

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

Docket No.: Z-4-23

Applicant: JDL DYL Properties, LLC
5080 Anderson Road
Doylestown, PA 18901

Owner: Spring Easton LLC, 7-11 c/o Ryan LLC
P.O. Box 4900
Scottsdale, AZ 85261

Subject Property: Tax Parcel No. 09-019-002, 09-019-003, and 09-019-004, which are located at 1796 S. Easton Road, Doylestown, PA 18901.

Requested Relief: Applicant proposes to subdivide and consolidate certain parcels into three lots, then redevelop one of the resulting lots as a Use E13 Car Wash. Applicant seeks a special exception under §175-67.B & §175 Attachment 2, to permit the Use E13 Car Wash, and the following variances:

1. from §175-68.A(5)(b), to permit a side yard setback of 14.5 feet at the common lot line between Lot 1 and Lot 2, where a side yard of 20 feet is required;
2. from §175-17.H, to permit Applicant to measure the rear yard setback for principal and accessory buildings from the property line, where this section requires the rear yard to be measured from the limit of the natural resource, and to apply the setbacks from the property line;
3. from §175-27.D.(7), §175-103.4 and §175-103.5, to allow disturbance on Lot 1 within the riparian corridor conservation district lands generally following existing disturbances of the riparian corridor made by the previous owner of the property, and existing driveway and accessory structure is within zone 1 and 2 of RCCD;
4. from §175-17.D.(1) and §175-69.D, to permit a continuation of parking facilities (with associated covered vacuum structures) between the principal building and Route 611 within the front yard setback on Lot 1;

5. from §175-23.B.(2), to modify the existing nonconforming planting strip between the Right-of-Way and the proposed parking area to 13.6 feet on Lot 1, where no planting strip presently exists and a planting strip of 32.5 feet is required;
6. from §175-68.A(3), to permit impervious surface coverage greater than 40% of the net buildable site area for the newly created lots, where the existing site is presently nonconforming with respect to impervious coverage; and
7. from §175-68.A, to permit continuation of the existing Use E-10 service station use on a newly created lot. Applicant requests continuation of the service station on a lot with a minimum lot width of 134 feet on the Easton Road frontage, where a minimum lot width of 200 feet is required on all frontages.

Hearing

History:

The application was filed in Doylestown Township on April 28, 2023. The hearing was held on June 19, 2023 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances:

Applicant by: Kellie McGowan, Esq.
Obermayer Rebmann Maxwell & Hippel
10 S. Clinton Street, Suite 300
Doylestown, PA 18901

Mailing Date:

July 27, 2023

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 Equitable 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-1, Commercial Zoning District of Doylestown Township. The combined lot area is 3.97 acres (gross). Tax Parcel 09-019-002 contains Premises A-1 and Premises A-2, as indicated on the deed (ZHB-1). Premises A-1 contains an existing strip shopping center with an accessory garage to the rear. Premises A-2 contains two existing uses, a 7-11 store, and a Midas service use.

4. The Property contains existing natural resource features, including, steep slopes, woodlands, streams/watercourse (Neshaminy Creek), floodplain, wetlands and riparian corridor.

5. The Property has multiple dimensional nonconforming conditions, including riparian corridor encroachment, parking location and stall size, parking planting strips, impervious coverage and building setbacks.

6. Applicant proposes to subdivide and consolidate the existing parcels into three lots, then redevelop Premises A-1 ("Lot 1") as a Use E13 Car Wash. The proposed car wash includes a 4,500 square foot car wash facility with associated vacuums and employee parking and 31 vacuum spaces, along with a small offices space. Three kiosk lanes are proposed, along with a stacking area which Applicant testified accommodates 34 cars. The car wash is proposed to have a 150 foot drive through tunnel and water recycling equipment. Applicant proposes an internal driveway connection to the Midas and 7-11 premises.

7. In order to facilitate the improvements, Applicant seeks the following zoning relief. A special exception under §175-67.B & §175 Attachment 2, to permit the Use E13 Car Wash (Lot 1 only); and the following variances:

- (1) from §175-68.A(5)(b), to permit a side yard setback of 14.5 feet at the common lot line between Lot 1 and Lot 2 (as measured to the existing Midas building), where a side yard of 20 feet is required;
- (2) from §175-17.H, to permit Applicant to measure the rear yard setback for principal and accessory buildings from the property line, where this section requires the rear yard to be measured from the limit of the natural resource, and to apply the setbacks from the property line;
- (3) from §175-27.D.(7), §175-103.4 and §175-103.5, to allow disturbance on Lot 1 within the riparian corridor conservation district lands;
- (4) from §175-17.D.(1) and §175-69.D, to permit a continuation of parking facilities and the addition of a roofed structure to cover vacuum areas between the principal building and Route 611 within the front yard setback on Lot 1;
- (5) from §175-23.B.(2), to modify the existing nonconforming planting strip between the Right-of-Way and the proposed parking area to 13.6 feet on Lot 1, where a planting strip of 32.5 feet is required;
- (6) from §175-68.A(3), to permit impervious surface coverage greater than 40% of the net buildable site area for the newly created lots:
 - i. Lot 1: 101.3%
 - ii. Lot 2: 66.8%
 - iii. Lot 3: 48.2%; and
- (7) from §175-68.A, to permit continuation of the existing Use E-10 service station use (the Midas) on a newly created lot with a minimum lot width of 134 feet on the Easton Road frontage, where a minimum lot width of 200 feet is required on all frontages.

8. The Board acknowledges that the site carries a number of preexisting legal nonconformities and is burdened by natural features, most notably the Neshaminy Creek and the required riparian corridors.

9. The Board finds that Applicant's prayer for relief is grounded in the attempt to maximize development on site, rather than being driven by the natural features of the site.

10. The Applicant has failed to present evidence of sufficient factors to warrant the grant of the multiple dimensional variances requested in conjunction with the subdivision creating three (3) new lots and the improvements proposed for Lot 1 under the traditional standard found at §910.2 of the Municipalities Planning Code, §175-136 of the Doylestown Township Zoning Ordinance, and as articulated by the Pennsylvania Courts, including, Valley View Civic Assoc. v. Philadelphia Zoning Board of Adjustment, 501 Pa. 550, 462 A.2d. 637 (1983).

11. The competent evidence presented leads the Board to find that, if the variance relief is granted, there will be negative impacts upon surrounding properties or uses. The Board is not convinced that the use, as proposed, will not have a negative impact upon the surrounding properties and uses, including the already heavy traffic in the area. The Board's concern extends to both internal traffic circulation between the lots as well as ingress and egress to and from the site; the overcrowding of the lot(s) in question and the lack of compatibility between the proposed use of the lots and surrounding area.¹

12. The evidence establishes that the relief sought by the Applicant is not the minimum variance necessary. The relief requested for measuring setbacks from the lot line as opposed to measuring from the limit of the natural resource area is overbroad and does not represent the minimum relief. Further, Applicant is creating three (3) new lots, but is creating nonconformities in so doing (including the side yard setback adjacent to the existing Midas building; insufficient lot width as measured along Route 611, and putting a structure in the front yard of the Car Wash site (roofed area over vacuum spaces; reduced planting strip; impervious surface coverage).

13. In that the variances are not supported, the Board finds that the special exception for the use, as proposed, must be denied.

14. The Board acknowledges that the redevelopment proposed by Applicant does reduce a number of existing nonconformities and will generally "update" a highly visible portion of the Property, but the Board is not convinced that appropriate redevelopment requires the extensive relief being requested.

15. Interested resident property owners and lessees spoke in opposition to the application.

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

¹ The Board considers these issues as incompatible with the general requirements contained at §175.138 of the Ordinance at #7, 9, 10, 12 and 13.

CONCLUSIONS OF LAW:

1. The Subject Property has been developed and used in a manner carrying multiple dimensional nonconformities.
2. Applicant failed to establish a hardship justifying the relief requested.
3. The competent evidence presented leads the Board to conclude that, if the variance relief is granted, there will be negative impacts upon surrounding properties or uses.
4. The evidence establishes that the relief sought by the Applicant is not the minimum variance necessary.
5. The Applicant has failed to present evidence of sufficient factors to warrant the grant of the dimensional variances requested, even under the relaxed variance standard applicable to dimensional variance cases, as articulated by the Pennsylvania Supreme Court, in Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d. 43 (1998).
6. Applicant failed to meet both the specific and general standards to permit a Use E13 Car Wash by special exception.
7. Accordingly, the Doylestown Township Zoning Hearing Board determined, by 3-0 vote, to Deny the Applicant's request for relief, as is set forth hereafter.

DISCUSSION

A zoning hearing board must base its decision on substantial evidence. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Atiyeh v. Board of Commissioners of Bethlehem Township, 41 A.3d 232, 236 at n.4 (Pa. Cmwlth. 2102), *citing*, Valley View Civic Association v. Zoning Board of Adjustment, 462 A.2d 637, 640 (Pa. 1983).

As long as the Zoning Hearing Board's findings of fact are based upon substantial evidence, those findings of fact are binding upon a Court for purposes of appellate review. Bartkowski, 106 A.3d at 237-238, *citing*, Eichlin v. Zoning Board of New Hope Borough, 671 A.2d 1173, 1175 (Pa. Cmwlth. 1996).

The Zoning Hearing Board as fact finder is the ultimate judge of credibility and resolves all conflicts in the evidence. Tri-County Landfill, Inc. v. Pine Township Zoning Hearing Board,

83 A.3d 488, 518 (Pa. Cmwlth. 2014); Szewczyk v. Zoning Board of Adjustment of City of Pittsburgh, 654 A.2d 218 (Pa. Cmwlth. 1995).

In addition, generally, a zoning hearing board's interpretation of its own zoning ordinance is entitled to great weight and deference. City of Hope v Sadsbury Township Zoning Hearing Board, 890 A.2d 1137, 1143 (Pa. Cmwlth. 2006).

A. Traditional Variance Analysis

When addressing the traditional variance analysis pursuant to the Pennsylvania Municipalities Planning Code ("MPC"), the ZHB is required to assess the following factors, where necessary:

- (1) 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 the zoning ordinance in the neighborhood or district in which the property is located.
- (2) 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 the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the applicant.
- (4) 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, nor be detrimental to the public welfare.
- (5) 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 issue.

See 53 P.S. §10910.2.

The Commonwealth Court explained that while the requirements for a dimensional variance are less stringent than a use variance, the "burden on an applicant seeking a

variance is a heavy one, and the reasons for granting the variance must be substantial, serious and compelling.” See, Singer v. Philadelphia Board of Adjustment, 29 A.3d 144, 149 (Pa. Cmwlth 2011). It is a longstanding principle, “that a variance should be granted only where it is not contrary to the public interest and where the property involved is subjected to an unnecessary hardship unique or peculiar to itself, and not to general conditions in the neighborhood, which may reflect the unreasonableness of the Zoning Ordinance.” See, Mitchener Appeal, 115 A.2d 367, 406 (Pa. Cmwlth 1955).

In the case at bar, the Zoning Hearing Board finds and concludes that the Applicant failed to present evidence that the physical features of the Property at issue caused a hardship sufficient to justify the relief requested. The Board acknowledges the existence of certain physical features on site, and the presence of existing legal nonconformities. None the less, the Board finds that Applicant articulated a hardship personal to their particular use and business model. The personal hardship is insufficient to establish basis for relief. Kneebone v. Zoning Hearing Bd. of the Twp of Plainfield, 2022 Pa. Lexis 504 (Pa. 2022). As such, the Zoning Hearing Board concluded that the application must fail.

Further, Applicant failed to demonstrate that the relief being requested served as the minimum variance relief. See, Pembroke Pee Wee, Inc. v. Zoning Hearing Bd., 768 A.2d 410 (Pa. Cmwlth 2000). The relief requested for measuring setbacks from the lot line as opposed to measuring from the limit of the natural resource area is overbroad and does not represent the minimum relief. Further, Applicant is creating three (3) new lots, but is creating nonconformities in so doing (to wit, the side yard setback adjacent to the existing Midas building, lot width along Route 611, and putting a structure in the front yard of the Car Wash site (roofed area over vacuum spaces); reduced planting strip; impervious surface coverage).

On a final note, the Board concludes that, if the variance relief is granted, there will be negative impacts upon surrounding properties or uses. The Board is not convinced that the use,

as proposed, will not have a negative impact on the already heavily trafficked area. The Board's concern extends to both internal traffic circulation between the lots as well as ingress and egress to and from the site.

The dimensional variances are simply not supported under the traditional analysis.

Special Exception.

§175-137 and §175-138 of the Ordinance provides the standards for the grant of special exceptions. §175-137 and §175-138 of the Ordinance reads 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.

Consistent with the Findings of Fact contained within this Decision, the Zoning Hearing Board finds and concludes that the Use proposed by Applicant meets the specific criteria, but not the general criteria for the E13 Car Wash use. The use does not serve the public interest or the best interest of the Township, convenience to the community or the public health, safety and general welfare. The use is not compatible with existing development primarily due to the need for variance relief and traffic concerns (internal to the site as well as external).

In that the legislatively permitted standards have not been met, the special exception must be denied. See Bray vs. Zoning Board of Adjustment, 410 A.2d 909, 911 (Pa. Commw. 1980). Accordingly, the Board denies the Special Exception.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby DENIES all relief requested.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

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

/s/ Mitchell Aglow
Mitchell Aglow, Vice Chairman

/s/ Samuel Costanzo
Samuel Costanzo, Secretary