

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

Applicant: Doylestown Veterinary Hospital, LLC
380 N. Shady Retreat Road
Doylestown, PA 18901

Owners: Ransome D. Weis and Laura J. Weis
380 N. Shady Retreat Road
Doylestown, PA 18901

Subject Property: Tax Parcel No. 09-009-001-001, which is located at the address of the Applicant set forth above.

Requested Relief: Applicant seeks the following relief from the Doylestown Township Zoning Ordinance (“Ordinance”):

1. a variance from §175-22.D, to reduce parking requirements for an existing Kennel/Pet Care Facility (Use A-3);
2. a variance from §175-22.D, to reduce parking requirements for Veterinary Offices or Clinic (Use E-16);
3. a special exception pursuant to §175-37.B, for A-3 Kennel Use in R-1 Zoning District; and
4. a special exception pursuant to and/or a variance from §175-112.B(3)(b), for the expansion of the existing veterinary clinic use (E-16) to exceed the 50% limitation on expanding nonconformities.¹

Hearing History: The application was filed in Doylestown Township on November 23, 2022. Hearings were held on January 9, 2023 and March 20, 2023 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.²

Appearances: Applicant by: Colby S. Grim, Esq.
Grim Biehn & Thatcher
104 S. Sixth Street
PO Box 215
Perkasie, PA 18944

Mailing Date: May 2, 2023

¹ The initial application filed requested relief only from the parking requirements.

² The initial hearing was scheduled for January 9, 2023, but Applicant amended the application and the full substantive hearing took place on March 20, 2023.

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. The lot area is 48.9949 acres (gross). The property accommodates the Applicant's preexisting nonconforming veterinary use (Veterinary Office or Clinic, Use E-16 and Kennel/Pet Care Facility, Use A-3).

4. Applicant established that the uses in question are preexisting lawfully nonconforming uses. See Exhibit A-8 (correspondence prepared by Stephanie J. Mason, Township Manager/Zoning Officer, stamped August 5, 2003), identifying the Veterinary Use and the Kennel Use as preexisting nonconforming uses.

5. Applicant seeks the following relief from the Doylestown Township Zoning Ordinance ("Ordinance"): (1) a variance from §175-22.D, to reduce parking requirements for an existing Kennel/Pet Care Facility (Use A-3); (2) a variance from §175-22.D, to reduce parking requirements for Veterinary Offices or Clinic (Use E-16); (3) a special exception pursuant to §175-37.B, for A-3 Kennel Use in R-1 Zoning District; and (4) a special exception pursuant to and/or a variance from §175-112.B(3)(b), for the expansion of the existing veterinary clinic use (E-16) to exceed the 50% limitation on expanding nonconformities.

6. The Zoning Hearing Board marked and admitted the following exhibits:

ZHB-1: Application received 11/23/2022 with attachments including a 03/07/2022 Sketch Plan, prepared by Holmes Cunningham, LLC.

ZHB-2: Legal notices of the January 9, 2023 hearing.

ZHB-3: January 9, 2023 request to continue the January 9, 2023 hearing and waive MPC and Ordinance timeframes.

ZHB-4: Amended application filed February 24, 2023.

ZHB-5: Legal notices of the March 20, 2023 hearing (fully readvertised based upon the amended application).

ZHB-6: Doylestown Township Zoning Ordinance.

A-1: *Curriculum vitae* Kristin Holmes, PE.

- A-2: Deed in favor of Ransome D. Weis and Laura J. Weis.
- A-3: Conservation Easement encompassing the entire property.
- A-4: Site Plan (sketch dated 11/08/2022).
- A-5: Site Plan (06/28/2022 – Existing Features).
- A-6: Photographs of the site.
- A-7: Tract calculations.
- A-8: Nonconforming use letter, prepared by Stephanie J. Mason, Township Manager/Zoning Officer, stamped 08/05/2003, identifying the Veterinary Use and the Kennel Use as preexisting nonconforming uses on the Subject Property.

7. Kristin Holmes, PE, testified rather extensively regarding the existing features and the proposed improvements for the Subject Property. Ms. Holmes did testify to steep slopes, woodlands, agricultural soils serving as natural resources on the site, as well as an identified water course, Cooks Run, with accompanying flood plain and riparian corridor. Additional site constraints include an adjacent field, on site, which is currently actively farmed and will not be disturbed. There is also a retention pond which the farmer maintains and will not be disturbed. Ms. Holmes authenticated the plans submitted.

8. Dr. Ransome Weis testified in support of the application. Dr. Weis is the veterinarian responsible for the facility at issue known as Doylestown Veterinary, and Holiday House, aka Holiday Farm. The veterinarian clinic is a small animal veterinarian hospital by appointment. Holiday House is a scheduled grooming and kennel facility.

Holiday House was established in 1950 on the Subject Property. The veterinarian clinic was established no later than 2003.

9. Dr. Weis intends to modernize the facilities and improve the aesthetics. In so doing, Dr. Weis acknowledges and affirms his responsibilities to honor an existing 1999 Conservation Easement which protects the historic structures and the natural resources on site. Dr. Weis has attempted to use the historic barn (circa 1809) for the veterinary hospital, but has encountered some functional impediments. In order to accommodate all uses, Dr. Weis intends to expand the facilities, especially the daycare use and the long-term kennel use.

10. The area surrounding the 49 acre property is largely residential, including a mobile home park directly across Shady Retreat Road.

11. Ms. Holmes testified that the proposed plan meets the land use criteria, maintains low density, and meets the objectives of the Comprehensive Plan.

12. A considerable number of questions were asked regarding the Conservation Easement and Applicant's intent and ability to honor same. Applicant insured that the objective

is to honor the Conservation Easement both as a matter of personal philosophy and the property rights conveyed.

13. Dr. Weis did observe that “doggie daycare” is not a defined use in the Ordinance. Therefore, the daycare use falls under kennel, but from the doctor’s perspective, the parking needs differ significantly between kennel use and daycare use, with doggie daycare being a quicker drop off and pickup.

14. Applicant will be widening the driveway which will provide for safer ingress and egress, will provide a separate loading and unloading area and employee parking to improve internal circulation.

15. Applicant intends to develop the site generally consistent with the Holmes Cunningham Sketch Plan, dated March 07, 2023.

16. At least two nearby property owners testified regarding the existing conditions. Christine Weyer, 185 Ash Way, expressed concerns about the volume of noise from the existing use. Dr. Weis did not agree with the representations made. Mr. Joseph Donawald, 13 Independence Way, expressed concern regarding the stacking of vehicles on Shady Retreat Road. Applicant addressed the concerns by emphasizing that widening the ingress/egress from the road to the bridge on site would alleviate any stacking to or on Shady Retreat Road.

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

CONCLUSIONS OF LAW:

1. The Subject Property has been used for lawful preexisting nonconforming uses in the nature of a kennel and veterinary clinic since 1950 and 2003 respectively.

2. Applicant seeks to expand the use and improve aesthetics, functionality, and circulation, while continuing to comply with the existing Conservation Easement. In so doing, Applicant requests the following relief: (1) a variance from §175-22.D, to reduce parking requirements for an existing Kennel/Pet Care Facility (Use A-3); (2) a variance from §175-22.D, to reduce parking requirements for Veterinary Offices or Clinic (Use E-16); (3) a special exception pursuant to §175-37.B, for A-3 Kennel Use in R-1 Zoning District; and (4) a special exception pursuant to and/or a variance from §175-112.B(3)(b), for the expansion of the existing veterinary clinic use (E-16) to exceed the 50% limitation on expanding nonconformities.

3. With regard to the special exception, the standard is found at §175-137 and §175-138.

§ 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.^[1]

[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.

4. Applicant meets the standards consistent with §175-38 of the Ordinance, but exceeds the 50% limitation on the expansion of a preexisting nonconforming use, contained within §175-112.B(3)(b). Applicant requests a variance from that provision, which will be addressed below. Further, Applicant seeks a variance from the parking provisions of the Ordinance for the Use A-3 Kennel/Pet Care Use and the Veterinary Office/Clinic (E-16) Use. The standard for a variance includes the following:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the appellant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

53 P.S. §10910.2.

5. The Doylestown Township Zoning Ordinance contains similar criteria. See §175-36.

6. The competent evidence presented leads the Board to conclude that, if the variance relief is granted, there will be no negative impacts upon surrounding properties or uses.

7. The evidence establishes that the relief sought by the Applicant is the minimum variance necessary.

8. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located.

9. The Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variance requested under the relaxed variance standard applicable to dimensional variance cases, as articulated by the Pennsylvania Supreme Court, in Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d. 43 (1998).

10. The grant of the requested variances satisfies Appellant's burden to meet the objective criteria set forth in the Ordinance for a special exception. New Bethlehem Borough Council v. McVay, 78 Pa. Commw. 167, 467 A.2d 395 (Pa. Cmwlth. 1983). A use permitted by special exception is presumptively consistent with the public health, safety and welfare; the denial of a special exception can be based only on proof that the use would create an adverse effect on the public welfare in a way not normally associated with proposed use. Kern v. Zoning Hearing Board of Tredyffrin Township, 68 Pa. Commw. 396, 449 A.2d 781 (1982). Here, the objecting witnesses failed to present proof that the proposed use would present a substantial threat of harm to the health, safety and welfare of the community. Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg, 126 Pa. Commw. 235, 559 A.2d 107 (PA. Cmwlth. 1989).

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

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS the following relief from Doylestown Township Zoning Ordinance:

1. A variance from §175-22.D, to reduce parking requirements for an existing Kennel/Pet Care Facility (Use A-3) from the 88 required to the 45 proposed;
2. A variance from §175-22.D, to reduce parking requirements for Veterinary Offices or Clinic (Use E-16) from the 46 required to the 35 proposed;
3. A special exception pursuant to §175-37.B, to permit an A-3 Kennel Use in the R-1 Zoning District; and
4. A variance from §175-112.B(3)(b), to permit a nonconforming veterinary use to expand greater than 50%.

The relief granted is subject to the following conditions:

1. Applicant is to show reserved parking to fulfill parking required by Ordinance to be activated only if needed as determined by the Township.
2. Applicant may not exceed the decibel level at the lot line per Township Ordinance.
3. Ingress and egress over the bridge/culvert must be reviewed by the Township Fire Marshal for sufficiency regarding width and structural integrity.
4. Applicant shall demonstrate compliance with the conservation easement to the satisfaction of Doylestown Township with regard to the planned improvements.
5. Applicant shall in all other respects comply with all other applicable governmental ordinances and regulations.

**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