

**ZONING HEARING BOARD OF DOYLESTOWN TOWNSHIP
BUCKS COUNTY, PENNSYLVANIA**

Application No. Z-6-2014

Applicants: Christine L. Cole
70 East Road
Doylestown, PA 18901

AND

Oscar Hammerstein's Highland Farm, Inc.¹
70 East Road
Doylestown, PA 18901

Owner: Christine L. Cole
70 East Road
Doylestown, PA 18901

Subject Property: Tax Parcel No. 9-9-89-1, located at the address of the Applicants set forth above.

Requested Relief:

The Applicants seeks a special exception, pursuant to §175-37.B and §175-138 of the Doylestown Township Zoning Ordinance ("Ordinance"), in order to use the property as a private organization/community center defined at Ordinance §175-16.C-8. Additionally, the Applicants requests the following variances:

1. from §175-19, to permit more than one principal use or building on the Subject Property;
2. from §175-22.A, §175-22.D and §175-29.B.9.e, to permit a total of 89 automobile parking spaces and 8 bus spaces instead of the 128 automobile spaces required;²
3. from §175-23.C.2, to permit a parking lot closer than 25 feet to a building;³
4. from §175-38, to permit an impervious surface coverage ratio in excess of the maximum permitted 20%;⁴ and

¹ At the March 16, 2015 hearing, this entity was added as an Applicant pursuant to Exhibit A-34, an Agreement of Sale for the purchase of the property from Christine L. Cole.

² These variance requests were withdrawn by the Applicants at the April 29, 2015 hearing.

³ This variance request was withdrawn by the Applicants at the January 12, 2015 hearing.

⁴ The proposed impervious surface coverage ratio of the Subject Property varies with the alternate plans for development proposed.

5. from §175-16.C.8.d and §175-39,⁵ to permit a lot area of 4.638 acres instead of the required 5 acres.

Hearing

History:

The application was filed in Doylestown Township on November 17, 2014. Hearings were held on December 15, 2014, January 12, 2015, March 16, 2015, April 20, 2015, April 29, 2015, and May 18, 2015. The Zoning Hearing Board took its public vote at a public meeting on June 15, 2015. All hearings were held at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.⁶

Appearances:

Applicants by: John A. VanLuvanee, Esq.
Eastburn and Gray, PC
60 E. Court Street
P.O. Box 1389
Doylestown, PA 18901

Doylestown Township by: John P. Koopman, Esq.
Begley Carlin & Mandio, LLP
680 Middletown Boulevard
Langhorne, PA 19047

Nicholas S. Molloy by: Stephen B. Harris, Esq.
Harris and Harris
1760 Bristol Road
P. O. Box 160
Warrington, PA 18976

Doylestown Country Club by: Stephen B. Harris, Esq.
Harris and Harris
1760 Bristol Road
P. O. Box 160
Warrington, PA 18976

Mailing Date: June 29, 2015

⁵ At the first hearing, the Applicants requested and received Board approval to amend the application to include a variance as to lot area from §175-39, which contains the same dimensional requirement as §175-16.C.8.d.

⁶ The Applicants waived all applicable hearing timeliness requirements of the Pennsylvania Municipalities Planning Code on the record during the hearings held. Further they agreed to extend the date of issuance of this Decision to July 2, 2015.

DECISION

FINDINGS OF FACT:

1. The Zoning Hearing Board of Doylestown Township met the requirements of the Zoning Ordinance, the Municipalities Planning Code, and other relevant statutes as to legal notice of the hearing held.
2. The Applicant, Christine L. Cole, is the Owner of the Subject Property and therefore possessed of the requisite standing to make application to this Board.
3. The Co-Applicant, Oscar Hammerstein's Highland Farm, Inc., is the equitable owner of the Subject Property pursuant to an Agreement of Sale received into evidence as Exhibit A-34. As such, it is possessed of the requisite standing to make application to this Board.
4. The Subject Property is located in the R-1 Residential Zoning District of Doylestown Township. Its lot area, pursuant to Ordinance definition at §175-9, is 4.638 acres. The Applicants conceded, at the December 15, 2014 hearing, that the lot area is not a lawful nonconforming condition.
5. The Subject Property is part of a tract of land, originally 40 acres in size, acquired by Dorothy Hammerstein in 1940. Oscar Hammerstein, II and Dorothy Hammerstein resided on the Subject Property until Mr. Hammerstein's death in 1960. Its current size is the result of conveyances of outparcels as described in Exhibits A-12 and T-3. It was further reduced in size as a result of a deed of easement given to PennDOT in-lieu of condemnation (see Exhibit A-12-A).
6. The Subject Property is bordered to its west by the property of Roberta G. Molloy, which accommodates a permitted single-family residential use. Mrs. Molloy, and her husband, Nicholas, were granted party status in this matter.
7. To the south of the Subject Property is the Doylestown Country Club, which was also granted party status.
8. It is bordered to its east by the Route 202 Bypass. Across the bypass are located several single-family residences, which constitute the balance of the neighborhood in which it is located.
9. The Subject Property fronts on East Road to its north. East Road is the dividing line between the R-1 Zoning District and a C-3 Commercial Zoning District. Across East Road is "The Farm" office complex which was developed consistent with Ordinance requirements for that zoning district.
10. The Subject Property is bordered by East Road and the Route 202 Bypass and, as a result of Ordinance definition, has two front yards.

11. The credible evidence submitted by all parties in this matter indicates that it is located in a residential neighborhood consisting of single-family detached homes. Its existing improvements include a residential structure, presently used as a bed and breakfast inn, a barn, an in-ground swimming pool, and a tennis court. The residential structure is photographically depicted in Exhibit A-22. The barn is photographically depicted in Exhibit A-23.

12. On November 17, 1988 the Subject Property was placed on the National Register of Historic Places (Exhibit A-21). The request for placement on the National Registry was received into evidence as Exhibit A-18, a "National Register of Historic Places Registration Form". This exhibit indicates that the property also accommodated, during its period of historical significance, a mid-nineteenth century frame carriage house, north of the barn and northeast of the residential structure, which has since been demolished and removed from the property.

13. The evidence indicates that the property was placed on the National Register due to its significance as the home of Broadway lyricist and producer, Oscar Hammerstein II, from 1940 until 1960.

14. According to Jeffrey Marshall, President of the Heritage Conservancy, the farmhouse, frame barn, and former carriage house were structures which contribute to the historic significance of the Subject Property.

15. The current use of the residential structure as a bed and breakfast inn is permitted by special exception. The Subject Property received a special exception for this use on January 4, 1989 as a result of the Decision of the Doylestown Township Zoning Hearing Board, received into evidence as Exhibit A-9.

16. Christine Cole, the Owner and one of the Applicants, testified that she has operated a bed and breakfast on the Subject Property within the Hammerstein home since she purchased it on February 1, 2007. She testified that her intent was to rehabilitate the barn but that she has not received sufficient revenues from the bed and breakfast to enable her to do so.

17. The Subject Property was also the subject of a Zoning Hearing Board Decision, dated July 17, 2006 (Exhibit A-5), pursuant to which the Zoning Hearing Board granted variances to permit the proposed subdivision of the property into four residential lots. The residential lot closest to East Road would contain the original Hammerstein home. The barn structure was to be rehabilitated and restored for a single-family detached dwelling use. The two lots at the rear of the property were to be developed for single-family detached dwelling uses.

18. Subsequent to the Zoning Hearing Board Decision of July 17, 2006, the then owner of the property, Shawn Touhill, filed an application to Doylestown Township for approval of the four lot subdivision. The Township Board of Supervisors approved the Touhill four lot residential subdivision plan on December 19, 2006.

19. The Pennsylvania Department of Environmental Protection approved sewer planning modules for the subdivision on April 25, 2007.

20. On September 16, 2008, the Board of Supervisors approved execution of Development Agreements for the Touhill subdivision.

21. Approval for the Touhill subdivision remains in effect at the current time.

22. The Applicant has applied for a special exception to operate the proposed buildings and uses on the property as a "private organization or community center" defined at Ordinance §175-16.C-8.

23. A private organization or community center is permitted by special exception in the R-1 Zoning District pursuant to Ordinance §175-37.B.

24. The criteria set forth in §175-16.C-8, necessary to obtain special exception approval as a private organization or community center, is set forth as follows:

- “(a) The use shall not be conducted as a private gainful business.
- (b) No outdoor recreational area shall be located nearer to any lot line than 100 feet.
- (c) In residential districts, private organizations and community centers shall be limited to those operated by groups which do not provide dining services and/or the service of alcoholic beverages.
- (d) The minimum lot area shall be 3 acres in the R-2 and R-2B Zoning Districts, but in all other districts the minimum lot size shall be 5 acres.”

25. The Applicants have requested a variance from §175-16.C-8.d because the lot area for the Subject Property is 4.638 acres.

26. The proposed theater and educational center structure is contemplated by the Applicants to accommodate educational programs as well as theater productions. The theater use will include, but will not be limited to, productions of Oscar Hammerstein II's works. It is proposed to be a regional theater, as opposed to a community theater. A regional theater, according to the evidence provided by the Applicants, is one that is "...a union theater, and actor's equity theater." An actor's equity theater is one that employs paid actors, for example Broadway performers, who have obtained an actor's equity card.

27. As depicted on Exhibit A-44, the theater will have up to 270 performances per year on up to 201 days per year. Evening performances will begin at 7:30 or 8:00 PM, lasting approximately 2 ½ hours, concluding, therefore, at 10:00 or 10:30 PM.

28. Performances will occur on Wednesday through Sunday evenings with two afternoon matinee performances per week on Wednesday and Sunday.

29. Kristine Lewis, one of the principals in Oscar Hammerstein's Highland Farm, testified that she currently operates a for-profit business corporation known as Theatre Arts Centre, Inc. in a commercially zoned strip shopping center in New Britain Borough. She proposes that that use, if relief is granted, will be shifted to the theater and educational center structure.

30. Exhibit A-41 describes the Theatre Arts Center, Inc. activities that will occur in the new structure to include "...theater workshops, dance studios, acting classes, musical theater classes, Broadway shows, and more." Its mission is "to educate and motivate students to gain confidence and develop necessary skills needed to be successful in the arts, in school and in life." It also depicts an acting and dance class schedule that includes mornings, afternoons, and evenings. It will also conduct summer theater camps including 2, 4 and 6 week sessions.

31. In Exhibit A-5, the Zoning Hearing Board found that the evidence submitted during the hearing held on that application established that the Subject Property could be subdivided into four residential building lots without any zoning relief or preservation of the historic structures; that the variances were warranted and necessary to preserve the existing structures; and that the relief sought would enable a more suitable development than a by right subdivision.

32. That decision granted a variance from the impervious surface coverage ratio limitation of 20%, required by Ordinance §175-38 and, in so doing, determined that the variance granted to allow an impervious surface coverage ratio of 26.8% on the Subject Property was the minimum variance necessary from Ordinance requirements that represented the least modification of the Ordinance to enable development for a permitted use in the R-1 Zoning District.

33. When the Applicant for the relief sought for the four lot subdivision, Shawn Touhill, sold the property to Christine Cole on January 10, 2007, it was subject to an Agreement that permitted Touhill's continued right to develop the Subject Property.

34. In 2011, Cole, William Hammerstein (Oscar Hammerstein's grandson) and Kristine Lewis formed a Pennsylvania Non-Profit Corporation known as "Oscar Hammerstein's Highland Farm". That entity obtained recognition as an IRC §501(c)(3) charitable organization from the Internal Revue Service.

35. Under the umbrella of this entity, the Applicants propose to maintain the home in its present condition to serve as a museum with open house tours. The barn is to be rehabilitated to function as a museum and exhibition center. They further propose a three-level theater and educational center structure that consists of a 5,800 square foot footprint and will accommodate 13,400 square feet of gross floor area. The existing gross floor area in the residential structure and barn is, according to the evidence, 12,100 square feet.

36. Ordinance §175-16.C.4 defines a "library or museum" use as follows: "Such use shall be limited to a library or museum open to the public or connected with a

permitted educational use and operated by a public or quasi-public institution.” The evidence establishes that the use proposed for the Hammerstein home and the barn is a museum use. Although the museum use is proposed to be operated by a non-profit organization, it is identical to a museum use that would be operated by a public or quasi-public institution and has the same impacts.

37. Ordinance §175-16.C.3 defines a “commercial school” use as follows: “Such use shall be limited to a trade, professional, music or dancing school, operated as a commercial business.” The Board finds that the Theatre Arts Center, Inc., presently operated by Kristine Lewis in New Britain Borough, and proposed to be operated within the structures on the Subject Property, is a commercial school, notwithstanding that it is to be operated under the umbrella of a non-profit organization, as it is intended to generate revenues necessary to sustain the multiple uses proposed.

38. Ordinance §175-16.E-9 defines a “commercial recreation and entertainment” use as “An indoor or outdoor entertainment or recreational facility operated as a commercial venture, which may include a bowling alley, skating rink, movie theater, *theater* (emphasis added), games arcade, recreational camps, driving range, chip and putt golf or miniature golf.”

39. The credible evidence from the Applicants indicates that the theater proposed within the new structure is to be the main income generator for the various uses proposed on the Subject Property and therefore it serves as a commercial venture to generate the revenue necessary to support those intended uses. The E-9 (theater) use requires a minimum lot area of 5 acres at §175-16.E-9.a.

40. Although the Applicants suggest that each of these uses can collectively be considered a “private organization or community center”, when combined, the competent and credible evidence clearly establishes that each is a principal use as defined in the Ordinance.

41. Accordingly, the Board finds that although the uses are collectively couched as a private organization or community center, each of them have the same characteristics and impacts of each of the defined principal uses referenced above.

42. The theater use proposed has the same characteristics, functions, revenue sources, expenses, and features as a theater that meets the definition of a commercial recreation and entertainment use. In fact, the evidence presented by the Applicants indicated that its size was determined on the basis of other regional theaters in Bucks County, namely the New Hope Playhouse and the Bristol Riverside Theater, each of which accommodates approximately 400 seats. The Applicants assert that the size of the theater proposed results from the Applicants desire to compete as a regional theater with these two facilities.

43. The C-3, commercial school, the C-4, museum, and the E-9, theater uses are not permitted by right, special exception or conditional use in the R-1 Zoning District according to Ordinance §175-42.⁷

44. Reference was made, in footnote 7, to Ordinance §175-30, which is entitled "Use of Historic Structures". This section evidences the legislative intent of the Board of Supervisors to encourage the maintenance and restoration of historic resources within the Township, authorizing their adaptive reuse.

45. The evidence proves that the Subject Property is an historic resource as it has unique historical or patriotic interest or value. Accordingly, the provisions of that Ordinance section apply to the Subject Property.

46. The Subject Property is eligible for the special adaptive use provisions as it is listed on the National Register of Historic Places.

47. §175-30.C states that a historic resource within the Township, in addition to uses permitted by right or conditional use, shall be eligible for additional use opportunities which include the B-10, residential conversion use; the B-12, guesthouse/bed and breakfast use; the C-4, library or museum use; and the D-1, office use.

48. The Board finds that the Subject Property has benefited from this opportunity as it accommodates one of the special uses permitted for historic resources, i.e. the bed and breakfast use.

49. Neither the C-3, commercial school, nor the E-9, theater use, are permitted as an alternative adaptive reuse of a historic resource.

50. §175-30-C.2 contains provisions that no historic resource may be enlarged beyond what is minimally necessary to accommodate the additional use and that the Board of Supervisors must deem that the additional use will have minimal detrimental effects on neighboring properties.

51. No variances were sought from any of the provisions of §175-30.

52. Ordinance §175-29.B is also applicable to this matter. It states that nonresidential planned group development, which is a development of more than one building or use, shall only take place where development of more than one building or use is permitted on a single lot.

53. §175-19 of the Ordinance, entitled "Number of Principal Building Per Lot" states that there shall be no more than one principal use or building per lot in the R-1 and R-1a Zoning Districts of Doylestown Township. Nonresidential group

⁷ The C-4 library or museum use is permitted by special exception, according to Ordinance §175-30.C.1 as an encouragement to preserve historic resources in the Township but only in the R-2, R-2b, R-4, and C-3 Zoning Districts.

development is permitted in all other zoning districts of Doylestown Township in accordance with §175-29.

54. No variance was requested from Ordinance §175-29. The Board finds that consideration of both Ordinance sections establishes that nonresidential group development is specifically prohibited in two residential districts in the Township, one of which is the R-1 District, indicating the legislative intent to preserve the single-family residence use to a greater extent in those districts than in other residential zoning districts of Doylestown Township.

55. The totality of the evidence submitted by all parties in this matter establishes that parking the theater use proposed presents one of the largest problems for development and one of the greatest impacts upon the neighborhood.

56. The Board finds that the Applicants recognize the difficulties presented by parking the theater use proposed by their presentation of three alternate development plans as follows:

- a. Exhibit A-26, which proposes 89 off-street parking spaces for passenger vehicles and 8 bus parking spaces. The Applicants' evidence indicated that the rationale behind that proposal was that the theater use would generate busloads of interested theatergoers in addition to individual attendees;
- b. Exhibit A-29, which proposes 128 off-street parking spaces that, according to the opinion expressed by the Applicants' engineer, Scott Mill, meets the Ordinance requirements for parking in connection with the proposed C-8, private organization or community center use; and
- c. Exhibit A-30, which proposes 64 off-street parking spaces. The Applicants testified if this plan were accepted, some sort of shuttle bus arrangement would be entered into with a property owner that presently accommodates parking in the vicinity of the Subject Property. The Applicants were not able to establish that it had any arrangement, permanent or otherwise, that would adequately and satisfactorily park theatergoers; nor did the Applicants present any evidence of what specific shuttling arrangements would be made, suggesting that shuttle buses could be rented or purchased. No evidence was presented to indicate the traffic impacts of a shuttling arrangement upon the residential neighborhood.

57. The Applicants agreed that the plan upon which it was proceeding was the A-29 Plan, proposing 128 parking spaces which, according to the Applicants, met the parking requirements of the Ordinance, resulting in the Applicants' withdrawal of variance requests from §175-22.A, §175-22-D, and §175-29.B.9.e.

58. Although this Board has found that the Applicants' proposal contemplates multiple principal uses, it further finds that even if all of those uses could be considered as one C-8 private organization or community center use, the parking impact of each of the uses must be met in order to:

- a. sustain the theater operation;
- b. provide sufficient parking on the Subject Property to insure that no parking will take place on the streets in the neighborhood; and
- c. provide a permanent parking facility necessary to reasonably accommodate theatergoers.

59. Further exacerbating the parking problem, the testimony of Kristine Lewis established that the equity actors and orchestra members that may be necessary for any production may vary from 20-50 individuals. The Applicants suggest that a condition could be imposed that none of these cast or orchestra members, nor employees of any of the operations on the property, would be permitted to park there, offering that a shuttle arrangement would reasonably resolve that situation. No evidence of any specific arrangement was presented during these hearings.

60. §175-22.D sets forth the parking requirements for an E-9 theater use. It requires that at least one off-street parking space be provided for each 50 square feet of gross floor area used or intended to be used for services to customers, patrons, clients, guests or members. Accordingly, the theater structure itself generates the need for 268 off-street parking spaces on the Subject Property. The Board finds this to be so whether the theater use is considered a separate principal use or a part of a C-8 community center use.

61. Instructive also are the provisions of §175-22.C of the Ordinance which states that: "Whenever there is an alteration of a use which increases the parking requirements, the total additional parking required for the alteration, changes or extensions shall be provided...".

62. With regard to the parking problem presented by the theater use, the Applicants presented the testimony of Steven Buckreis, a principal in a valet parking company known as "Open Door Valet". He stated that his company engages in parking lot management by way of consultation, sales, training and staffing.

63. The testimony of Buckreis indicated that the 128 parking spaces proposed is insufficient to park the theater use for performances and he suggested a valet parking arrangement that could, by stacking vehicles with valet employees, fit 160 vehicles into the 128 off-street parking spaces proposed.

64. Buckreis further opined that the parking of up to 200 vehicles could be accommodated by the placement of additional stacked parking in the loading areas, access areas to the proposed museum and the driveway to the parking field from East Road (see Exhibit A-46).

65. The valet arrangement involving the stacking of vehicles proposed in Exhibit A-46, violates several other Ordinance sections as follows:

- a. §175-21.B, states that no structure, parking area, driveway or road or storage of materials shall be permitted in buffer yards. The exhibit shows valet parking along the southeastern portion of the main access drive.
- b. §175-23.C.3, states that parking shall be so arranged that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any motor vehicle.
- c. §175-24.B, states that the areas for the loading and unloading of delivery trucks and other vehicles and for servicing of establishment and/or shops by refuse collection, fuel or other service vehicles shall have adequate and unobstructed access from a street, service driveway or alley and shall be so arranged that they may be used without blocking or otherwise interfering with the use of automobile access ways, parking facilities, or pedestrian ways.

66. The Applicants' request for a variance from the impervious surface coverage ratio limitation of 20% contained at §175-38, is generated by the size of the theater proposed and its resultant parking needs.

67. The impervious surface coverage ratio proposed under Exhibit A-29, which provides parking for 128 vehicles, is 47.1%. This proposed impervious surface coverage ratio far exceeds the 26.8% that this Board found was the minimum variance necessary to enable development for permitted use on the Subject Property in Exhibit A-5.

68. Additionally, the Board finds, as noted above, that Exhibit A-29 does not propose sufficient off-street parking spaces to meet the parking requirements for the theater use. Accordingly, the Board finds that adequate parking arrangements for the proposed use would require even greater impervious surface on the Subject Property.

69. On this issue, Doylestown Township presented the testimony of Judith Stern-Goldstein, its Planning Consultant. Ms. Stern-Goldstein was qualified to testify as an expert in land use planning.

70. The Board finds her testimony credible that, while the impervious surface coverage ratio requirements in a zoning ordinance may have a relationship to issues involving stormwater runoff, which are regulated by the Township's Subdivision and Land Development Ordinance, one of the principal reasons for impervious surface coverage regulations in a zoning ordinance is to regulate the intensity of the development, density, and the massing of structures.

71. Further, her credible and competent testimony establishes that the intensity of development proposed in Exhibit A-29 involves impervious surface and massing which is more than double that which is permitted by the Ordinance and that the resulting intensity of development is inconsistent with the R-1 Zoning District regulations.

72. Stern-Goldstein further established, and the Board finds, based upon her testimony, that Exhibit A-29 provides for the location of numerous parking spaces within 50 feet from the right-of-way line of the 202 Bypass in violation of Ordinance §175-23.C.13.

73. Several residential property owners in the neighborhood testified against the application. Among them were, Joseph Paternostro, of 39 Houk Road; Lisa Mergen, of 18 Houk Road; and Tim Swanson, of 83 Pheasant Road, who collectively represented that they were testifying on behalf of 30-50 residents of the neighborhood who had met five or six times and determined to streamline the neighborhood's opposition testimony to those three individuals.

74. Based upon that testimony, which the Board finds to be credible, a large number of Doylestown Township residents in the R-1 neighborhood in which the Subject Property is located are opposed to the application and their collective testimony established the following:

- a. the proposal will increase traffic on internal neighborhood roads which were not designed or built to accommodate the volumes of traffic that will result;
- b. East Road is a narrow, heavily travelled Township thoroughfare which has no posted speed limit;
- c. East Road has no sidewalks or shoulders;
- d. Exhibits M-5.E, F, I, and J photographically depict that parking on East Road is unsafe and unsatisfactory. Vehicles parked along East Road will, of necessity, because there is no shoulder, protrude into the driving lanes of East Road;
- e. because the A-29 Plan proposes insufficient off-street parking, theatergoers and others will inevitably park on the neighborhood streets;
- f. no adequate arrangements have been made for off-site parking for actors, orchestra members, or employees;
- g. traffic and parking on neighborhood streets will create hazards for pedestrians, particularly children, who regularly walk and ride bikes on them; and

- h. the lights and noise to be generated by the proposed parking facility are incompatible with residential use.

75. The Doylestown Township Manager, Stephanie Mason, credibly established the following in her testimony in opposition to the application:

- a. East Road has an un-posted speed limit;
- b. East Road has no sidewalks or street lighting;
- c. parking is not currently prohibited on East Road, however, East Road is narrow and not safe for on-street parking;
- d. parking is not prohibited on adjacent residential development streets; and
- e. during the summer, the hours of operation of the proposed theater are coincident with the hours of operation of the Fanny Chapman Pool which, although located in Doylestown Borough, is in close proximity to the Subject Property.

76. Ms. Mason further testified that the Township's opposition to the application is based upon the proposed intensity of development. She states the Township's position that a 400 seat regional theater use on the property, is not consistent or compatible with the established residential use in the neighborhood. Ms. Mason also testified that the Township Supervisors believe that the proposal will result in serious and concerning vehicular and pedestrian traffic, parking, and safety issues.

77. The testimony from Mr. and Mrs. Molloy, the contiguous residential neighbors, credibly establishes the impacts of the proposed theater use of the Subject Property upon their residential use. The Board finds, based upon the evidence submitted, that the traffic, sound, and light produced by the late night parking of the theater proposed, will massively impact their ability to enjoy the outdoor use of their residence, particularly in the summer months when the evening performances are scheduled.

CONCLUSIONS OF LAW

1. The Subject Property currently enjoys a bed and breakfast use defined at Ordinance §175-16.B.12.

2. The structures on the Subject Property are historic resources as defined at Ordinance §175-30. The B-12, bed and breakfast use, constitutes a use permitted in the R-1 District by special exception as an additional use opportunity for historic resources.

3. Land development of the Subject Property into four single-family residential lots is permitted by right.

4. The Subject Property has been approved for development into four residential lots as a result of the grant of zoning relief from this Board in Exhibit A-5.

5. Exhibit A-5 granted four variances to enable the bed and breakfast use. This Board found, in connection with one of the variances sought from the impervious surface coverage ratio limitation of 20% in the R-1 District, that the minimum variance necessary from that requirement for permitted development is 26.8%. The impervious surface coverage ratio sought by the Applicants, depicted at Exhibit A-29, is 47.1%.

6. Further, the Board concludes that the Subject Property can be developed for agricultural and horticultural uses, permitted by right pursuant to §175-37.A, and a large lot single-family detached dwelling, which is also permitted by right by that section.

7. The application seeks the following variances from the Ordinance:

- a. from §175-19, to permit more than one principal use or building on the Subject Property;
- b. from §175-38, to permit an impervious surface coverage ratio of 47.1%, instead of the maximum permitted 20% and the approved 26.8% for a four lot residential subdivision; and
- c. from §175-16.C.8.d and §175-39, to permit a lot area of 4.638 acres, instead of the required 5 acres.

8. Pursuant to the provisions of the Doylestown Township Zoning Ordinance and the Pennsylvania Municipalities Planning Code, in order to achieve these variances, the Applicants must satisfy the Board that the proposal meets all five criteria set forth at Ordinance §175-136.

9. §175-136.A.1, requires:

“That 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 that 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.”

10. The Board concludes that there are no unique physical or topographical conditions peculiar to the Subject Property that precludes its development consistent with Ordinance requirements.

11. Further, the Board concludes that the application seeks variances from conditions that are generally created by the provisions of the Ordinance throughout the R-1 Zoning Districts in the Township. Lastly, relevant to this requirement, the Board concludes that the Applicants’ proposal contemplates intensity, density, and massing that is precluded by the impervious surface coverage ratio requirements of §175-38.

12. §175-136.A.2 requires:

“That 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 that the authorization of a variance is therefore necessary to enable reasonable use of the property.”

13. The Board concludes that the property can be developed in strict conformity with the provisions of the Ordinance as follows:

- a. it can continue its permitted bed and breakfast use;
- b. it can reasonably be used for a large lot single-family detached dwelling, comparable to its two closet residential properties;
- c. it can be subdivided into four residential lots, by right; and
- d. it can be developed in accordance with the approved Touhill subdivision for four residential single-family detached dwellings on residential lots.

14. §175-136.A.3, requires: “That such unnecessary hardship has not been created by the Applicants.” The variance relief sought in this application, the Board concludes, results solely from the Applicants’ desire to construct a 400 seat theater that generates the need for off-street parking spaces as required in the Ordinance and the resultant impervious surface coverage generated thereby.

15. §175-136.A.4, requires:

“That 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 not to be detrimental (sic) to the public welfare.”

16. The Board concludes that the uses proposed on the Subject Property are so intense as to constitute a neighborhood changing condition.

17. The credible evidence from the Township witnesses and the residential property owners in the neighborhood of the Subject Property establishes that the proposed theater use will result in traffic, parking, and safety impacts that substantially and permanently impair the use of adjacent residential properties.

18. Additionally, the Board concludes that a residential property owner in the R-1 District is entitled to rely upon the provisions of the Ordinance to permit the continued enjoyment of its residential use. A theater of the size, and the uses proposed within it, will have massive negative impacts upon the neighborhood and particularly the adjacent residential uses.

19. The evidence credibly and competently establishes that Mr. and Mrs. Molloy will be confronted with sights, sounds, and lights, particularly before, during, and after the summer evening performances, that will disrupt their continued reasonable residential use of their property.

20. §175-136.A.5, requires: “That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in (sic) issue.”

21. The Board concludes that the variances requested do not represent the minimum variances necessary to permit reasonable use of the Subject Property. The inclusion of the theater and its parking requirements far exceed the relief that is necessary, for example, to create a museum and showplace around the historic resource that is the Oscar Hammerstein residence. Further, the Board has already found, in Exhibit A-5, that the minimum variance relief necessary to accommodate a reasonable use of the Subject Property, with regard to impervious surface limitations, would permit an impervious surface coverage ratio of 26.8%.

22. The application seeks a special exception pursuant to §175-37.B, to permit a C-8 private organization or community center use on the Subject Property. That use, in the R-1 District, requires a lot area of 5 acres pursuant to §175-16.C.8.d. The area of the Subject Property, at 4.638 acres, does not and cannot meet that requirement.

23. The Board further concludes that the proposed C-8 use contemplates a non-residential planned group development as defined at Ordinance §175-29.B since it encompasses three separate and distinct uses defined in the Ordinance in more than one building, i.e. the C-3 commercial school use; the C-4 museum use; and the E-9 theater use.

24. A non-residential planned group development is not permitted in those zoning districts of Doylestown Township which do not permit more than one building or use on a single lot.

25. Doylestown Township has nineteen defined zoning districts, identified at §175-10 of the Ordinance, six of which are residential zoning districts. A non-residential planned group development is prohibited in only two of the zoning districts in the Township, namely the R-1 and the R-1A Districts.

26. The Board concludes that the exclusion of a non-residential planned group development from these two districts represents the legislative intent of the Doylestown Township Board of Supervisors to preserve at least two zoning districts within the Township where only one use or building per lot is permitted.

27. Accordingly, a variance is required from §175-29.B of the Ordinance. The application does not request a variance from that Ordinance section.

28. Ordinance §175-22.C requires that when there is an alteration, change or extension of use proposed on a subject property, which increases the parking requirements, the total additional parking for each of the uses is required.

29. Ordinance §175-22.D requires, for an E-9 theater use, one off-street parking space for each 50 square feet of gross floor area used or intended to be used for service to customers, patrons, clients, guests or members. The Board concludes, therefore, that the theater use proposed generates the need for 268 off-street parking spaces. No variance was sought from this section.

30. Additionally, the proposed C-3 commercial school use requires one parking space for each faculty member and employee plus one parking space per three students.

31. Further, the C-4 museum use requires one parking space per 250 square feet of gross floor area occupied by that use.

32. The parking requirements of the Ordinance for the requested C-8, private organization or community center use are insufficient to adequately serve the parking needs of theatergoers and will, the evidence establishes, result in on-street parking in the residential neighborhood which this Board concludes to be disruptive of the residential uses enjoyed there.

33. Some of the parking spaces depicted on Exhibit A-29 violate the setback requirement of §175-24.C.13. No variance relief was sought from this section.

34. The valet parking proposal of the Applicants violates Ordinance §175-24.3 and §175-24.4. No variance relief was sought therefrom.

35. In order to grant the special exception sought for the C-8 use, the Board is required to consider additional factors as set forth in §175-138.A.

36. Relevant to Subsection 7 thereof, the Board concludes that the Applicants have not established the need for the proposed use and that the negative impacts of it, established by the evidence, indicates that it is not in the convenience of the community or the public health, safety and general welfare.

37. Intensity, density, and massing of the Applicants' proposal represents an overcrowding of the Subject Property.

38. The proposed use is not compatible with existing development in the neighborhood or development anticipated in the foreseeable future.

39. The proposed operation of the Subject Property, in connection with the requested special exception, is more objectionable to nearby properties by reason of noise and lights than would result from the operation of a permitted use on the Subject Property.

40. The credible and competent evidence of the Township's Land Use Planner, Judith Stern-Goldstein, and its Manager, Stephanie Mason, when combined with the testimony and photographs of the surrounding neighborhood streets, establishes that the impacts of the theater use of the proposed property create a high degree of probability that the proposed use will substantially affect the health, safety and welfare of the community greater than what is normally expected from the use proposed.

41. The variances sought in this application are dimensional in nature. A lesser standard of proof is necessary to establish unnecessary hardship for dimensional variances rather than a use variance. Hertzberg v Zoning Board of Adjustment of City of Pittsburgh, 721 A.2d 43 (PA. CMWLTH. 1998). Hertzberg instructs that in applying this lessened standard "...courts may consider multiple factors, including...the characteristics of the surrounding neighborhood. To hold otherwise would prohibit the rehabilitation of neighborhoods by precluding an applicant who wishes to renovate a building in a blighted area from obtaining the necessary variances." *Id.*, 721 A.2d at 50.

42. However, the Pennsylvania Commonwealth Court has instructed that:

"[W]hile Hertzberg eased the requirements...it did not make dimensional requirements...“free-fire zones” for which variances could be granted when the party seeking the variance merely articulate(s) a reason that it would be financially “hurt” if it could not do what it wanted to do with the property.” Society Created to Reduce Urban Blight v Zoning Board of Adjustment, 771 A.2d 874, at 877 (PA. CMWLTH. 2002).

43. As such, this Board concludes that the Applicants have failed to prove a hardship, economic or otherwise, which prohibits reasonable use of the property.

44. The Board concludes that the alleged hardship here is personal and self-imposed in order to enable the Applicants to do what they want with the property. It is not innate to the property itself.

45. The Board specifically rejects the Applicants' position that the proposed C-8 use will preserve the integrity of the historic nature of the Subject Property and its structures. On the contrary, the evidence establishes that the addition of a three-story 13,400 square foot floor area theater structure and a parking field, of the size necessary to park that structure materially and negatively impacts the integrity of this historic resource.

46. The special exception request is denied due to the negative impacts of the proposed use on the neighborhood. Further, the development as proposed does not meet the requirement for a 5 acre lot size, set forth at Ordinance §175-16.C-8 and §175-16.E-9.a.

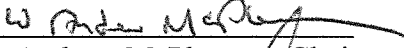
47. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to deny the Applicants' requests for relief as is set forth hereafter.


ORDER

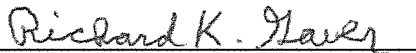
Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby determines as follows:

1. to deny the special request application for a private organization or community center use pursuant to Ordinance §175-16.C-8;
2. to deny the variance requested from §175-19 to permit more than one principal use or building on the Subject Property;
3. to deny the variance requested from §175-38 as to the impervious surface coverage ratio proposed; and
4. to deny the variances sought from §175-16.C-8.d and §175-39 to permit a lot area of 4.638 acres.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

By: 
W. Andrew McPherson, Chairman


William J. Lahr, Vice Chairman


Richard K. Gaver, Secretary