

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

Docket No.: Z-2-2023

Applicant: Philmont Properties, LP
76 Griffith Miles Circle
Warminster, PA 18974

Owner: Same.

**Subject
Property:** Tax Parcel No. 09-006-026, which is located at 33 Neill Drive,
Doylestown, PA 18901.

**Requested
Relief:** Applicant proposes to improve the property with a one (1) story, 35,550 square foot G-15 warehouse use and other improvements. Applicant requests a special exception pursuant to §175-77.2.B of the Doylestown Township Zoning Ordinance ("Ordinance"), accordingly.

**Hearing
History:** The application was filed in Doylestown Township on February 17, 2023. The hearing was held on May 15, 2023 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.¹

Appearances: Applicant by: Edward F. Murphy, Esq.
Wisler Pearlstine, LLP
301 N. Sycamore Street
Newtown, PA 18940

Mailing Date: June 29, 2023

¹ The hearing was originally scheduled and advertised for April 17, 2023. Applicant was unavailable on that date. The hearing was opened on April 17, 2023 and continued to a date certain, to wit, May 15, 2023. Applicant waived the relevant provisions of the Municipalities Planning Code and the Doylestown Township Zoning Ordinance with regard to timing for hearings. (See ZHB-4)

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 is the Owner of the Subject Property and therefore possessed of the requisite standing to make application to this Board.

3. The Subject Property is located in the C-4, Office and Medical Professional Zoning District of Doylestown Township. The lot area is 5.519 acres (gross). The property is presently unimproved, but had previously supported a single-family dwelling with a detached garage, both of which have fallen into disrepair, with the single-family dwelling having been recently demolished.

4. Applicant proposes to improve the property with a one (1) story, 35,550 square foot G-15 warehouse use and other improvements. Applicant requests a special exception pursuant to §175-77.2.B of the Doylestown Township Zoning Ordinance ("Ordinance"), accordingly.

5. The property is a "corner lot", a defined term within the Doylestown Township Zoning Ordinance. The Property maintains frontage along both Swamp Road and Neill Drive. The Property also maintains a third frontage along Ferry Road.

6. The property is abutted to the west by a property improved by, among other things, an approximately 13,172 square foot (footprint) G-15 warehouse use and other improvements, including 50 off-street parking spaces, and stormwater management facilities generally consistent with a Site Plan, prepared by Holmes Cunningham LLC, dated October 20, 2022, last revised February 13, 2023.

7. Much of the property within close proximity to the Subject Property is zoned residential. Across Swamp Road (Plumstead Township) and across Ferry Road (New Britain Township) are properties zoned for commercial, professional and/or office use.

8. The plan as proposed by Applicant has the warehouse use being accessed via driveways on both Swamp Road as well as from Neill Drive.

9. Applicant is attempting to preserve existing mature woodlands which buffer the proposed use from the new and adjacent residential dwellings. Applicant further seeks to preserve existing mature woodlands along the property's frontage on Swamp Road. One of the objectives is to leave the Swamp Road view shed largely unchanged. See Sketch Plan, prepared by Holmes Cunningham LLC, dated October 20, 2022, last revised February 13, 2023.

10. The G-15 warehouse use is defined at §175-16 of the Ordinance as follows:

(15) G-15. Warehouse. Wholesale business, wholesale storage or warehousing, excluding retail sales except as provided for below. A small retail store may be operated in conjunction with use G-15, subject to the following conditions:
[Amended 9-19-1989 by Ord No. 193]

- (a) The retail store shall be an accessory use which is clearly incidental and subordinate to the primary use G-15;
- (b) The retail store may only sell those items stored at the property in accordance with use G-15; and
- (c) The retail store may not exceed 15% of the gross floor area or 1,000 square feet, whichever is less.

11. A standard for any special exception within the Doylestown Township Zoning Ordinance is contained at §175-137 and §175-135 of the Ordinance. Those provisions read as follows:

§ 175-137 Special exceptions.

- A. Where this chapter has provided for stated special exceptions to be granted or denied by the Board pursuant to express standards and criteria, the Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this chapter, as it may deem necessary to implement the purposes of this chapter.
- B. The relief granted pursuant to the grant of a special exception shall expire five years from the date of the written decision granting the special exception by the Zoning Hearing Board, five years from the date of the Board of Supervisors approval at a public meeting of a preliminary subdivision and/or land development plan based, in part, upon the special exception, or five years from the date of a final Order of Court arising from an appeal from the granting of the special exception, but same shall not be extended if the appeal arises from the grant of a subdivision and/or land development approval where the special exception or special exceptions were a part of same. [Added 4-14-2004 by Ord. No. 317]

§ 175-138 Additional factors to be considered.

- A. In passing upon applications for special exceptions and variances, the Board shall consider all relevant factors and procedures specified in other sections of this chapter, including Article **IV**, Use Regulations, as well as the following.

- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments. No special exceptions or variances shall be granted within the floodway for any proposed use, development or activity that will cause any increase in flood levels.
- (2) The danger that materials may be swept onto other lands or downstream to the injury of others.
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- (4) The availability of alternative locations not subject to flooding for the proposed use.
- (5) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
- (6) The suitability of the property for the use desired and the extent to which the new or expanded use is regulated by appropriate conditions and safeguards.
- (7) The public interest in or the need for the proposed use and that the use will serve the best interests of the Township, the convenience of the community and the public health, safety and general welfare.
- (8) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions. Where applicable, a certificate of adequacy of sewage and water facilities shall be provided.
- (9) The effects of the proposed change with respect to the most appropriate use of land; conserving the value of buildings; safety from fire, panic and other dangers; adequacy of light and air; the overcrowding of land; congestion of population; and the adequacy of public and community services.
- (10) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- (11) The size, scope, intent and character of the exception requested and assurance of the compatibility of the proposed use with the spirit, purpose and intent of the Comprehensive Plan and with all applicable requirements of this chapter and

the Township Subdivision and Land Development Ordinance.^[1]

[1] *Editor's Note: See Ch. 153, Subdivision and Land Development.*

(12) The safety of access to the property for ordinary and emergency vehicles and the probable effects of proposed development on highway congestion and assurance that adequate access arrangements are provided in order to protect roadways from undue congestion and hazard.

(13) The operation in connection with any special exception or variance shall not be more objectionable to nearby properties by reason of noise, fumes, vibration or lights than would be the operation of any permitted use.

(14) Such other factors which are relevant to the purpose of this chapter.

B. The Board may refer any application and accompanying documentation pertaining to any request for a special exception or variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities and the adequacy of the plans for protection of public health, safety and welfare and other related matters.

C. Special exceptions and/or variances shall only be issued after the Board has determined that the granting of such will not result in additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with local laws or ordinances.

12. Applicant's expert, Rob Cunningham, PE, did address each of the special exception standards and did indicate compliance with §175-137 and §175-138. Mr. Cunningham further underscored the benefit of the low volume warehouse use versus a higher volume office use.

13. Multiple nearby property owners spoke in opposition during the public comment aspect of the hearing. The common theme among the nearby residents was existing stormwater management issues, heavy traffic on Route 313, potentially dangerous conditions in redeveloping the site for a warehouse use, and opposition to using Neill Drive as an entry point for the proposed use.

14. Applicant emphasized that the issues being raised by the neighboring property owners would be addressed by those entities having jurisdiction over those issues during the land development process (including PennDOT and Doylestown Township).

15. Doylestown Township took no position with regard to this application.

CONCLUSIONS OF LAW:

1. The Subject Property is not presently being actively used. A dilapidated residential dwelling structure has been demolished. A dilapidated accessory garage remains, but in serious disrepair.
2. Applicant proposes to improve the property with a one-story, 35,550 square foot G-15 warehouse use and other improvements, including stormwater management and 50 parking spaces. The G-15 use is permitted by special exception within the C-4 medical office zoning district in Doylestown Township. The standards for a special exception are contained at §175-137 and §175-138 of the Ordinance (above).
3. A use permitted by special exception is presumptively consistent with the public health, safety and welfare; the denial of a special exception can be based only on proof that the use would create an adverse effect on the public welfare in a way not normally associated with proposed use. *Kern v. Zoning Hearing Board of Tredyffrin Township*, 68 Pa. Cmmw. 396, 449 A.2d 781 (1982).
4. Applicant has demonstrated compliance with the G-15 use as well as the standards contained at §175-137 and §175-138.
5. Here, the objecting witnesses failed to present proof that the proposed use would present a substantial threat of harm to the health, safety and welfare of the community, beyond that which would normally be associated with the permitted use. *Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg*, 126 Pa. Commw. 235, 559 A.2d 107 (PA. Cmwlt. 1989).
6. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for relief, as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS a special exception pursuant to §175-77.2.B of the Doylestown Township Zoning Ordinance to permit Applicant to improve the property with a one (1) story, 35,550 square foot G-15 warehouse use and other improvements, subject to compliance with the following specific conditions:

1. Applicant shall submit a Land Development Plan to Doylestown Township and proceed through the land development process to address issues including stormwater management design, traffic circulation, and traffic study;
2. Applicant's design is to minimize the truck movements onto and from Neill Drive to the satisfaction of PennDOT and Doylestown Township Board of Supervisors.
3. Applicant must locate the stormwater basin outside of the 50 foot buffer yard.
4. Loading bays are to be located on the building side facing the adjacent parcel located in the C-4 Zoning District, consistent with §175-24.D of the Ordinance.
5. Compliance with all other applicable governmental ordinances and regulations.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

By: /s/ William J. Lahr
William J. Lahr, Chairman

/s/ Mitchell Aglow
Mitchell Aglow, Vice Chairman

/s/ Samuel Costanzo
Samuel Costanzo, Secretary