

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

**Docket No.:** Z-4-24

**Applicants:** Robert and Megan Bekes  
138 South Shady Retreat Road  
Doylestown, PA 18901

**Owners:** Same.

**Subject Property:** Tax Parcel No. 09-008-001, which is located at the address of the Applicants set forth above.

**Requested Relief:** Applicants seek to construct a single-family dwelling on an undersized lot. Applicants seek variances from §175-39 of the Doylestown Township Zoning Ordinance ("Ordinance"), to permit reduced side yard setbacks (proposing 9.25 feet each where 25 feet is required); reduced lot width (proposing 50 feet where 150 feet is required); and, reduced lot area (proposing 14,451 square feet where a minimum of 40,000 square feet is required); and from §175-39 of the Ordinance to permit an impervious surface ratio of 26% where a maximum of 20% is permitted.

**Hearing History:** The application was filed in Doylestown Township on March 26, 2024. The hearing was held on May 23, 2024 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901

**Appearances:** Applicant by: Zachary Morano, Esq.  
HRMM&L  
1684 S. Broad Street, Suite 230  
Lansdale, PA 19446

Jessie Stanwick: *Pro Se*  
128 South Shady Retreat Road  
Doylestown, PA 18901

**Mailing Date:** June 20, 2024

## 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 lot area is 14,451 square feet. Applicants consider the property a vacant lot. Applicants own the property immediately next door to the Subject Property.

4. The property in question was conveyed to the Applicants (Robert Bekes and Megan Bekes, husband and wife), from Grantor James B. Steele, by deed dated December 30, 2005. The deed further documents the property as,

“Situate in a development known as Braewood, Section B, Township of Doylestown, County of Bucks and State of Pennsylvania, described in accordance with a Plan thereof made by J.G. Park and Associates, Registered Surveyors, dated February 15, 1954 and recorded in Plan Book 7 Page 43 as follows, ...”

See, December 30, 2005 Deed to Subject Property (Premises A, Tax Parcel No. 09-003-062; and Premises B, Tax Parcel No. 09-008-001.

5. During the period of time Applicants have owned the property, Applicants have used the two identified premises as a single lot. A single-family dwelling is built upon Premises A, Tax Parcel No. 09-003-062 (aka Lot No. 30 of the subdivision).

6. The smaller premises represents one-half of the adjacent lot, half of which was sold to the owner of Lot No. 30 (as reflected as Premises B of the deed). The other half of the original Lot No. 31 was sold to the property owner on the other side of the former Lot No. 31, Party Protestant Jessie Stanwick, 128 South Shade Retreat Road.

7. While a dwelling was constructed on the Premises A aspect of the deeded parcel, Applicants used the entire property as one. There was no clear line of delineation between the two properties. There is no curb cut for Premises B. No fence separated the two properties. Applicants used Premises B as a storage area and as a turnaround for vehicles from Premises A.

8. The Doylestown Township Zoning Ordinance contains a merger provision. The merger provision, found at §175-112.B(2) reads 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.

B. Extensions and alterations.

(2) Nonconforming lots. A building or structure may be erected or altered on any lot held at the effective date of this chapter in a single and separate ownership that is not of the required width or minimum area, provided the following requirements are observed: [Amended 1-15-2019 by Ord. No. 394 ]

(a) The lot is of sufficient size to assure adequate and safe facilities for the disposal of sewage and waste products, and there is adequate separation between the sewage and waste disposal system and all water supplies as determined by the Bucks County Department of Health or another authorized agency.

*(b) Such lot must be in single and separate ownership, and not form part of a continuous frontage with other lots in the same ownership. If two or more lots with continuous frontage in single ownership are of record at the time of passage or amendment of this chapter, and if all or part of the lots do not meet the requirements for lot width and area established by this chapter, the lands involved shall be considered an undivided parcel, and no portion of such parcel shall be occupied that does not meet lot width and area requirements established by this chapter.*

(Italicized for emphasis).

9. Applicants disagree that Applicants intended to merge the two premises contained upon the deed.

10. Applicants seek to construct a single-family dwelling on the undersized Premises B. Applicants seek variances from §175-39 of the Doylestown Township Zoning Ordinance ("Ordinance"), to permit reduced side yard setbacks (proposing 9.25 feet each where 25 feet is required); reduced lot width (proposing 50 feet where 150 feet is required); and, reduced lot area (proposing 14,451 square feet where a minimum of 40,000 square feet is required); and from §175-39 of the Ordinance to permit an impervious surface ratio of 26% where a maximum of 20% is permitted.

11. In support of Applicants' request, Applicants submitted the following documents:

- A-1: Resume of John M. Dura, P.L.S.
- A-2: Application
- A-3: Subject Property Deed and Associated County Property Records
- A-4: Property Aerial
- A-5: 1954 Plan of Lots for Braewood Development
- A-6: 2024 Tax Parcel Viewer
- A-7: Lot 30 Property Deed and Associated County Property Records
- A-8: Lot 32 Property Deed and Associated County Property Records
- A-9: Zoning Plan
- A-10: Bucks County Water and Sewer Authority Will Serve Letter

12. Through its evidence, Applicants attempted to establish that Premises B is a "separate lot" legally created, and therefore represents a lawful nonconforming lot upon which Applicants must be entitled to develop the proposed single-family dwelling.

13. Applicants originally indicated that Applicants lived on Premises A and intended to use Premises B for a dwelling unit for their daughter.

14. Subsequently, neighbors testified that the Applicants do not live on the site and have not lived on the site for some time. They further emphasized that the Applicants have not cared for or maintained the property.

15. Adjacent property owner, and Party Protestant, Jessie Stanwick, testified to drainage concerns. In addition, Applicants have proposed to set the proposed dwelling back toward the rear of the lot. Ms. Stanwick indicated that the proposed location is not in character with the other dwellings on site and would infringe on her quiet enjoyment of her property.

16. Other adjacent and nearby property owners echoed the Stanwick sentiments, some more forcefully.

17. The Zoning Hearing Board finds Applicants not credible in their representations made. Regrettably, the Zoning Hearing Board believes that Applicants were not entirely truthful in representing the history and use of the property, nor the possible future uses of the property.

18. Multiple adjacent and nearby property owners testified to multiple negative impacts of permitting development of the undersized lot.

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

## CONCLUSIONS OF LAW:

1. The Subject Property is one of two premises reflected on a single deed, owned by Applicants Robert Bekes and Megan Bekes, husband and wife. Applicants' counsel attempted to illustrate that the lots were lawfully created.

2. Regrettably, the history leading to formation of these premises is less than clear. While there was a Subdivision Plan submitted as Exhibit A-5, representing the 1954 Subdivision for Braewood, the Subdivision Plan shows uniformly sized lots, including the Bekes lot (138 Shady Retreat Road) and the Stanwick lot (128 Shady Retreat Road), and a similarly sized lot between them (Lot 31). The Bekes lot at 138 Shady Retreat Road is Lot 30 of the subdivision. The Stanwick lot is Lot 32 of the subdivision. At some point, one-half of the lot between 138 and 128 (to wit Lot 31) was merged; one-half merged with the Stanwick property; and, the other half was merged with the Bekes Property, previously owned by James B. Steele. No lot line change plans (subdivision plans) were submitted as part of the application. None may exist.

3. Applicants did submit the County tax parcel information which shows the Stanwick lot as one oversized lot (presumably comprised of one-half of Lot 31 and all of Lot 32), and the Bekes lot as the whole of Lot 30 and half of Lot 31. No additional support documents that the Bekes lot was lawfully created as two separate lots, one being undersized.

4. The Stanwick lot includes a deed which comprises the original lot, plus the other half lot, merged. (See Exhibit A-8, Stanwick deed, dated November 8, 2021)

5. Under the Doctrine of Merger, adjoining lots, at least one of which is nonconforming, held under common ownership prior to the passage of a zoning ordinance, which are rendered nonconforming, usually by the passage of a zoning ordinance provision, merge into one conforming lot. *In re Appeal of Moyer*, 978 A.2d 405, 409 (Pa. Cmwlth. 2009).

In *Cottone v. Zoning Hearing Board of Polk Township*, the Commonwealth Court reviewed the doctrine of merger and restated the doctrine's main principles,

... mere common ownership of adjoining properties does not *automatically* result in a physical merger.... On the other hand, adjoining properties under common ownership can merge when a zoning ordinance provision causes one or more of the adjoining lots to become undersized, depending on the facts and circumstances of each case.... Adjoining lots under separate ownership before a zoning ordinance enactment makes the lots too small to build upon are presumed to remain separate and distinct lots. Should those adjoining, undersized lots be thereafter acquired by a single owner, the burden is on the municipality to show that the new common owner has merged the two lots into one.... Otherwise, the result would be to permit separate development of each lot by any person other than the common owner....

*In re Appeal of Moyer*, 978 A.2d at 409, citing *Cottone v. Zoning Hearing Board of Polk Township*, 954 A.2d 1271, 1275-1276 (Pa. Cmwlth. 2008). (emphasis in original).

In the case at bar, the two lots were under the same ownership at the time the township enacted the zoning ordinance and at that time the lots merged.

6. Not only is the fact that both premises are on the same deed illustrative, but more importantly Applicants' use of the property as one single property, lacking a second curb cut, lacking any hedge between the two properties, supporting Applicants' use of both properties as one, all support a finding that the lots were not kept separate and distinct. Therefore, under the principles of the Doctrine of Merger, the lots are presumed to have merged because they were under common ownership when the Zoning Ordinance was enacted and when the lot became nonconforming. *In Re Moyer*. 978 A.2d at 409, supra. Through common ownership, use as one lot, and lack of evidence of any measures taken to keep the lots separate and distinct, the burden under the doctrine of merger has been met.

7. Applicants' testimony, as scant as it was, is insufficient to manifest an intent to keep the lots separate and distinct. *West Goshen Township v. Crater*, 538 A.2d 952, 955 n.2 (Pa.Cmwlth. 1988) (evidence that lots were shown separately on an approved subdivision plan and described separately in deeds does not constitute physical manifestation of intent to separate lots). In fact, the case at bar does not even illustrate the level of "intent to separate" as was shown in *West Goshen Township*.

8. In addition to the lots merging, and therefore the relief being denied as improvidently requested (no two single-family dwellings may locate on a single residential lot), the relief being requested would require a subdivision.

9. Applicants failed to establish a hardship justifying the relief requested.

10. The competent evidence presented leads the Board to conclude that, if the variance relief is granted, there will be negative impacts upon surrounding properties or uses.

11. The evidence establishes that the relief sought by the Applicants is not the minimum variance necessary.

12. The Applicants have failed to present evidence of sufficient factors to warrant the grant of the dimensional variances requested, even 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).

13. Accordingly, the Doylestown Township Zoning Hearing Board determined, by 3-0 vote, to Deny the Applicants' request for relief, as is set forth hereafter.

**ORDER**

Upon consideration, and after hearing, the Zoning Hearing Board of Doylestown Township hereby DENIES all relief requested by the Applicant.

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**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