

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

Application No. Z-22-2019

Applicant: Atlas Mountain Construction
 1865 S. Easton Road
 Doylestown, PA 18901

Owner: Andy M. Najibi
 1865 S. Easton Road
 Doylestown, PA 18901

**Subject
Property:** Tax Parcel No. 09-007-150 which is located at the address of the
 Applicant set forth above.

**Requested
Relief:** Applicant seeks to construct 8 single-family attached dwellings
 while retaining an existing historic structure on the Subject
 Property. §175-16.B(15) of the Doylestown Township Zoning
 Ordinance (“Ordinance”), provides the standards for use B-15.
 The use is permitted in the R-1 zoning district in which the
 property is located by conditional use under §175-37.D of the
 Ordinance. Applicant seeks multiple variances from the
 dimensional and design standards under §175-16.B(15),
 including base site area, density, maximum impervious surface,
 and minimum front yard, to construct the use as requested.¹

**Hearing
History:** The application was filed in Doylestown Township on October 2,
 2019. The hearing was held on December 16, 2019 at the
 Doylestown Township Building, 425 Wells Road, Doylestown,
 PA 18901.²

¹ During the hearing held, Applicant confirmed that the request for relief had been amended. Applicant removed two units from its request, resulting in a total of six B-15 single-family attached dwellings, and thereby reduced the density and impervious surface coverage relief requested and eliminated the front yard setback variance requested.

² The Applicant did submit a waiver of the right to a first hearing within 60 days of filing the application.

Appearances: Applicant by: Nathan D. Fox, Esq.
Obermayer Rebmann Maxwell &
Hippel LLP
43 S. Main Street
Doylestown, PA 18901

Oxford Property
Investments, LLC by: Edward M. Wild, Esq.
Benner and Wild
174 West State Street
Doylestown, PA 18901

Doylestown Township by: Jeffrey P. Garton, Esq.
Begley, Carlin & Mandio, LLP
680 Middletown Boulevard
PO Box 308
Langhorne, PA 19047

Mailing Date: January 30, 2020

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 R-1, Residential Zoning District of Doylestown Township.

4. Applicant is seeking to develop the Subject Property utilizing the standards for use B-15 attached dwellings retaining existing historic structure. The use is permitted by conditional use before the Township Board of Supervisors. Applicant seeks multiple variances in advance of the conditional use hearing.

5. The following exhibits were presented during the hearing held:

ZHB Exhibits:

ZHB-1: Application dated September 27, 2019 received October 2, 2019 with attachments including:

- a. Addendum with memorandum identifying relief requested.

- b. List of property owners within 500 feet.
- c. Deeds to the Subject Properties.
- d. Sketch plan, prepared by Gilmore & Associates, dated September 13, 2019.

- ZHB-2: Proof of publication of notice of the hearing.
- ZHB-3: Proof of posting.
- ZHB-4: Proof of mailing.
- ZHB-5: Doylestown Township Zoning Ordinance.
- ZHB-6: Applicant's waiver dated November 18, 2019 allowing the hearing greater than 60 days from submitting the application.
- ZHB-7: Applicant's December 16, 2019 amendment to the application with revised sketch plan, prepared by Gilmore & Associates dated December 8, 2019.

Applicant Exhibits:

- A-1: December 16, 2019 letter amending Zoning Hearing Board application reducing the scope of relief requested.
- A-2: Site plan for six (6) proposed B-15 single-family attached dwellings, prepared by Gilmore & Associates, Inc. dated December 5, 2019.
- A-3: Letter from Doylestown Township Solicitor's office dated January 16, 2019 agreeing to "place the residence located on the above-referenced property on the list of historic properties within Doylestown Township."
- A-4: Architectural rendering of the proposed dwelling, prepared by Ralph C. Fey, A.I.A. PC Architects (four sheets).
- A-5: Doylestown Township Zoning Hearing Board Decision regarding 3725 Bristol Road and a proposal for the construction of eight (8) single-family attached dwelling units in conjunction with the use of an historic structure on the property and requesting a variance from §175-16.B(15)(g)[5] of the Doylestown Township Zoning Ordinance to permit the development with a minimum base site area of less than the 10 acres required.

Protestant Exhibits:

- P-1: November 18, 2019 Entry of Appearance by Edward M. Wild, Esq., Benner and Wild, on behalf of adjacent property Oxford Property Investments, LLC (owners of properties at 1 Oxford Lane through 8 Oxford Lane).
- P-2: Tax map.
- P-3: Applicant's six unit plan annotated by Protestant.

6. Adjoining property owner, Robert Wagner, Managing Member of Oxford Property Investments, LLC, testified in support of his request for party status. Mr. Wagner and his company own the eight lot subdivision immediately adjacent to the Subject Property, along New Britain Road (parcels 09-007-150-009; 09-007-150-010; 09-007-150-011; 09-007-150-002, immediately adjacent to the subject parcel and lot 09-007-150-009).

7. Mr. Wagner considers the proposed "twins" immediately adjacent to his development as "devaluing" his properties. Mr. Wagner does not consider the townhouses as competing with his subdivision, due to different price points, but considers the proposed development as noncompliant and more congested than his development.

8. Mr. Wagner believes that the land development proposal at issue will have an immediate negative impact upon the sales of his development, which at the time of the December 15, 2019 hearing consisted of one sample house, one spec house, and an additional house sold.

9. Applicant objected to party status being granted to Oxford Properties Investments, LLC (Oxford). Applicant argued that Protestant Oxford was neither "affected" nor "aggrieved", as contemplated by §908(3) and §913.3 of the Municipalities Planning Code. The Zoning Hearing Board overruled Applicant's objection and allowed the adjacent property owner to fully participate as a party.

10. Applicant identified the site at issue as containing a historic structure. This fact was confirmed by Assistant Zoning Officer, Sinclair Salisbury, through a letter dated January 16, 2019, prepared by the Doylestown Township Solicitor.

11. Applicant also presented the testimony of Mr. Andy Najibi. Mr. Najibi is the President and Owner of Atlas Mountain Construction. Mr. Najibi owns the property at issue as an individual. He submitted the present zoning application in the capacity as President and Owner of Atlas Mountain Construction. Mr. Najibi has a background as a builder and contractor for 32 years constructing both residential and commercial buildings in and around the Doylestown area.

12. Mr. Najibi purchased the property in November 2018. He originally proposed eight B-15 single-family attached dwellings. He has reduced the number of dwellings requested to six.

13. Mr. Najibi indicated that building single-family dwellings on the Subject Property is not feasible. In Mr. Najibi's opinion, the only feasible plan is the plan presented which preserves the historic property and provides six (6) new single-family attached dwellings with development infrastructure.

14. Mr. Najibi discussed the renderings submitted with the application (Exhibit A-4). Mr. Najibi is attempting to utilize higher end finishes and stone to appeal to a higher end market.

15. Applicant presented the expert testimony of Eric Clase, PE, of Gilmore & Associates, Inc.

16. Mr. Clase discussed the plan design. The initial variance requested is for base site area. Applicant considers the base site area as 4.029 acres. The 4.029 acres includes not only tax parcel no. 09-007-150, but nearby parcel 09-007-145. Parcel 09-007-145 was at one time part of 09-007-150, but PECO and SEPTA right-of-way bisected the parcels leaving 09-007-145 on the other side of the PECO and SEPTA right-of-ways and parcel 09-007-150 being an unusually shaped lot.

17. Parcel 09-007-145, the isolated parcel across the right-of way, is 1.034 acres gross.

18. The original parcel 09-007-150 was greater than 10 acres, but the adjacent parcels, representing the eight parcel subdivision owned by Oxford, was subdivided from the Subject Property, at some point in the past.

19. Applicant offered various hypothetical analyses regarding the Subject Property.

Applicant suggested that if the site was 10 acres in size, the Ordinance allowed a yield of 10 single-family attached dwellings plus preservation of a historic building.

With regard to density, Applicant suggested that with a density of 2.33 units, Applicant could produce six townhomes, not including the historic structure. Further, Applicant suggested that if the site area of parcel 09-007-145 were included, the six townhomes would be permitted by right.

Applicant also suggested that should the Zoning Hearing Board include the outparcel 09-007-145 in the calculation for impervious surface coverage, the Applicant would comply with the 40% impervious surface permitted by presenting 37.24% impervious surface.

20. Applicant testified that the original plan for eight units was reduced at the request of the Township, to reduce the density, and to further provide for a condition against developing a single-family dwelling on the outparcel 09-007-145.

21. Applicant offered to deed restrict parcel 09-007-145 (the isolated parcel) should the relief be granted.
22. Applicant argued that multiple hardships are driven from the parcel at issue, including the odd shape, and the topographic features, neither of which were created by the Applicant. Further, the Applicant argued that the character of the immediate area would not be negatively affected by the proposed development.
23. Protestant argued that the rear yard provisions of 175-16.B(15)(g) speak in terms of both lots and tracts, and that the setbacks must be “stacked”. Protestant argued that the stacking of required yards drives the need for additional variances.
24. Assistant Zoning Officer, Sinclair Salisbury, indicated that the tract and yard setbacks should not be stacked. The Township has consistently interpreted the provision as not requiring stacking.
25. Mr. Salisbury indicated that the Township is seeking improvements to New Britain Road immediately adjacent to the Subject Property.
26. In closing, Protestant argued that Applicant has no legal hardship justifying the requested relief. Instead, Protestant argued that Applicant could build one or two single-family dwellings. Protestant requested that the application be denied.
27. Applicant argued that a hardship exists; the use is permitted; and Applicant is requesting the minimum relief necessary for the B-15 use. Applicant requested that the relief be granted.

CONCLUSIONS OF LAW

1. The Subject Property has been used as is permitted by right within the R-1 Zoning District.
2. Applicant proposed a use permitted by conditional use, to wit, as a seven unit residential subdivision, with six B-15 single-family attached dwellings, and one remaining historic structure.

The proposed use requires the following:

- a. a variance from §175-16.B(15)(g)[5], to allow a minimum base site area of 4.029 acres instead of the required 10 acres;
- b. a variance from §175-16.B(15)(g)[5], to allow density of +/- 2.33 units per acre providing for six newly constructed units plus one existing historic home; and
- c. a variance from §175-16.B(15)(g)[8], to allow impervious surface of 1.135 acres and the determination that the open space owned by the Applicant (Tax Parcel No. 09-007-145 bisected by

PECO and SEPTA tracts) be included toward necessary calculations.

3. The requirements for the permitted use (§175-16.B(15)) follow:
 - (15) B-15. Single-family attached dwelling units in conjunction with use of historic structures:[3] [Added 12-16-2003 by Ord. No. 315]
 - (a) Dwellings shall be arranged in groups or clusters and not in long rows parallel to street lines. No more than four such buildings may be so attached in any one group.
 - (b) To create architectural interest in the layout and character of housing fronting streets, variations in setbacks, materials and design shall be encouraged. In any case, a minimum of two-foot variation in setback shall occur at least every second dwelling.
 - (c) Such uses shall be served by public water and a public centralized sewage systems.
 - (d) Minimum area/yard requirements for each unit if the underlying zoning is R-1:
 - [1] Minimum required lot area: 4,000 square feet.
 - [2] Minimum required lot width: 30 feet.
 - [3] Yard setbacks:
 - [a] Front yard: 20 feet.
 - [b] Side yard: 5 feet (one side only).
 - [c] Rear yard: 25 feet, provided; however, that the Board of Supervisors may reduce the minimum rear yard requirement to 15 feet for 20% of the dwelling units provided the units are not in a back-to-back configuration with any other proposed dwelling units.
 - (e) Minimum area/yard requirements for each unit if the underlying zoning is R-1a:
 - [1] Minimum required lot area: 4,000 square feet.
 - [2] Minimum required lot width: 30 feet.
 - [3] Yard setbacks:
 - [a] Front yard: 20 feet.
 - [b] Side yard: 10 feet.
 - [c] Rear yard: 25 feet.
 - (f) Condominium ownership of the units is permitted, provided it is demonstrated that each unit would meet the minimum area/yard requirements under this subsection.
 - (g) In addition to the minimum yard requirements for each unit, a group of single-family attached dwellings (two or more) shall meet the following

yard requirements for the tract development:

[Amended 1-15-2019 by Ord. No. 394]

[1] Front yard: 65 feet.

[2] Side yard: 75 feet.

[3] Rear yard: 75 feet.

[4] Minimum base site area: 10 acres.

[5] Maximum net density: 2.0 dwelling units per acre in the R-1 Zoning District and 1.0 dwelling unit per acre in the R-1a Zoning District.

[6] Minimum open space ratio: 50%.

[7] Maximum impervious surface ratio: 40% in the R-1 Zoning District and 20% in the R-1a Zoning District.

- (h) The open space created shall be owned and maintained by Doylestown Township and/or a homeowners' association, or a combination thereof, which said determination shall be made by the Township Board of Supervisors.
- (i) The applicant shall submit architectural renderings for the proposed building units which must be approved by the Board of Supervisors of Doylestown Township. The architecture of the proposed buildings shall be compatible and consistent with the historic structures located on the tract.
- (j) This use shall only be permitted if the tract contains a structure or structures identified as eligible historic resources in accordance with the provisions of § 175-30A of the Doylestown Township Codified Zoning Ordinance of 1988, and said historic structure or structures must be preserved as part of the use. The detached historic structure may remain as a single-family dwelling although the balance of the tract may be developed utilizing use B-15.

4. For the foregoing reasons, Doylestown Township Zoning Hearing Board denies the variances requested.

5. The Zoning Hearing Board finds that there are no unique physical circumstances or conditions which rise to the level of unnecessary hardship. The Board makes this determination despite the unusual shape of the lot and despite the history of the lot as described (originally existing in excess of 10 acres subdivided to eventually accommodate the eight unit subdivision nearly adjacent, and previously subdivided to accommodate PECO and SEPTA right-of-ways).

While the lot is of unusual shape, the shape does not drive the request for variance. The lot is not 10 acres in size, and therefore the Applicant requires a variance

to utilize the property for a use B-15 single-family attached dwellings in conjunction with the use of an historic structure. Applicant has failed to meet its burden of establishing a justifiable hardship. The density and impervious surface variances are driven by the base site variance.

6. The Applicant has failed to establish that the physical circumstances or conditions of the property have made development in strict conformity with the Ordinance impossible. Party Protestant has demonstrated that certain uses, including the construction of one or even two single-family dwellings on the Subject Property is “possible”. The Board draws this conclusion acknowledging that the Applicant considers that proposal economically infeasible.

7. The Board is not persuaded by the Protestant’s argument that single-family attached dwellings in conjunction with use of a historic structure will alter the essential character of the neighborhood or district. Despite Protestant’s desire to build single-family dwellings on the adjacent parcels, the Board does consider the use B-15 as a permitted use within the zoning district, albeit by conditional use, and albeit on a parcel a minimum of 10 (ten) acres of base site area. Therefore, in general, the proposed use is compatible with the essential character of the neighborhood just not on this undersized lot.

8. The Board is not convinced that the variances requested are the minimum variances necessary to afford relief. Applicant does maintain a request for minimum site area, considerably less than the 10 acres required; density; and impervious surface coverage. By further reducing the number of units, the Applicant would in fact continuously reduce the variances for density and impervious surface. Accordingly, the Board is not convinced that the relief is the minimum relief.

9. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to deny relief to the Applicant and the Subject Property as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby DENIES the requested variances from §175-16.B(15) of the Doylestown Township Zoning Ordinance.

**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