

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

Application No. Z-15-2019

Applicants: Andrew & Patricia Miller
 206 Nicklaus Drive
 Doylestown, PA 18901

Owners: Same.

**Subject
Property:** Tax Parcel No. 09-020-047 which is located at the address of the
 Applicants set forth above.

**Requested
Relief:** Applicants seek to continue to use the Subject Property to support
 a home based business, Pets Are Inn Bucks County, a pet care
 and pet boarding business. In response to an Enforcement Notice
 issued by Doylestown Township, Applicants seek a variance
 from §175-37 of the Doylestown Township Zoning Ordinance
 (“Ordinance”), or a special exception under §175-37.B with
 variances from §175-16.A(3) Kennel use and 175-16.H(1) Home-
 based business, to allow the continued use.

**Hearing
History:** The application was filed in Doylestown Township on August 6,
 2019. The hearing was held on September 16, 2019 at the
 Doylestown Township Building, 425 Wells Road, Doylestown,
 PA 18901.¹

Appearances: Applicants by: Gavin Laboski, Esquire²
 Laboski Law
 314 W. Broad St, Suite 124
 Quakertown, PA 18951

¹ During the September 16, 2019 hearing, the Zoning Hearing Board indicated that a decision would follow at public hearing to be held October 21, 2019. At October 21, 2019 hearing the Zoning Hearing Board considered Applicants’ request to reopen the record and continue the matter to November 18, 2019. Appropriate waivers were given.

² Attorney Laboski replaced Attorney Davis as counsel for Applicants at final hearing February 27, 2020.

Township by: Bryce McGuigan, Esquire
Begley, Carlin & Mandio, LLP
680 Middletown Boulevard
P.O. Box 308
Langhorne, PA 19047-0308

Mailing Date: March 20, 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 Applicants are the Owners 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. The primary use on the Subject Property is a residential single-family detached dwelling.

4. Applicants have also used the property to support a business caring for and boarding pets. That use is not permitted by right within the R-1 Zoning District.

5. Applicants have requested zoning relief to allow the pet care and pet boarding business at the residential property, in response to a July 30, 2019 enforcement notice issued by Doylestown Township.

6. The following evidence was presented during the hearings held:

Zoning Hearing Board Exhibits:

- ZHB-1: Application dated August 16, 2019 with attachments:
- a. Articles of Incorporation for Pet Paws, Inc., Woodbourne Road, Langhorne.
 - b. 2019 Kennel License issued by the Commonwealth Bureau of Dog Law, for Pets Are Inn.
 - c. Letter from Dr. Sharon Minniger, DVM, Telford Veterinary Hospital, commenting on the Pets Are Inn boarding service.
 - d. Deed to the Subject Property in favor of the Applicants, Andrew Miller and Patricia Miller.
 - e. Photographs of one of the two vans advertising the Pets Are Inn use.

- ZHB-2: Proof of publication of notice of the initial hearing held September 16, 2019.
- ZHB-3: Proof of mailing.
- ZHB-4: Proof of posting premises with notice of hearing.
- ZHB-5: Doylestown Township Zoning Ordinance.
- ZHB-6: July 30, 2019 enforcement notice issued by Doylestown Township.
- ZHB-7: Entry request to reopen the record and continue to November 21, 2019.

7. Mr. Andrew Miller testified in support of the application. The following Findings of Fact are drawn from Mr. Miller's testimony:

- a. Pets Are Inn is registered by the Commonwealth of Pennsylvania as a kennel permitted to board up to 10 dogs.
- b. Mr. Miller on behalf of Pets Are Inn, did not seek local approval for the kennel use.
- c. The Commonwealth agency approving the kennel use did not make a determination whether the use was permitted within the zoning district at issue.
- d. Pets Are Inn uses two vans "wrapped" in advertising, consistent with the photograph marked and admitted as ZHB-1(e). The vans include the Pets Are Inn logo, custom coloring, contact information and additional marketing messaging.
- e. Depending on the season, Pets Are Inn uses up to three drivers to pick up and drop off dogs and corresponding paperwork.
- f. Pick up and drop off occurs between 8:00 AM and 5:00 PM.
- g. The Pets Are Inn use may have up to 10 dogs onsite at any one time.
- h. The use includes use of a portion of the rear yard as a dog run.
- i. The property is .43 acres. The nearest residential property is less than 100 feet from the dog run within the rear yard. The "dog run" is less than 300 feet from the neighboring residential buildings.
- j. The single-family dwelling does contain a two car garage.

- k. Parking on the premises includes the two vans and one personal vehicle.
 - l. Applicant testified that Pets Are Inn is a franchise, governed by a franchise agreement between Applicants, as franchisee, and Pets Are Inn or the parent company, as franchisor. The white vans containing a wrap advertising Pets Are Inn is a requirement under the franchise.
 - m. The franchise agreement has not been entered into evidence.
8. Multiple residents spoke, some in favor and some opposed to the continuation of the proposed use, as follows:
- a. Ralph Montanaro, 2004 Country Club Drive, does not favor commercial use within the residential district and fears diminution of property value for residential properties within the district.
 - b. Robert Berkowitz, 208 Nicklaus Drive, has lived in the neighborhood for 30 years and is not opposed to the use as described by the Applicant.
 - c. Nancy Cox, 2037 Country Club Drive, observes that the wrapped vehicles are not visually appealing, but there are other vehicles within the neighborhood which are not visually appealing. Ms. Cox prefers to not see said vehicles.
 - d. Richard Cox, 2037 Country Club Drive, opposes the use. Mr. Cox emphasizes that the neighborhood is residential and a business use is inconsistent.
 - e. Bob Abecasis, 2032 Country Club Drive, indicates that as a resident he is unaware of the business use onsite, but for the presence of the wrapped vans advertising the business.
 - f. Pam Dozier, 2011 Country Club Drive, considers the Applicants “great neighbors” and sees no problem with the continuation of the use described by Applicants.
 - g. Thomas Carberry, 218 Nicklaus Drive, is not opposed to the use, does not notice the “kennels”, and does not mind the vans.
 - h. Russell Gotschall, 2065 Country Club Drive, does not find the wrapped advertising vans offensive.
9. §175-37 of the Doylestown Township Zoning Ordinance lists all uses provided within the R-1, Residential Zoning District, within which the property is

located. An A-3 kennel use and a H-1 home-based business use are permitted by special exception. Both uses are further defined.

10. The kennel use is defined at Ordinance §175-16.A(3) as follows:

§175-16.A(3). Kennel. The keeping of more than four dogs, cats, ferrets or other animals customarily kept as household pets that are more than four months old for breeding, training, selling or boarding for a fee is permitted, provided that the following conditions are met.

- (a) Minimum lot size shall be five acres.
- (b) No animal shelter or runway shall be located closer than 300 feet to any residential building other than the owner's or closer than 100 feet to the property line.
- (c) The kennel shall be constructed so that the animals cannot stray therefrom.
- (d) All animals must be kept indoors between 10:00 p.m. and 7:00 a.m.

11. A home-based business is defined at §176-16.H(1) of the Ordinance. The H-1 use is distinguished from a no impact home-based business, which is defined at §175-16.H(1). The provisions of §175-16.H(1) follow:

§175-16.H(1) Accessory uses.

(1) H-1 Home-based business: a business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling and which involves some customer, client or patient traffic, whether vehicular or pedestrian, pickup, meeting location, delivery or removal functions to or from the premises in excess of those normally associated with a residential use. The business or commercial activity must satisfy the following requirements:

[Amended 6-1-1993 by Ord. No. 227; 6-26-2001 by Ord. No. 301; 11-18-2008 by Ord. No. 345]

- (a) The home-based business shall be accessory to a residence and carried on wholly indoors and within a dwelling or other structure accessory thereto and shall be clearly incidental and subordinate to its use for residential purposes by its occupants.
- (b) The business activity shall be compatible with the residential use of the property and surrounding residential uses and shall meet the minimum and maximum area, height and dimensional requirements of the district in which the use is located.

- (c) Such use shall be limited to single-family detached dwellings.
- (d) There shall be no use of show windows, display or advertising visible outside the premises, except as provided for signs herein.
- (e) There shall be no exterior storage of material or building material.
- (f) There shall be no parking of commercial vehicles, except that parking of not more than one commercial vehicle exceeding a one-ton loading capacity and with no more than two axles or four wheels, whichever is less, including any construction or landscaping vehicles and trailers used for their transportation (i.e., front-end loaders, cranes, cement mixers, riding lawn mowers, etc.) shall be permitted only within a completely enclosed building.
- (g) The appearance of the residential structure shall not be altered or the home-based business within the residence be conducted in a manner which would cause the premises to differ from the residential character by the use of colors, materials, construction, lighting, show windows or advertising visible on the premises to attract customers or clients, other than an identification sign not exceeding two square feet, notwithstanding any other provisions of this chapter.
- (h) A sign displaying the name and address of the home-based business may be permitted, subject to the following requirements: no more than one such sign shall be erected on the lot; the area of the sign shall not exceed two square feet in size; and the sign shall be either fixed flat on the main wall of the building or may be erected in the front yard, but not within 10 feet of the cartway.
- (i) No articles shall be sold or offered for sale except such as may be produced on the premises.
- (j) There shall be no stockpiling, storage or inventory of products of a substantial nature.
- (k) There shall be no commodities sold or services rendered that require receipt or delivery of merchandise, goods or equipment by other than passenger motor vehicle or by parcel or letter carrier mail service using

vehicles typically employed in residential deliveries.

- (l) The home-based business shall be carried on only by inhabitants of the dwelling and not more than two additional employees.
- (m) The floor area devoted to a home-based business shall not occupy more than 25% of the ground floor of the principal residential structure or 500 square feet, whichever is less; all portions of the floor area to be used for the home-based business shall be accessible to employees and clients without having to enter or walk through the areas of the residence devoted to solely residential use, and all areas to be used for employees and client visits shall be in one location and not separated by rooms or hallways which are used for residential purposes.
- (n) No equipment or process shall be used in a home-based business which creates discernible noise, vibration, glare, fumes, odors or electrical interference at the property line, and no equipment or process shall be used which creates visual or audible interference in any radio or television receiver off the lot or causes fluctuations in line voltage off the lot.
- (o) No manufacturing, repairing or other mechanical work shall be performed in any open area. All such activities shall be conducted in such a manner that they are not detectable or noticeable at or beyond the property line.
- (p) The business activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use in the neighborhood.
- (q) The maximum number of off-street parking spaces shall be limited to six parking spaces, which shall not include any garage spaces and shall be designed to comply with the appropriate provisions of Article V of this chapter.
- (r) No more than one home-based business shall be permitted per residential dwelling.
- (s) The hours of operation shall be limited to Monday through Saturday, and activities shall occur between the hours of 8:00 a.m. to 9:00 p.m.

- (t) Parking spaces required by the home-based business in addition to those required for the residential use must be located to the side or to the rear of the principal residence and must be separated from adjoining properties by a ten-foot-wide planted buffer.
- (u) The business may not involve any illegal activity.

12. The Applicants are unable to comply with the specific provisions and definition of the A-3 kennel use.

13. The Applicants are unable to comply with specific provisions and definition of the H-1 home-based business use.

14. Doylestown Township actively participated in this matter and opposed the use as described, but did not oppose a modified, less intense use, subject to conditions.

CONCLUSIONS OF LAW

1. The use of the Subject Property as a single-family dwelling within the R-1, Residential Zoning District is permitted by right. A kennel use (A-3) or a home-based business use (H-1) are permitted by special exception.

2. Applicants have been operating a pet care and pet boarding business on the Subject Property unlawfully as an unpermitted use under the Doylestown Township Zoning Ordinance. Applicants possess a kennel license, but possess no local permit to operate the home-based kennel type business.

3. As a result of a July 30, 2019 enforcement notice, Applicant now seeks zoning relief in order to continue the home-based kennel type business.

4. The zoning relief includes a request for a special exception under §175-37.B to permit either an A-3 kennel use or an H-1 home-based use; a variance from §175-37 to permit the use as described; a variance from §175-16.A(3) in order to characterize the use as a kennel use; or a variance from §175-16.H(1) to allow the use as a home-based business, without meeting each of the specific requirements of the home-based business use.

5. A special exception is a permitted use, provided the Applicants meet all the specific requirements of the use described. Valley Forge Industries, Inc. Appeal, 406 Pa. 387, 117 A.2.d 450 (Pa.Cmwlt.1962).

6. Applicants fail to meet the specific provisions of Ordinance §175-16.A(3) Kennel. Applicants' lot size is less than 5 acres. The use of the rear yard is closer than 300 feet to the adjacent residential buildings and closer than 100 feet to the Subject Property property line. The A-3 kennel use special exception fails.

Accordingly, the use is not permitted under §175-37.B in the R-1, Residential Zoning District.

7. Applicants fail to meet multiple specific provisions of the H-1 home-based business use. The use is not wholly indoors (condition a). The use does include “display or advertising visible outside the premises”, to wit the wrapped vans (condition d). The vans are commercial vehicles (condition f). The vans may be considered “advertising visible on the premises to attract customers or clients” (condition g). The business includes more than two employees whom are not inhabitants of the dwelling (condition l). The use of the property associated with the business is greater than 25% of the ground floor of the principal residence or 500 square feet, including the use of the exterior as an exercise yard or dog run (condition m). There is discernable noise at the property line (condition n). There is additional solid waste which is not normally associated with the residential use (condition p). The hours of operation include Sunday hours, and essentially run 24 hours per day 7 days a week (condition s). As such, the Applicants fail to establish basis for a special exception under §175-16.H(1). Accordingly, the use is not permitted under §175-37.B.

8. Applicants seek a variance from certain provisions of §175-16.A(3) to allow the kennel type use upon the Subject Property. Similarly, the Applicants request a variance from §175-37, permitted uses, to allow the use as described within the R-1 District. The Zoning Hearing Board’s analysis for each is identical, as follows:

- a. The competent evidence presented leads the Board to conclude that, if the variance relief is granted, as requested, there will be negative impacts upon surrounding properties or uses. The Board considers the intensity of the use (up to 10 dogs onsite, plus managing the care and custody of dogs on other sites) as too intense a use for the residential property at issue. Further the Board considers the presence of the two wrapped vans advertising the business, in the context of operating the business onsite, as an obtrusive display of commercial advertising within the Residential Zoning District. Further, the Board considers the multiple employees and multiple daily and weekly trips to be inconsistently intensive for the residential area.
- b. The Board concludes that the evidence provided does not establish that the relief sought by the Applicant is the minimum variance relief necessary. The Zoning Hearing Board has considered the testimony of both the Applicants and the commenting public, and determines that the use would be more compatible with the residential district in which it is located, and therefore the Applicants would be in need of less relief, if the use was reduced in size and scope.
- c. The Board concludes that the variances sought will alter the essential character of the neighborhood or district in which the Subject Property is located for the reasons stated above.

- d. The Applicants have not presented evidence sufficient to warrant the grant of any dimensional variance, to wit proximity of the full use within 100 feet of the Subject Property property lines, lot size for the Subject Property (5 acres) or locating the use within 300 feet of an adjacent residential property (the neighbors).

9. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to deny the special exception and two of the variances requests, but grant the variance to allow a modified home-based business, consistent with the attached Order.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS a variance from §175-16.H(1) Home-based business, of the Doylestown Township Zoning Ordinance to permit a modified and less intensive version of the present home-based business on the Subject Property, subject to the following conditions:

1. The permitted use to allow boarding of up to four (4) dogs, but no more than four (4) dogs, on the Subject Property.
2. All commercial vehicles, including the two vans “wrapped” with advertising for the home-based business, shall be garage kept, or parked offsite at an alternate facility, but in any event hidden from public view while at 206 Nicklaus Drive.
3. Applicant is provided a variance from §175-16.H(1)(a), (l), (m), and (s), consistent with the Findings of Fact and Conclusions of Law contained within the present Decision.
 - a. §175-16.H(1)(a), to allow the homebased business to take place outdoors as well as indoors.
 - b. §175-16.H(1)(l), to allow greater than two employees.
 - c. §175-16.H(1)(m), to allow outdoor yard area to be used.
 - d. §175-16.H(1)(s), to operate Sunday and extended hours.
4. The home-based business use permitted is not a “kennel”, as defined within the Doylestown Township Zoning Ordinance. A kennel use is not permitted on the Subject Property.
5. Compliance with all other applicable governmental ordinances and regulations is required.

The variance from §175-37 to allow a kennel use within the R-1 District is DENIED. The special exception under §175-37.B to permit a kennel use is DENIED. The request for a kennel use under §175-16.A(3) is DENIED.

**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