

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

Application No. Z-3-2011

Applicant: DBD Realty, Ltd, LLC
301 Oxford Valley Road
Suite 501A
Yardley, PA 19067

Owner of Premises: Same as Applicant

Subject Property: Tax Parcel Nos. 9-7-130 and 9-7-130-4 which are collectively located at 2015 Lower State Road in Doylestown Township.

Prayer of Relief: The Applicant desires to develop the property into a mixed used commercial and residential development, and in order to do so, requests a variance from §175-16.B.15.g.6 of the Doylestown Township Zoning Ordinance ("Ordinance") in order to permit a density of 2.087 dwelling units per acre on the property which is in the R-1 Zoning District, instead of the required 2.0 dwelling units per acre.

Hearing History: The application was filed in Doylestown Township on March 22, 2011. The hearing was held on April 28, 2011 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA. 18901.

Appearances: Applicant by: Edward F. Murphy, Esq.
McBride and Murphy
P.O. Box 1186
Newtown, PA 18940

Date of Issuance: **June 6, 2011**

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 hearings 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 R-1, Residential District. It is approximately 27.225 acres in size (gross) and consists of two (2) tax parcels: (1) TPN 9-78-130 which is approximately 18.7 acres in size, upon which is existing vacant warehouses, laboratory buildings, office buildings and associated out buildings, connected with its former use as White Eagle Laboratories. This parcel also accommodates the original residential structure built on the property by the Neamand family (the "Neamand residence").

4. The use of that tax parcel is lawfully nonconforming to the requirements of the Ordinance, having been established prior to its enactment.

5. TPN 9-7-130-4 is approximately 8.5 acres in size and accommodates residences, residential out buildings, and a pond.

6. The Applicant proposes to consolidate the tax parcels, demolish the existing industrial/laboratories buildings, and redevelop the combined property into a three (3) building, 32,000 square foot office complex, as well as retain the existing Neamand family homestead and construct ten (10) new single family attached dwellings in its vicinity, all as depicted on a preliminary plan prepared by Gilmore & Associates, Inc., dated September 1, 2009, last revised March 30, 2011 (the "Plan").

7. In connection with the development of the property pursuant to the Plan, the Applicant has agreed to retain and maintain the Neamand Residence, rehabilitate it, and maintain its viewscope from Lower State Road.

8. Pursuant to Ordinance §175-37.D.1.b, the development of single family attached dwellings in conjunction with the use of historic structures (Use B-15) is permitted in the R-1 District, upon conditional use approval from the Doylestown Township Board of Supervisors.

9. Accordingly, the residential portion of the plan proposes the construction of ten (10) attached dwelling units which, when combined with the Neamand Residence, will result in eleven (11) residential units on the subject property.

10. All uses on the subject property will be serviced by public water and public sewer.

11. The Applicant credibly established that prior to the submission of the Plan, the Applicant had evaluated various alternative development scenarios and explored them with various boards and commissions of Doylestown Township. It developed a "by right" land development plan that was fully compliant with all applicable ordinance regulations. That plan contemplated the provision of the 32,000 square feet of office space in a single building as opposed to the three (3) buildings, proposed in the Plan.

12. The "by right" plan, by providing for the proposed office floor area within a single building, reduced the size of the area to be devoted to that use and therefore increased the area available for the proposed eleven (11) residential units.

13. Upon review by Township staff and professionals, the Township recommended and encouraged the Applicant to consider reducing the scale of the single building so as to make it more consistent with the residential nature of the neighborhood.

14. The Applicant agreed to these recommendations and, as a result, proposes the three (3) buildings contained in the Plan. This, and only this, results in the variance request because, as a result of reducing the area devoted to the residential uses, the density on the property was increased to 2.087 dwelling units per acre.

15. The Applicant's competent and credible evidence indicates that, but for the development of the office component of the subject property as depicted in the Plan, the Applicant would not require any relief from the zoning ordinance.

16. The subject property has been reduced in size by the acquisition, through condemnation, of an 8.4 acre parcel of the original property by Penn Dot in connection with the development of the Route 202 parkway, leaving approximately 27.225 acres of gross area.

17. Further, the subject property is burdened by a number of natural resources including wetlands, a 1.5 acre pond, tributaries of the Neshaminy Creek, and steep slopes, which result in a "net buildable area" for the subject property, of 8.82 acres.

18. In addition to the changes in the configuration of the office space, the Applicant also agreed to relocate the walking paths on the subject property so as to assist Doylestown Township and its neighboring municipalities in their goal to connect open spaces in the Central Bucks area.

19. A number of residential neighbors supported the Applicant's proposals and request for relief during the public comment portion of the hearing.

20. Doylestown Township to no position with regard to this application.

CONCLUSIONS OF LAW

1. Because the subject property is nonconforming as to its use, and because attached residential units are permitted in the R-1 District in connection with the rehabilitation and use of the Neamand Residence, the subject property can be developed without variance from the use requirements of the Ordinance.

2. The Applicant has established, and the Board concludes, that a "by right" plan, providing for eleven (11) residential units, including the Neamand Residence, and 32,000 square feet of office space, could be accommodated by providing the office space within a single building.

3. However, the Board agrees that the redesign of the office space, as depicted in the Plan, is more in keeping with the character of the residential neighborhood and the buildings would appear to be more residential in scale.

4. The Board concludes that the subject property is burdened by such natural resources that the more preferable plan would be made impossible by the strict enforcement of Ordinance §175-16.B.15.g.6, limiting density to 2.0 dwelling units per acre.

5. Notwithstanding this hardship, the Board concludes that the minor deviation in density which results from the more preferred and acceptable development of the property is de minimis in nature.

6. Further, the Applicant has established evidence of sufficient factors to warrant the grant of the dimensional variance requested.

7. The evidence indicates that the grant of the relief requested will result in the development of the property consistent with the Plan, without adverse impact to neighboring properties or uses.

8. Accordingly, the Doylestown Township Zoning Hearing Board determined unanimously to grant the Applicant's request for relief as set forth hereafter.

WHEREFORE, the Zoning Hearing Board of Doylestown Township GRANTS a variance from §175-16.B.15.g.6 of the Doylestown Township Zoning Ordinance in order to permit the development of the subject property in compliance with the Plan at a density of 2.087 dwelling units per acre, instead of the maximum permitted 2.0 dwelling units per acre, subject to compliance with all other applicable governmental ordinances and regulations.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

By: W. Andrew McPherson, lsl
W. Andrew McPherson, Chairman

William J. Lahr, lsl
William J. Lahr

Richard K. Gaver, lsl
Richard K. Gaver

IMPORTANT NOTE: Pursuant to §175-136 and §175-137 of the Doylestown Township Zoning Ordinance, the relief granted herein shall expire five (5) years from the date of this decision.