

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

Applicant: Monster Property One LLC
P.O. Box 706
Fort Washington, PA 19034

Owner: Same.

Subject Property: Tax Parcel No. 09-007-120; 09-007-122-001; 09-007-128, which is located at 1861 Lower State Road, Doylestown, PA 18901 of the Applicant set forth above.

Requested Relief: Applicant appeals an Enforcement Notice issued by Doylestown Township dated May 27, 2020. The Enforcement Notice cited Applicant for expanding a Non-Conforming business on the subject property. Applicant’s appeal avers that the tree service business continues, but has not expanded. In the alternative, Applicant requests a special exception under section 175-112.B(3) of the Doylestown Township Zoning Ordinance (“Ordinance”) to permit the expansion of a legal preexisting non-conforming use.

Hearing History: The application was filed in Doylestown Township on June 25, 2020. The first hearing was held on May 27, 2021. The final hearing was held on January 17, 2022, at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.¹

Appearances: Applicant by: Joshua S. Ganz, Esq.
Duffy North
104 N. York Road
Hatboro, PA 19040

Doylestown
Township by: Bryce H. McGuigan, Esq.
Begley, Carlin & Mandio, LLP
680 Middletown Blvd.
Langhorne, PA 19047

James Howley *Pro Se*
1 Howley Lane
Doylestown, PA 18901

¹ Applicant did sign multiple waivers of Municipalities Planning Code (“MPC”) and the Doylestown Township Zoning Ordinance.

David Rapoport
1811 Deerfield Lane
Doylestown, PA 18901

Pro Se

Mailing Date: March 3, 2022

DECISION

I. 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 Zoning Hearing Board held hearings on the following dates:

a. August 17, 2020, continued to October 19, 2020 by joint request.

b. October 19, 2020, continued to January 18, 2021 by joint request.

c. January 18, 2021, continued to April 19, 2021 by joint request.

d. April 19, 2021, continued to May 27, 2021 by joint request.

e. May 27, 2021, hearing held, evidence presented, and continued to July 19, 2021.

f. July 19, 2021, hearing held, evidence presented, testimony of Sinclair Salisbury, Director of Code Enforcement, Doylestown Township, testimony of Judith Stern Goldstein, and Testimony of Joshua Skolnick. Continued to October 18, 2021 with briefs to be provided by the parties.

g. October 18, 2021, continued to January 17, 2022 (briefs received).

h. January 17, 2022, deliberations; additional testimony by party protestant, public comment, and rebuttal testimony from Joshua Skolnick. Further deliberations and final determination made.

4. The following exhibits were marked and admitted during the hearing held on May 27, 2021:

ZHB Exhibits:

- ZHB-1: Application filed June 25, 2020 with a list of property owners to be notified by mail and a May 27, 2020 Enforcement Notice/Notice of Violation, issued by Doylestown Township.
- ZHB-2: Legal notice of the initial hearing held August 17, 2020 (proof of publication; posting; mailing).
- ZHB-3: Doylestown Township Zoning Ordinance.
- ZHB-4: Series of waivers of MPC and Ordinance timeframes for hearings held.
- ZHB-5: Township position and potential conditions.

5. The following exhibits were marked and admitted during the hearing held on July 19, 2021:

ZHB Exhibits:

- ZHB-6: Additional waivers.

Township Exhibits:

- T-1(A): Enforcement Notice dated May 27, 2020.
- T-1(B): Doylestown Township Zoning Ordinance §175-112 – Nonconformities.
- T-1(C): Property records TMP No. 09-007-120.
- T-1(D): Property records TMP No. 09-007-128.
- T-1(E): Property records TMP No. 09-007-122-001.
- T-1(F): Parcel map.
- T-1(G): Registration of Nonconforming Use, dated July 21, 1988 by Doylestown Township Board of Supervisors.
- T-1(H): Decibel meter testing records.
- T-1(I): Aerial photographs of Subject Property (circa 1985-1990).

- T-1(J): Aerial photographs of Subject Property (circa 2010-2021).
- T-1(K): Written statements by neighbors (admitted over hearsay objection).

Applicant Exhibits:

- A-1: Photograph of Subject Property.
- A-2: Building permit application received by Doylestown Township April 11, 2018.
- A-3: May 2, 2018 building permit rejection letter issued by Doylestown Township to Monster Properties with subsequent handwritten note dated October 24, 2019 by Director of Code Enforcement Sinclair G. Salisbury indicating as follows: “After meeting with Township – no increase in building footprint. Only modification to second floor were retroactively add flood vent to first floor per IBC 2015.”

6. The Subject Property is located at 1861 Lower State Road within the R-1A Zoning District of Doylestown Township. It is identified by way of four separate Bucks County Tax Map Parcel Nos.: 09-007-120; 09-007-122-001; 09-007-128; and, 09-007-129. See NT 07/19/2021, page 13.

7. Portions of the Subject Property are subject to a registered legally nonconforming use, as follows:

Pursuant to the provisions of §2113 of the Doylestown Township Zoning Ordinance, the Doylestown Township Board of Supervisors hereby certifies a nonconforming use for Bucks County Tax Parcels 9-128 (0.77 acres), Tax Parcel 9-7-120 (2.96 acres), and a small portion of Tax Parcel 9-7-122-1 which said small portion is a 30 foot long strip of land near the garage buildings, otherwise, there has been no nonconforming use established for the balance of Tax Parcel 9-7-122-1.

The nature of the Non Conforming Use is a junkyard facility for the storage of junked motor vehicles and customary uses associated with a junkyard, including the sale of used motor vehicles parts derived from junked cars, the sale of junked vehicles, and an office related to the operations of the junkyard facility. The Board of Supervisors has determined that a nonconforming use for the sale of used motor vehicles was not established nor has a retail sales use been established. The nature of the Non Conforming Use is limited to the uses set forth herein and any other uses normal and customarily associated with a

junkyard not otherwise enumerated but not the resale of vehicles other than junked vehicles for disposal as scrap.

This certification was issued the 21st day of June, 1988. Board of Supervisors, Doylestown Township.

_____ S.

Exhibit ZHB-1 and T-1(A).

8. On May 27, 2020, Doylestown Township issued an Enforcement Notice pertaining to the Subject Property. The Enforcement Notice reads in pertinent part, as follows:

RE: Failure to make an application for a Special Exception to the Zoning Hearing Board for the expansion of a non-conforming use, addition of manufacturing mulch at 1861 Lower State Road, Tax Parcel: 09-007-120, R1A Zoning District.

ENFORCEMENT NOTICE

This enforcement notice is sent to you because of the following violations of the Code of the Township of Doylestown observed at your property 1861 Lower State Road. Tax parcel # 09-007-120.

...

3. **List of specification violations:** Failure to apply to the Zoning Hearing Board for a Special Exception for the expansion of a Non-Conforming business. Twp. Code Section 175-112 (3)

...

Respectfully,
Sinclair G. Salisbury²

Exhibit ZHB-1 and T-1(A).

9. Applicant appeals the May 27, 2020. In the alternative, Applicant requests a special exception under §175-112.B(3) of the Doylestown Township Zoning Ordinance to permit the expansion of a legal preexisting non-conforming use.

10. The history of the use of the Subject Property is essentially not in dispute. The property was previously owned by the Garanos and used as a metal recycling facility/junkyard which the Township recognizes as a legal nonconforming use that existed prior to the passage of the Zoning Ordinance. NT May 27, 2021, page 20. From the mid to late 1990s the property was used by various entities including Advanced Tree Care, Asplundh, and Victory Gardens which used the property for

² During the initial substantive hearing held on May 27, 2021, the Township did formally amend without objection the Enforcement Notice to include all subject Tax Map Parcel Nos, except No. 09-007-129.

storage of equipment and products generated from wood recycling operations. NT 5/27/21, page 72.

11. Prior to purchasing the Subject Property, Monster owner Josh Skolnick leased the Subject Property from the owners for three years. NT 5/27/21, pages 71 and 72.

12. In describing the use, Mr. Skolnick indicated that vehicles are stored on the Subject Property and are then dispatched to job sites throughout the local communities. The vehicles return with material including those from tree removal and stump grinding jobs. The material is then processed on site and sold. NT 5/27/21, page 71.

13. In 2013, Mr. Skolnick requested a meeting with the Township to discuss the purchase of the property and to continue a recycling operation on the Subject Property. NT 5/27/21, pages 74 and 75. There is no written documentation regarding the Township's affirmation of the permitted use, other than the 1988 nonconformity certification (Exh. T-1(G)). Monster Properties purchased the Subject Property, removed the existing junkyard, and proceeded to use the entire property for the recycling of wood products using machinery such as whole tree chippers, tub grinders, wheel loaders and excavators. NT 5/27/21, pages 73-75.

14. Upon purchase of the property, neither Mr. Skolnick nor Monster Properties sought to or did obtain a certificate of nonconformity for the Monster Properties use.

15. Mr. Salisbury confirmed that some level of the wood recycling operation was permitted as a continuation of the previous metal recycling operation (nonconforming junkyard).

16. In March 2020, the Township received noise complaints about the property. NT 5/27/21, page 23.

17. Mr. Skolnick represents that the grinders run approximately 20 hours per week on average. NT 5/27/21, page 75. Mr. Skolnick concedes that in March 2020 the chipper was run on a Saturday or Sunday as a result of the volume of material to be processed and mechanical breakdowns. NT 5/27/21, pages 77-78.

18. Mr. Skolnick characterizes these issues as "anomalies" and not normal operating conditions. NT 5/27/21, page 79.

19. Based on the aerial photographs of the property from 2010-2021 as compared to the aerial photographs from 1985-1990, Mr. Salisbury did opine that the use had expanded both in size and scope on the Subject Property and into areas of Tax Parcel No. 09-007-122-001 which were not fully as authorized as a portion of the property to be used for the nonconforming use. Mr. Salisbury further opined that the wholesale much sales were unauthorized. He further acknowledged recent complaints of intense noise and nuisance. NT 7/19/21, pages 25-27.

20. The testimony of Sinclair Salisbury is accepted as credible.

21. Judith Stern Goldstein testified on behalf of the Township. Ms. Goldstein is a Township Planning Consultant and Senior Project Manager with Gilmore & Associates. Ms. Goldstein also reviewed the aerial photographs of the property and offered her opinion that there had been an increase in intensity of the use. Ms. Goldstein emphasized that the aerials from 2018-2021 reflected the most pronounced changes in the property. NT 7/19/21, page 59.

22. Ms. Goldstein further observed that the aerial from 2021 reflected that the mulch piles were larger than in prior years.

23. The testimony of Judith Stern Goldstein is accepted as credible.

24. The Board has reviewed the aerial photographs (T-1(I) & T-1(J)) and finds and concludes that the volume of material and the area of the coverage on the subject site increased drastically from 1985 to 2010, then again most significantly from 2018 to 2021 (T-1(I) & T-1(J)). The expansion of the nonconforming use from 1985 to 2021 is clearly significantly greater than 50% in area, intensity and volume. The expansion from 2018 to 2021 appears greater than 50% by volume and therefore intensity (see Exh. T-1(I) & T-1(J)).

25. All parties agree that the noise complaints were initiated in 2020. The noise complaints were investigated by Mr. Salisbury, Code Enforcement Officer for Doylestown Township.

26. The entire area around the nonconforming Monster Property is zoned residential.

27. Mr. Salisbury did provide sound recordings. The sound recordings reflect the decibel levels higher than permitted by Township Ordinance (Township Ordinance = 55 decibels. An unspecified machine operating from the site was recorded at 61.8 decibels). The noise extends beyond the original nonconforming parcels.

28. Joshua Skolnick, Principal of Monster offered testimony in support of Monster's application. Mr. Skolnick's recitation of the history of the property was similar to that of Mr. Salisbury. Mr. Skolnick recalls or perceives certain verbal assurances which are not documented and were not reflected through Mr. Salisbury's testimony.

29. Mr. Skolnick claims that the amount of material processed by Monster has remained "fairly steady" over the past few years. However, Mr. Skolnick does recognize that complaints were issued beginning in 2020. Mr. Skolnick relates the noise complaints to the COVID-19 pandemic and more people staying at home during normal business hours.

30. Mr. Skolnick testifies that the machines typically do not run on the weekends, but they have in the past.

31. While Mr. Skolnick disagrees that the nonconforming use has increased by 50%, Mr. Skolnick does concede that the business has increased, and estimates the increase at 20%.

32. The Board finds the testimony of Mr. Skolnick less credible than that of the nearby residential property owners. The Board does not doubt Mr. Skolnick's attempts at mitigating the negative impact of the volume and intensity of his business operations at 1861 Lower State Road, and how it affects the residential neighbors. However, the Board considers Mr. Skolnick's testimony skewed by his own perception and instead considers the testimony of the adjacent property owners more credible on the issue of observations regarding noise and intensity off site from the Subject Property, and therefore more credible on the issue of how the Monster Tree Service use negatively affects the adjacent property owners and community.

33. Multiple nearby and adjacent property owners testified regarding the use. All of the speakers are residents. They live adjacent to, or in close proximity to, the subject site. Several of the property owners considered the use a "manufacturing" use. At least one commentor believed the Monster use was less offensive in terms of noise and visual blight. However, the overwhelming testimony indicated that the noise emanating from the Monster use, especially from 2020 forward was much more intense than any previous use. The noise was described as "intense and continuous". Visual blight was observed. Other property owners discussed light pollution as a result of spot lights and dust emanating from the property. One neighbor indicated that stepping outside for a morning cup of coffee resulted in a "barrage of sound". The general consensus was that the noise from the various machines on site interfered with the residents' quiet enjoyment of their residential properties. Testimony was offered that the metal manufacturing use was less noisy and less intense. One property owner emphasized that the grinding may run for up to 15 hours in a given day depending on volume of material available and that spring and fall are the busiest. The residential property owners identified "new noises" within the past 10 years.

34. The testimony of the residents is accepted as credible for their personal observations of noise, light, dust, and general intensity of the use. The Board accepts their testimony regarding the nature, intensity, duration and timing of the noises as credible. The Board accepts the testimony of the neighbors over the testimony of Mr. Skolnick where the two are in conflict.

35. Mr. Skolnick did offer rebuttal testimony. The Board acknowledges the rebuttal testimony and observes that the rebuttal testimony does not change the aforementioned findings.

36. Mr. Skolnick asserted that he relied upon representations made by the Township in purchasing the property and "continuing", and presumably expanding (by his admission at a minimum) the wood recycling operation.

37. To the extent that Mr. Skolnick asserts a vested right or an estoppel argument against the Township, the Board finds same unsubstantiated and unjustified. The Board draws the conclusion that the use insidiously expanded to the

point where the use became a nuisance resulting in resident complaints, resulting in the Township investigating and issuing the notice of violation.

II. CONCLUSIONS OF LAW:

1. The Subject Property has been authorized as a lawfully preexisting nonconforming use as a junkyard (storage of junked motor vehicles with customary uses accessory to a junkyard), as reflected through the June 21, 1988 Registration of Nonconforming Use (Exh. T-1(G)).

2. Applicant is operating an enterprise storing and recycling wood and wood waste products including firewood, mill logs and mulch and selling same wholesale.

3. Doylestown Township has considered some measure of the above wood recycling use as a continuance of the approved nonconforming use.

4. Doylestown Township has since cited Applicant for expanding the lawful nonconforming use without obtaining a special exception.

5. The use has expanded 20% by Applicant's admission and greater than 50% by Board finding.

6. The Zoning Hearing Board concludes that the Township has met its burden of establishing that Applicant has expanded the preexisting nonconforming use without authorization. This conclusion is based upon the evidence presented, including the visible change in the use of the property as reflected through the aerial photographs, testimony regarding the intensity of the use provided by the neighbors, and in part by the property owner and proprietor, Mr. Joshua Skolnick, Principal of Monster Tree Service, Inc., and the noticeable change in the audible footprint of the present use (observations by the neighboring residential property owners regarding the increase in noise over the past several years and the complaints resulting therefrom). The notice of violation is affirmed.

7. In light of the notice of violation being affirmed, Applicant seeks a special exception to expand the use. The Board denies Applicant's request for a special exception based upon the evidence presented and Applicant's failure to meet the specific requirements of §175-137 Special Exception and §175-138 Additional Factors, especially §175-138.A(10) and §175-138.A(13).

8. The use described by the Applicant is incompatible with the existing residential development and development anticipated in the residentially zoned area in the foreseeable future. More directly, the evidence presented established that the use as described by Applicant and the neighbors is inconsistent with the adjacent residential uses.

9. The operation is more objectionable to the nearby properties by reason of noise and vibration, than would be the operation of any permitted use. The Board

refers to the uses permitted within the R-1A district as well as the use permitted by the June 21, 1988 Registration of Nonconforming Use.

10. To the extent that Mr. Skolnick asserts a vested right or an estoppel argument against the Township, the Board finds same unsubstantiated and unjustified. The Board draws the conclusion that the use insidiously expanded to the point where the use became a nuisance resulting in resident complaints, resulting in the Township investigating and issuing the notice of violation.

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

III. DISCUSSION:

The Applicant has appealed the May 27, 2020 Enforcement Notice/Notice of Violation. The notice of violation indicated that the Applicant had expanded a preexisting nonconforming use without obtaining appropriate relief by way of special exception through the Doylestown Township Zoning Ordinance, as contemplated by §175-112 of the Ordinance. §175-112 of the Ordinance reads, in pertinent part as follows.

§ 175-112. Nonconformities.

[Amended 4-9-1996 by Ord. No. 250]

A use, structure or lot which is nonconforming, as defined in § 175-9 of this chapter, shall be subject to the following regulations.

A. Continuance. ...

B. Extensions and alterations.

...

(3) Nonconforming uses shall not be altered, reconstructed, extended or enlarged, except in accordance with the following provisions:

(a) Such alterations, reconstruction, extension or enlargement shall be *only upon the same lot* as in existence at the date the use became nonconforming and shall be prohibited from encroaching on another lot subsequently added to the original parcel.

(b) Any increase in volume or area shall not exceed an *aggregate of more than 50%* of the volume or area existent at the date the use became nonconforming, during

the life of the nonconformity, and shall require approval as a special exception under the provisions of § 175-137 (Zoning Hearing Board). Structures or land uses that have reached their maximum expansion allowance under previous ordinances are not eligible for any increase in volume or area under this chapter.

- (c) No expansion or increase shall be permitted which would not comply with the dimensional requirements of the zoning district in which the lot is located.

...
§175-112. Nonconformities. Doylestown Township Zoning Ordinance. (emphasis added)

Applicant appealed the Enforcement Notice/Notice of Violation, and in the alternative requested a special exception as provided under §175-112.B.

A. Appeal of Enforcement Notice/Notice of Violation.

§616 of the Municipalities Planning speaks to the procedure for an appeal from a Township Enforcement Notice.

Section 616.1. Enforcement Notice.

(a) If it appears to the municipality that a violation of any zoning ordinance enacted under this act or prior enabling laws has occurred, the municipality shall initiate enforcement proceedings by sending an enforcement notice as provided in this section.

...
(d) In any appeal of an enforcement notice to the zoning hearing board the municipality shall have the responsibility of presenting its evidence first.

...

53 P.S. Section 10616.1, Municipalities Code Section 616.1. Enforcement Notice.

Section 909.1 of the Municipalities Planning Code provides the Zoning Hearing Board exclusive jurisdiction to hear and render final judications with regard to appeals from the determination of the zoning office. See MPC Section 909.1(3).

The sufficiency of the notice of violation is not at issue. Instead, Applicant challenges the substantive assertion within the notice of violation. Through the appeal and application, Applicant asserts in part, “Your petitioner believes it has not expanded the existing nonconforming use”. See Exhibit ZHB-1, paragraph 12.B.

For the reasons contained within the Findings of Fact, the Board finds and concludes that the notice of violation shall be affirmed in that the Applicant has

expanded the legally nonconforming status permitted by the original Registration of Nonconforming Use dated June 21, 1988. The Board finds the use expanded greater than 50%. The Applicant concedes expansion of 20%. The Enforcement Notice is affirmed.

B. Special Exception.

With the Board having affirmed the notice of violation for expansion of a nonconforming use, Applicant bears the burden of establishing entitlement to such enlargement by way of special exception. By the plain language of the Doylestown Township Ordinance, a lawful nonconformity may only be altered or expanded pursuant to special exception. See §175-112.B(3)(a) of the Ordinance.

Further the expansion is limited to a lifetime expansion of no greater than 50% of the volume or area of the nonconforming use as established at the date the use became nonconforming. See §175-112.B(3)(b).

Additionally, the expansion or increase shall only be permitted on the original parcel, and the expansion must otherwise comply with all dimensional requirements of the Ordinance. See §175-112.B(3)(a) and (c).

§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.¹¹¹

[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 Applicant has exceeded the scope of the June 21, 1988 nonconforming use certification, and has further failed to establish the basis for a special exception, in part because the expansion has exceeded the lots in question; the present lot is not suitable for the Monster Tree Service use due to the imposition on the adjacent neighboring residential properties through noise, light, dust, and vibration; 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 which is predominantly residential.

The operation of the use as described in part by the Applicant, but more significantly by the residential property owners, is more objectionable by reason of noise, vibration and light than the previous lawfully permitted nonconforming use. 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.

C. The Doctrine of Natural Expansion.

In the Alternative to requesting a special exception, the Applicant has argued that the use described is permitted under the Doctrine of Natural Expansion as the natural growth of the June 21, 1988 nonconforming junkyard use. The Zoning Hearing Board disagrees.

Applicant argues that “Monster is permitted to increase the magnitude or intensity of its nonconforming use through the Doctrine of Natural Expansion. See Dipal Corp vs. Chartiers Twp. Zoning Hearing Bd, 2021 Pa. Commw. LEXIS 523, at *19-22 (Cmwlth. Aug. 6, 2021). ...” Applicant’s brief to the ZHB at page 9.

The Zoning Hearing Board acknowledges the Doctrine of Natural Expansion. In this regard, Applicant bears the burden of proof. See Dipal at 261, A.3d 1097, page 18. Nonetheless, the Board observes that, as the Commonwealth Court indicated in RAV

Collision Services vs. Zoning Hearing Board, 2021 Pa. Commw., unpub. LEXIS 373, citing Altepa Inc. vs. North Huntingdon Township Zoning Hearing Board, 445, A.2d 1358, 1559-60 (Pa. Commw. 1982), “There is no constitutionally protected right to change from one nonconforming use to another. Allowance of a change of nonconforming use is based upon the ordinance and is limited to the ordinances’ terms.”

The Township has conceded that a “wood recycling use” is similar in character to the approved “metal recycling use” or junkyard certified as legally nonconforming in June 1988. The Board is less convinced, but acknowledges the Township’s admission. Nonetheless, any expansion of the 1988 use must comply with the special exception standards contained within the Doylestown Township Zoning Ordinance and may, in no event, exceed 50% of the volume or area of the use when it became nonconforming. The Board uses the June 21, 1988 Certification of Nonconforming Use as the date the use became lawfully nonconforming.

As previously indicated, the Doylestown Township Zoning Ordinance requires alteration or expansion of a nonconforming use by special exception. The Zoning Hearing Board questions whether the use described by Applicant represents a continuation of the previously authorized nonconforming junkyard use, but the Township has essentially conceded the threshold question finding some measure of the wood recycling use represents a continuation of the previous nonconforming metal recycling use. The Board is left with the question of alteration or expansion.

The Commonwealth Court discussed the limitations on the Doctrine of Natural Expansion in the matter of R.K. Kibblehouse Quarries vs. Marlborough Township Zoning Hearing Board, 630, A.2d 937 (Pa. Commw. Ct. 1993). In analyzing the question, the Kibblehouse Court indicated as follows:

In Pennsylvania our Courts have recognized that the right to expand a nonconforming use to provide for the natural expansion and accommodation of increased trade “is a constitutional right protected by the due process clause.” Silver vs. Zoning Hearing Board of Adjustment, 255 A.2d 506-07 (PA. 1969), Gilfillan’s Permit, 140 A. 136 (PA. 1927). However, the natural right of expansion is not unlimited. A municipality has the right to impose reasonable restrictions on the extension of a nonconforming use. Jenkintown Towing Service vs. Zoning Hearing Board of Upper Moreland Township, 446 A.2d 716 (Pa. Cmmw. Ct. 1982).

R.K. Kibblehouse Quarries, 630 A.2d 937, 943.

Further, in the matter of Overstreet vs. Zoning Hearing Board Schuylkill Township, 412 A.2d 169 (Pa. Cmmw. Ct. 1980), the owner of a nonconforming mobile home park utilizing half of the owner's property sought permission to install mobile homes on the remaining half of the property owned at the time the Ordinance was enacted. The Court affirmed the Zoning Hearing Board in concluding that the expansion was impermissible in that the second half of the property had not been devoted to the nonconforming use. The Overstreet and Kibblehouse cases represent limitations on the constitutional right to expand.

For the reasons contained herein, the Zoning Hearing Board finds and concludes that the Applicant has impermissibly expanded the lawful nonconforming use without obtaining a special exception. The volume has increased since 1988. The portions of the lots upon which Applicant operates the nonconforming use have expanded. The volume and the area of the use have further impermissibly expanded greater than 50%. All of the above occurred without a special exception, i.e., without complying with the Ordinance. The Doctrine of Normal Expansion does not authorize an "end run" around the legislatively established process.

The Zoning Hearing Board rejects Applicant's argument to the contrary.

D. Conclusion.

For the foregoing reasons, the Board affirms the May 27, 2020 Enforcement Notice and denies Applicant's request for a special exception.

ORDER

Upon consideration and after multiple public hearings held, the Zoning Hearing Board of Doylestown Township hereby **DENIES** Applicant's appeal from the May 27, 2020 Enforcement Notice issued by Doylestown Township. The Enforcement Notice citing Applicant for expanding a nonconforming use on the Subject Property without obtaining a special exception is **AFFIRMED**. Applicant's request for a special exception under §175-112.B(3) of the Doylestown Township Zoning Ordinance to permit the expansion of a legal preexisting non-conforming use is also **DENIED**.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

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

/s/ Mitchell Aglow
Mitchell Aglow

/s/ Samuel D. Costanzo
Samuel D. Costanzo