

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

Application No. Z-4-2013

Applicant: Pennsford, LLC
c/o Wayne Ford
2374 Glenside Avenue
Glenside, PA 19038

Owner: Briar Rose, Inc.
1304 Highland Avenue
Fort Washington, PA 19034

Subject Property: Tax Parcel No. 9-14-32, which is located at 1360 Almshouse Road, Warrington, PA.

Requested Relief: The Applicant seeks modification of condition #2 and condition #3 imposed by the Doylestown Township Zoning Hearing Board in its April 11, 2012 decision granting a special exception to permit the expansion of a lawful non-conforming use on the subject property, in order to allow sit down dinners in the addition that has been constructed pursuant thereto, and, in addition, to permit amplified music, dancing or disc jockeys within that addition. Alternatively, the Applicant requests variances from these conditions.

Hearing History: The application was filed in Doylestown Township on April 15, 2013. The first hearing was held on May 20, 2013, at the outset of which it was determined that the Applicant had only requested modification or variance relief from one of the two conditions that it seeks. Accordingly, at the request of the Applicant to permit appropriate public notice, the hearing was continued until, and resumed on, June 17, 2013. Both hearings were held at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant by: Edward M. Wild, Esq.
Benner and Wild
174 West State Street
Doylestown, PA 18901

Date of Issuance: July 16, 2013

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 submitted, as Exhibit A-2, portions of an existing lease for the subject property which contains an option to purchase it by the Applicant. Accordingly, the Applicant is possessed of the requisite standing to make application to this Board.
3. The subject property is located in the C-2, Commercial Zoning District of Doylestown Township. It is 4.21 acres in size, according to Exhibit B-1.A, a sketch plan prepared by Showalter & Associates, dated 1/3/11.
4. The subject property accommodates a banquet facility that is approximately 15,104 square feet in size, accessed by a semicircular driveway to Almshouse Road; a standalone building which is used as the facility's offices and for storage; and a parking field that provides for 136 off-street parking spaces, including five (5) handicapped spaces, which are sized in accordance with Ordinance requirements.
5. The use of the subject property is as a banquet facility, defined at Ordinance §175-16.E.18. Mr. Ford confirmed the Applicant's use of the property as a facility available for special dinners, banquets or other dining events by prearrangement with the management of the facility for groups or parties and not open to the general public on a daily basis. It will not be a meeting place or a restaurant.
6. Use E-18 "Banquet Facilities" are not permitted within the C-2 Zoning District of Doylestown Township. However, the banquet facility was created when the former Warrington Country Club and Golf Course was developed as a residential subdivision, leaving the club house itself for a separate banquet use.
7. The evidence satisfies the Board that the Township recognizes the E-18 banquet facility use as a lawful non-conforming one on the subject property.
8. On April 11, 2012, the Doylestown Township Zoning Hearing Board issued its decision to grant a special exception to the Applicant to permit a 23% expansion of a prior existing non-conforming use, where the 23% expansion proposed was less than the 50% permitted in Ordinance §175-112.B.
9. Since the issuance of that decision, received into evidence as Exhibit B-1.A, the Applicant has secured approval from the Doylestown Township Board of Supervisors to permit the proposed improvements that have been constructed on the subject property.

10. At the hearing that resulted in the issuance of Exhibit B-1.A, the Applicant's witness, Wayne Ford, testified that the addition sought would not be an additional dining area but rather would serve as an area to be used for pre-dinner cocktail hours and hors d'oeuvres in conjunction with a neighboring dining room for dinners.

11. At that time, Mr. Ford indicated that the addition will have no other standalone use and will not be used for dining other than for buffet tables for hors d'oeuvres or entrées to be carried into an adjacent dining room.

12. Further, Mr. Ford testified that there would be no amplified music; no dancing; and no disc jockeys within the proposed addition.

13. At this hearing, Mr. Ford is seeking modifications of conditions that would allow sit down dinners in the addition and permit amplified music, dancing or disk jockeys within it.

14. The zoning relief granted in Exhibit B-1.A is subject to five specific conditions, two of which are relevant to this application. They are as follows:

"2. That there will be no sit down dinners in the proposed addition;

3. That the addition will not accommodate amplified music, dancing, or disc jockeys; it may provide unamplified background music;"

15. Mr. Ford credibly testified that the original portion of the banquet facility had deteriorated, at the time of the beginning of his lease, so as to require significant improvements and expenditures to open.

16. There was no soundproofing in the building; there were vents that permitted sounds and smells to emanate from the building; and the windows were in such bad shape as to produce no sound suppression.

17. The new addition constructed is designed to suppress and reduce sound, including installation and soundproof windows without vent access to the exterior.

18. The credible evidence indicates that the Applicant has improved the HVAC system so as to reduce its sound emissions and has further, with input from residential neighbors, improved the aesthetics and functioning of the banquet facility so as to minimize its impact.

19. However, the Applicant has found that the new addition is a much more attractive facility than the old one and several customers have requested events and dinners to occur within it. The Applicant has received requests for the use of this room for birthday parties, corporate events, funeral luncheons, showers and the like. In addition, the Applicant did conduct a special Mother's Day dinner event in 2013, advertised in advance for which reservations were taken and no walk-in customers were permitted. The Applicant would like to have 3 or 4 of those types of dinners a year

specifically referring to such events to occur on Thanksgiving, Mother's Day, and/or New Year's Eve.

20. The older portion of the banquet facility contains two ballrooms; one designed to accommodate approximately 260 customers; and the other 150. There is amplified music, dancing, disc jockeys, and the like, occurring within these ballrooms presently.

21. Additionally, the Board finds that amplified music, dancing, and disc jockeys have been provided as part of the banquet facility use on the subject property since prior to the date of enactment of Doylestown Township's first zoning Ordinance, hence those uses are lawfully non-conforming.

22. The Applicant testified that the new addition accommodates approximately 64-80 customers. He indicated that there will never be the use of each of the three entertainment rooms within the facility at the same time, i.e., the Applicant will not use at least one of the ballrooms anytime that the addition accommodates dining, dancing, amplified music, or disc jockeys.

23. Ford testified that there is sufficient on-site parking spaces to accommodate the current use and anticipated use if the request for modification of conditions is granted.

24. The Applicant agreed that any amplified music within the structure on the subject property will conclude by midnight. He also confirmed that there will be no outdoor amplification of music or sound.

25. Ford expressed the opinion that even if amplification of music is permitted within the addition, there will be less sound emanating to residential neighbors than presently occurs from the uninsulated and non-soundproofed main building.

26. One of the neighbors in attendance at the hearing, representing the Greens of Doylestown Homeowners Association, agreed that, thus far, the Applicant has accomplished a quality renovation of the facility and that it has become, once again, an asset to the community. He testified that noise emanates more from the original structure than from the proposed addition.

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

CONCLUSIONS OF LAW

1. The subject property accommodates a lawful non-conforming use as a banquet facility.
2. The Board concludes that, inherent within a banquet facility is the emanation of music and sounds ordinarily associated with banquets and celebrations that occurs in such a facility.
3. Although the recently constructed addition to the subject property was not intended to accommodate sit down dinners, amplified music, dancing or disc jockeys, the experience of the Applicant has indicated a demand for those historically consistent uses within it.
4. Based upon the competent evidence presented, the Board concludes that the Applicant has made every effort to dampen or soften the sound impact that will emanate from the addition if the requested relief is granted.
5. The Applicant has presented evidence of sufficient factors to lead the Board to conclude that circumstances have changed since the original hearing to approve the construction of the addition, and that it has been completed in such an attractive fashion so as to increase demand for its use for sit down dinners, music, dancing, and disc jockeys.
6. Those events are consistent with the historic non-conforming use of the property.
7. No evidence was presented that suggests any increase in negative impacts upon surrounding properties or uses if the requested relief is granted.
8. No evidence was presented that the request for modification herein contained will result in any negative impact upon the general health, safety or welfare of the public.
9. Accordingly, the Doylestown Township Zoning Hearing Board determined that the Applicant's request for modifications of conditions imposed upon the grant of relief contained in Exhibit B-1.A is necessary, reasonable and logical.
10. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to grant modification of conditions of special exception approval, granted on April 11, 2012, as is set forth hereafter.

WHEREFORE, the Zoning Hearing Board of Doylestown Township grants modifications of conditions #2 and #3 imposed by the Zoning Hearing Board in its April 11, 2012 decision (Exhibit B-1.A) so as to permit sit down dinners as well as amplified music, dancing and/or disc jockeys within the addition approved in that decision, subject to compliance with all other applicable governmental ordinances and regulations and the remaining conditions from that decision #1, 4 and 5, as well as the following additional specific conditions:

- 1) the Applicant will not employ the use of one of the ballrooms existing within the original structure if the addition will be accommodating a dinner, amplified music, dancing or a disc jockey;
- 2) amplified music will cease by midnight; and
- 3) there will be no outdoor amplification of music or sound.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

By: /s/ W. Andrew McPherson
W. Andrew McPherson, Chairman

/s/ William J. Lahr
William J. Lahr, Vice Chairman

/s/ Richard K. Gaver
Richard K. Gaver, Secretary

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.

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

Application No. Z-6-2013

Applicant: Chris Cafiero, 421 Germantown Pike DFC, LLC
1000 Germantown Pike, Unit A-2
Plymouth Meeting, PA 19462

Owner: 421 Germantown Pike DFC, LLC
1000 Germantown Pike, Unit A-2
Plymouth Meeting, PA 19462

**Subject
Property:** Tax Parcel No. 9-14-37, which is located at the intersection of
Almshouse and Easton Roads in Doylestown Township. It has
been developed as the Blueberry Hill Shopping Center.

**Requested
Relief:** The Applicant requests modifications of conditions of approval to
operate a daycare facility on the subject property so as to permit
an alteration of the impervious surface coverage ratio approved
thereby. Additionally, the Applicant requests modification of a
condition of approval, or a variance from §175-17.D.3 of the
Doylestown Township Zoning Ordinance ("Ordinance") in order
to permit the proposed play area to be located at a setback
distance of 41 feet, instead of the previously approved 56 feet.

**Hearing
History:** The application was filed in Doylestown Township on May 16,
2013. The hearing was held on June 17, 2013, at the Doylestown
Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant Pro Se'

Date of Issuance: July 22, 2013

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 a principal of 421 Germantown Pike DFC, LLC, the Owner of the subject property, and is therefore possessed of the requisite standing to make application to this Board.

3. The subject property is located in the C-2, Commercial Zoning District of Doylestown Township. It is 3.637 acres in size.

4. The subject property has been developed for a shopping center use (use E-14), as a result of final plan approval received from Doylestown Township.

5. This approval was granted to the Owner's predecessor in title, Carrollton Blueberry Associates, LP (hereinafter "Carrollton").

6. When Carrollton purchased the subject property, it ascertained significant deterioration in many of the structures and commenced removal of those portions of the structures that were dangerous and the rehabilitation and renovation of those remaining.

7. At that time, Carrollton applied for zoning relief to develop the property as an E-14 shopping center that contemplated the destruction and removal of the depilated buildings on it; the rehabilitation of the former residence/restaurant and carriage house; the construction of an additional two-story retail office structure; and the construction of a proposed bank branch structure.

8. In that effort, Carrollton obtained relief from this Zoning Hearing Board as a result of two separate applications. Those decisions, received into evidence in this hearing as Exhibits B-5 and B-6, granted significant dimensional and performance standard relief in order to enable the rehabilitation of the property to a reasonable and fruitful purpose, as it had become an "eyesore" prior to its purchase by Carrollton.

9. Further, as set forth in Exhibit B-7, the third Zoning Hearing Board decision regarding the subject property, Carrollton was granted a use variance to permit the occupation of the "rear" building on the subject property, containing approximately 16,000 square feet of area, as a daycare center. Additionally, in that decision, Carrollton received a variance from §175-17.F in order to allow a proposed play area for the daycare center to be setback at a front yard setback distance, from Almshouse Road, of 56 feet.

10. Unfortunately, the recent economic recession and its impact upon real estate development forced the subject property into bankruptcy. In this application, the new owner of the subject property desires to modify earlier dimensional relief granted.

11. As a result in changes in state regulations and a downsizing and reconfiguration of the proposed play area for the daycare center, it is now proposed to result in a front yard setback distance, from Almshouse Road, of 41 feet.

12. The Applicant testified that this additional variance is necessary so as to maintain the mature stand of trees that is located in the vicinity of the proposed daycare play area.

13. The location of the proposed play area is depicted on Exhibit B-1.A, a Zoning Exhibit prepared by Fioravanti, Inc., dated 4/1/13.

14. That Exhibit depicts that the existing manor house is located at the same 41 feet setback from Almshouse Road, or slightly less than that, and is, therefore, lawfully non-conforming to the front yard setback distance requirements of the Ordinance.

15. Ordinance §175-17.D.3 requires a front yard setback distance of 65 feet.

16. In the Zoning Hearing Board decision permitting the daycare center use, a front yard setback variance from Almshouse Road was granted to 56 feet.

17. This application also seeks approval of a modification of a variance granted in Exhibit B-6, that would permit an impervious surface coverage ratio of up to 74.5%. As a result of the reconfiguration and downsizing of the play area, the actual proposed impervious surface will be 73.64%. As the proposed new impervious surface coverage ratio will comply with the variance limitation imposed in Exhibit B-6, this Board determines that no relief is required by the Applicant as to impervious surface coverage.

18. As a result of the previous Zoning Hearing Board decisions regarding the subject property, a number of conditions were imposed upon the grants of relief in order to minimize the variances and/or soften their impact on surrounding properties or uses. This Applicant agrees to continue to abide by those conditions.

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

CONCLUSIONS OF LAW

1. The subject property has been developed consistent with land development approvals given by Doylestown Township after zoning relief necessary to do so, was granted.

2. The "rear" building on the subject property has been granted a use variance to be operated as a daycare center and this application proposes that use, but seeks modification of relief granted in an earlier decision in order to accomplish that use and meet the needs of the intended day care center operator.

3. The Board concludes that no relief or modification of the variance regarding impervious surface coverage, granted in Exhibit B-6, is necessary.

4. Further, the Applicant has established the necessity of the reconfiguration and relocation of the play area proposed for the daycare center use including the preservation of a stand of mature trees, and the existence of a front yard setback distance non-conformity on the subject property of about 41 feet.

5. The balance of these conclusions and the decision of this Board were determined by a majority of 2 of the 3 Board Members, with Chairman Andrew McPherson dissenting.

6. The Board concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variance that is sought as to the front yard setback distance from Almshouse Road.

7. The evidence presented leads the Board to conclude that the grant of the relief requested will have no negative impact upon surrounding properties or uses.

8. The Board concludes that the imposition of conditions upon the grant of relief has resulted in a lessening of any impacts that may result. Accordingly, the Board imposes a number of conditions upon this grant of relief, which shall continue to survive and bind this Applicant.

9. Accordingly, the Doylestown Township Zoning Hearing Board determined, by a 2-1 majority, to grant relief to the Applicant, as set forth and conditioned hereafter.

WHEREFORE, the Zoning Hearing Board of Doylestown Township grants a variance from §175-17.D.3 to permit the location of the proposed play area for the daycare facility to be located, at its closest point, at a front yard setback distance from Almshouse Road of 41 feet, subject to compliance with all other applicable governmental ordinances and regulations and the following specific conditions:

1) that tenants and/or occupants of the buildings on the subject property shall require their employees to park in the parking spaces provided on the Barn Plaza property;

- 2) that no part of the building being permitted for such daycare center use shall be used as a banquet hall or catering facility;
- 3) Fencing. The fence enclosing the playground shall consist of a beige colored PVC fence, so as to blend with the adjacent building and landscaping. This fence, which faces the Greens at Warrington (the "Greens"), shall not be white colored PVC.
- 4) Vans.
 - (a) Vans, buses or similar group multi-student vehicles, if any, shall be parked on the site, in the corner of the Kohl's parking lot (just north of the access drive), so as not to be visible from the homes in the Greens.
 - (b) No more than two (2) or three (3) vans, buses or similar multi-student group vehicles shall be parked on-site.
- 5) Lights.
 - (a) No lighting shall be installed on the daycare building, or used in connection with the daycare use, that can be seen from the homes in the Greens unless directed downward and in a manner such that the source of light (i.e., the light bulb) cannot be seen from the homes in the Greens.
 - (b) The outdoor playground shall not be lit for night use.
- 6) Pine Trees. The Applicant shall install three (3) pine trees measuring ten (10) to twelve (12) feet in height, to the rear of the 200 building (i.e. 200-205 Eagle Lane), subject to the Applicant's obtaining permission from the property owners to access the property and install said trees on their property.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

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

/s/ Richard K. Gaver
Richard K. Gaver, Secretary

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.

