank of pond on 14 below cart path and drop area;
- (d) Berm on 13 hiding cart path;
- (e) Bunker by 17th green;
- (f) Edges of bunkers at 13th green;
- (g) Front and back of 18th green;
- (h) Mound at tee side of range;
- (i) Mound by 15th fairway;
- (j) Mound in front of 5th green and greenside bunker;
- (k) Mound protecting 1st hole from driving range;
- (l) Mound short of 17th green;
- (m) Other side of berm hiding cart path on 13;
- (n) Planting bed between 3rd tee and cart path;
- (o) Recessed bunker area to the right of 18th green;
- (p) Slope at east side of driving range tee;
- (q) Slope at northeast corner of driving range tee;
- (r) Slope at northeast corner of practice putting green;
- (s) Slope between tee of driving range (top) and lesson tee (foreground);
- (t) Slope from 9th green to cart path and clubhouse;
- (u) Slope from 18th green to parking lot;
- (v) Slope of front bunkers on 18;
- (w) Slope to left of 9th green, separating green from cart path and clubhouse;
- (x) 9th tee;
- (y) 12th fairway bunker #3;
- (z) 12th fairway bunker #2; and
- (aa) 12th fairway bunker.

3. At the hearing, the Neighbors offered the following exhibit, which was admitted into evidence:

Exhibit N-1: List of Neighbors and ChescoViews aerial photographs depicting the location of their properties.

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

5. The Applicant is the Waynesborough Country Club, which owns the subject property. *See* Exhibits A-2, A-3, A-4, A-5, A-6, A-7, A-8, B-6, and B-8; *see also* N.T., p. 2.

6. The subject property is located at 440 Darby Paoli Road, Paoli, Pennsylvania, being UPI No. 55-4-2 (“Property”). *See* Exhibits A-2, A-3, A-4, A-5, A-6, A-7, A-8; *see also* N.T., p. 2.

7. The Property is located in the AA Residential District of the Township and measures approximately 187 gross acres in area. *See* Exhibit B-1, B-2, B-3, B-4, B-6, and B-8; *see also* N.T., pp. 28, 50.

8. Section 455-31 (Natural resources protection) of the Zoning Ordinance provides as follows:

The establishment and administration of the provisions governing natural resources shall be governed by the provisions of the following articles of Chapter 274, Natural Resources Protection, which are incorporated by reference as if set forth fully herein, as may be amended from time to time in accordance with the procedures set forth in Article XVII of this chapter and the Municipalities Planning Code:

- A. (Reserved)
- B. Article IV, Wetlands and Watercourses.
- C. Section 274-18 of Article V, Riparian Buffer Zone (RBZ).
- D. Sections 274-22, 274-23 and 274-24 of Article VI, Steep Slopes.
- E. Sections 274-27 and 274-28 of Article VIII, Woodlands and Wooded Lots.

See Exhibit B-7.

9. Section 274-18.A (Delineation) of the Easttown Township Natural Resource Protection Ordinance provides as follows: “[a]n undisturbed vegetated area shall extend a minimum of 50 feet, measured horizontally, outward from the edge of a protected wetland,

floodplain, or watercourse, and completely surround the protected natural resource(s).” *See* Exhibit B-7.

10. Section 274-24.A(2) (Resource protection standards – Very steep slopes) of the Easttown Township Natural Resource Protection Ordinance provides as follows: “[n]o more than 15% of very steep slopes shall be regraded, cleared, built upon, or otherwise altered or disturbed. The maximum impervious surface coverage shall be 5%. Permitted activities within the 15% disturbance on very steep slopes shall be limited as follows.” *See* Exhibit B-7.

11. Section 274-24.D (Resource protection standards) of the Easttown Township Natural Resource Protection Ordinance provides as follows: “[t]here shall be no grading or filling on very steep slopes within 100 feet of any stream, wetland, lake, or pond, except to protect the stream bank or shoreline and prevent erosion.” *See* Exhibit B-7.

12. Section 274-16.D (Resource protection standards) of the Easttown Township Natural Resource Protection Ordinance provides as follows: “[w]etlands, floodplains and watercourses are subject to further protection by a fifty-foot-wide riparian buffer zone, in accordance with Article V, Riparian Buffer Zone (RBZ).” *See* Exhibit B-7.

13. Section 274-5 (Definitions) of the Easttown Township Natural Resource Protection Ordinance defines riparian buffer zone as follows: “[t]he total area encompassing the riparian buffer and the natural resources the buffer protects, which may include watercourses, ponds and lakes, wetlands, and floodplains.” *See* Exhibit B-7.

14. Section 274-5 (Definitions) of the Easttown Township Natural Resource Protection Ordinance defines “riparian buffer” as follows:

An area surrounding a watercourse, floodplain or wetland, containing trees and other vegetation, that intercepts surface water runoff, wastewater, subsurface flow, and/or deep groundwater flows from upland sources and functions to remove or buffer the effects of associated nutrients, sediment, organic matter,

pesticides, or other pollutants prior to entry into surface waters. This transition area between aquatic and terrestrial environments may also provide wildlife habitat, control water temperature, attenuate flood flow, and provide opportunities for passive recreation.

See Exhibit B-7.

15. Timothy J. Brennan, who was admitted as an expert in civil engineering, and Joseph T. Furko, CEO and General Manager of the Waynesborough Country Club, testified in support of the subject application. *See Exhibit A-1; see also N.T., pp. 24-25, 28, 86.*

16. The Property has a generally rectangular shape and contains frontage along Darby Paoli Road. *See Exhibits A-2, A-4, A-5, A-6, A-7, A-8, and B-6.*

17. The Property contains a tributary to Crum Creek, which is a special protection watershed, and both moderately steep and very steep slopes. *See Exhibits A-2, A-4, A-5, A-6, A-7, and A-8; see also N.T., pp. 34, 74.*

18. Section 455-132 (Definitions; word usage) of the Zoning Ordinance defines “very steep slopes” as “those areas of land where the grade is 25% or greater.” *See Exhibit B-7; see also N.T., p. 44.*

19. Section 455-132 (Definitions; word usage) of the Zoning Ordinance defines “moderately steep slopes” as “those areas of land where the grade is 15% to 25%.” *See Exhibit B-7.*

20. The Property is improved with a clubhouse, sports facility, swimming pool, tennis courts, golf course, and other attendant improvements. *See Exhibits A-2, A-4, A-5, A-6, A-7, A-8, and B-6; see also N.T., pp. 28-29.*

21. The Applicant is preparing to renovate its existing golf course, and, as a part of that renovation, the Applicant plans to perform grading work within the 50-foot undisturbed vegetated area measured from the edge of a floodplain or water course, regrade and disturb more

than 15% of very steep slopes, regrade on very steep slopes within 100 feet of a stream or pond, and regrade within the 50-foot-wide riparian buffer zone.⁵ *See* Exhibits A-2, A-4, A-5, A-6, A-7, A-8, B-1, B-2, B-5, and B-8; *see also* N.T., pp. 13, 31.

22. Mr. Furko testified that the Applicant desires to make golf course improvements, because golf course improvements have a useful life of approximately 15 to 20 years, and the bunkers and other golf course improvements on the Property are at the end of their useful life. *See* N.T., p. 87.

23. Mr. Brennan testified that the slopes on the Property constitute unique vertical features that make the golf course more challenging and are vertical features associated with the construction of the golf course in the early 1960s. *See* N.T., p. 38.

24. The Property currently contains approximately 92,962 square feet of very steep slopes, and during the proposed regrading, the Applicant will disturb approximately 44.9% (41,781 square feet) of very steep slopes located on the Property. *See* Exhibits A-5 and A-6; *see also* N.T., pp. 45, 49-51.

25. The Applicant will regrade very steep slopes within 100 feet of Crum Creek. *See* Exhibits A-6, A-7, and A-8.

26. Other than the steep slopes located behind the clubhouse, all of the very steep slopes on the Property are man-made as a result of grading during the construction of the golf course. *See* Exhibit A-5; *see also* N.T., p. 37.

27. The amount of new very steep slopes that will be created by the proposed regrading will be approximately 52,315 square feet; thereafter, the overall total amount of very

⁵ The instant application solely addressed improvements to the golf course and to no other club facilities. *See* Exhibit B-8; *see also* N.T., p. 29.

steep slopes on the Property will be approximately 103,496 square feet. *See* Exhibits A-7 and A-8; *see also* N.T., pp. 52-53.

28. Mr. Brennan explained that the primary reason for regulating very steep slopes is erosion and that the risk of erosion is lessened by reducing the severity of the slope. *See* N.T., pp. 62-63.

29. The Applicant proposes to disturb approximately 93,130 square feet (2.14 acres) within the 50-foot-wide riparian buffer area. *See* Exhibits A-2 and A-4; *see also* N.T., p. 30.

30. The disturbance within the 50-foot-wide riparian buffer area will not disturb an area of the Property that is not already a golf course improvement. *See* N.T., p. 33.

31. The Property currently contains approximately 142,236 square feet of moderately steep slopes. Section 274-24.A(1) (Resource protection standards) of the Easttown Township Natural Resource Protection Ordinance provides that no more than 50% of moderately steep slopes shall be regraded, cleared, built upon, or otherwise altered or disturbed. As a result of the proposed regrading, the Applicant will disturb approximately 48.2% (68,577 square feet) of the moderately steep slopes located on the Property. *See* Exhibits A-5, A-6, and B-7.

32. The Applicant proposes to disturb approximately 63,043 square feet (1.45 acres) of land within the 100-year floodplain, which was approved by Easttown Township by approval of the Floodplain Permit on June 11, 2021. *See* Exhibits A-2 and A-3; *see also* N.T., pp. 29-30, 34.

33. Mr. Brennan testified that none of the proposed regrading work will occur within the wetlands. *See* N.T., p. 74.

34. Trap shooting occurs on the Property.⁶ *See* N.T., p. 96.

35. Mr. Brennan testified that he was unable to speak to whether the proposed grading renovations would change the amount of noise emanating from the Property as a result of trap shooting. *See* N.T., pp. 108-109.

36. Mr. Furko testified that trap shooting noise was not taken into account when the regrading improvements of the golf course were considered. *See* N.T., p. 101.

37. Mr. Brennan testified that stormwater runoff on the Property will not change as a result of the proposed regrading, and no additional stormwater management will be required as a result of the proposed regrading. *See* N.T., pp. 31-32 73, 85.

38. The Township did not take a position on the subject application. *See* N.T., pp. 111-112.

39. The Easttown Township Planning Commission unanimously recommended approval of the Applicant's variance requests. *See* Exhibit B-5; *see also* N.T., p. 112.

DISCUSSION

In reviewing requests for variances, the Board is guided by the criteria for variances set forth in §455-116.A and B of the Zoning Ordinance. Section 455-116.B provides as follows:

The Board may grant a variance, provided that the applicant has met its burden to prove that all of the following criteria, where relevant in a given case, are met:

1. There are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this chapter in the neighborhood or district in which the property is located.

⁶ Trap shooting is the sport of shooting at clay pigeons from a thrower. *See* N.T., p. 96. Trap shooting occurs on the Property in the driving range. *Id.* Trap shooting occurs on Sundays from November through March. *See* N.T., p. 97. Mr. Furko testified that the proposed regrading will not increase the number of trap shooters. *See* N.T., p. 100.

2. Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this chapter, and the authorization of a variance is therefore necessary to enable the reasonable use of the property.
3. Such unnecessary hardship has not been created by the applicant.
4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare.
5. That, in the case where the property is located in part or totally within the regulatory floodway, the granting of a variance will not increase the base flood elevation.
6. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

In addition to the above-referenced criteria, the courts of the Commonwealth of Pennsylvania have interpreted dimensional variance requests. In *Hertzberg v. Zoning Bd. of Adjustment of City of Pittsburgh*, 721 A.2d 43, 47 (Pa. 1998), the Supreme Court of Pennsylvania stated that when an applicant seeks 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. The Supreme Court went on to explain that the grant of a dimensional variance is of lesser moment than the grant of a use variance. *Id.* *Hertzberg* eased the requirements for granting a dimensional variance. *Society Created to Reduce Urban Blight v. Zoning Bd. of Adjustment of City of Philadelphia*, 771 A.2d 874, 877 (Pa. Cmwlth. 2001). Multiple factors may be considered in determining whether an applicant establishes unnecessary hardship for a dimensional variance. *Tri-County Landfill, Inc. v. Pine Tp.*

Zoning Hearing Bd., 83 A.3d 488, 520 (Pa. Cmwlth. 2014). These factors include the cost of strict compliance with the zoning ordinance, the economic hardship that will result from denial of a variance, and the characteristics and conditions of the surrounding area. *Id.*

In consideration of the standards set forth, and based on a careful review of the evidence presented to the Board, it is determined that the Applicant has met the requirements of the Zoning Ordinance for the requested variances. The Property contains a tributary to Crum Creek, which is a special protection watershed and a unique physical condition. In association with the Crum Creek, the Property contains a riparian buffer and a required undisturbed vegetative area. The aforementioned natural features present a challenge for the Applicant to develop the Property in strict conformity with certain provisions of the Zoning Ordinance and the Easttown Township Natural Resource Protection Ordinance.

The Board recognizes that the Property is a golf course, and vertical features were added to the golf course to make it more challenging. By adding the vertical features, the Applicant created a majority of the very steep slopes on the Property. Put simply, the majority of the very steep slopes are manmade as part of the golf course construction. The Applicant, in these variance requests, simply desires to regrade certain vertical features of the golf course that have reached the end of their useful life. Given the unique business model of a golf course, the manmade very steep slopes, and the need for renovations, the Board is satisfied that, in this case, the hardship has not been created by the Applicant.

The Board is satisfied that the variances will not alter the essential character of the neighborhood, as the golf course will remain a golf course after the grading renovations. As previously stated, the Applicant desires to regrade certain vertical features of the golf course that have reached the end of their useful life. Additionally, the Easttown Township Planning

Commission unanimously recommended approval of the requested variances. In this particular case, the Board is satisfied that the variances requested represent the minimum variances that will afford relief. As previously noted, the vertical features that created the vast majority of the very steep slopes on the Property were created by the Applicant to make the golf course more challenging, and the Applicant merely desires to regrade certain vertical features of the golf course that have reached the end of their useful life.

The Board appreciates the Neighbors coming to the hearing and stating their concerns regarding noise resulting from trap shooting. However, the Neighbors presented no affirmative evidence with regard to the effect of the Applicant's proposed regrading on noise; thus, the Board cannot conclude that the concerns raised by the Neighbors are relevant to the relief sought by the Applicant.

Accordingly, the Applicant's request for a variance from §455-31 (Natural resources protection) of the Easttown Township Zoning Ordinance to permit golf course renovations: (1) within 50 feet of the edge of a protected floodplain or watercourse, where an undisturbed vegetated area shall extend a minimum of 50 feet from the edge of a protected wetland, floodplain, or watercourse; (2) that will disturb approximately 44.9% very steep slopes, where no more than 15% of very steep slopes shall be regraded, cleared, built upon, or otherwise altered or disturbed; and (3) that will grade on very steep slopes within 100 feet of Crum Creek, where there shall be grading on very steep slopes within 100 feet of any stream; and a variance from §274-16.D (Resource protection standards) of the Easttown Township Natural Resource Protection Ordinance to permit golf course renovations that will encroach into the 50-foot-wide riparian buffer zone, where a 50-foot-wide riparian buffer zone shall otherwise protect wetlands, floodplains, and watercourses, for the property located at 440 Darby Paoli Road, Paoli,

Pennsylvania (UPI No. 55-4-2), in the AA Residential District of the Township, shall be GRANTED, subject to the conditions in the Order that follows.

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. The Applicant has demonstrated that it is entitled to the variances, which have been granted.

The Board, therefore, enters the following:

ORDER

AND NOW, this 24th day of August, 2021, upon consideration of the application of the Waynesborough Country Club for a variance from §455-31 (Natural resources protection) of the Easttown Township Zoning Ordinance to permit golf course renovations: (1) within 50 feet of the edge of a protected floodplain or watercourse, where an undisturbed vegetated area shall extend a minimum of 50 feet from the edge of a protected wetland, floodplain, or watercourse; (2) that will disturb approximately 44.9% very steep slopes, where no more than 15% of very steep slopes shall be regraded, cleared, built upon, or otherwise altered or disturbed; and (3) that will grade on very steep slopes within 100 feet of Crum Creek, where there shall be grading on very steep slopes within 100 feet of any stream; and a variance from §274-16.D (Resource protection standards) of the Easttown Township Natural Resource Protection Ordinance to permit golf course renovations that will encroach into the 50-foot-wide riparian buffer zone, where a 50-foot-wide riparian buffer zone shall otherwise protect wetlands, floodplains, and watercourses, for the property located at 440 Darby Paoli Road, Paoli, Pennsylvania (UPI No.

55-4-2), in the AA Residential District of the Township, IT IS HEREBY ORDERED that the application shall be GRANTED, subject to the following conditions:

1. All representations made by the Applicant and its representatives on the record at the hearing with respect to the Property and the application are binding as conditions to this approval.

2. The Applicant shall obtain all necessary approvals and permits as required by the applicable local, state, and federal regulations, ordinances, statutes, and laws.

3. The Applicant shall comply with the terms of any other approval, permit, or review letter granted by Easttown Township.

4. Upon request of the Township, the Applicant shall execute documents necessary to record these conditions in the office of the Recorder of Deeds in and for Chester County.

ZONING HEARING BOARD
EASTTOWN TOWNSHIP

William F. Connor, III

Chairman, William F. Connor III.

William H. Howard

William H. Howard

Larry "Buzz" Wood

Larry "Buzz" Wood