

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

Application No. Z-7-2017

Applicant: Brian C. Hitchon
536 W. Swamp Road
Doylestown, PA 18901

Owners: Brian C. Hitchon and Angela C. Nutter
536 W. Swamp Road
Doylestown, PA 18901

**Subject
Property:** Tax Parcel No. 09-004-043 which is located at the address of the
Applicant set forth above.

**Requested
Relief:** The Applicant requests a variance from §175-39 of the
Doylestown Township Zoning Ordinance (“Ordinance”), to
permit a deck location at a side yard setback distance of less than
the required 25 feet.

**Hearing
History:** The application was filed in Doylestown Township on September
1, 2017. The hearing was held on October 26, 2017 at the
Doylestown Township Building, 425 Wells Road, Doylestown,
PA 18901.

Appearances: Applicant, Pro Se'

Mailing Date: November 20, 2017

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 one of 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. It accommodates the Applicant's single-family detached dwelling with typical residential access walkways, driveway and a deck.

4. The Subject Property is undersized and nonconforming to the minimum lot area requirement of 40,000 square feet in the R-1 Zoning District set forth at Ordinance §175-39. It is 15,500 square feet in size.

5. The Board finds that the lot was created prior to the presently applicable lot area requirement of the Ordinance.

6. Recently, the Owners had listed the Subject Property for sale and, during due diligence by the buyer, they questioned whether a permit had been issued for the construction of a rear deck, 12' x 14' in size.

7. The Applicant testified that he constructed the deck approximately 4-5 years ago. The surface of the deck is made of composite trex material. Its railings are made of wood.

8. The deck, as constructed, is located at a 13 foot side yard setback distance from its nearest side property line.

9. A deck is considered a structure under Ordinance definition and is required to meet the dimensional requirements of §175-39. The side yard setback distance required thereby is 25 feet.

10. Thereafter, the Applicant applied for a building permit for the existing deck which was denied in Exhibit B-1.A, a letter of August 1, 2017 from Sinclair G. Salisbury, the Doylestown Township Director of Code Enforcement. That letter established that the residential structure on the Subject Property is lawfully nonconforming to the side yard setback requirement of 25 feet. It is setback 18 feet from the same side property line as the deck.

11. The side property line in question is shared with a residential use. The access driveway to that residence is located along the shared side property line on the neighbor's side.

12. The Applicant testified that he has received no complaints from any neighbors, including the most impacted one, in the 4-5 years of the deck's existence.
13. Mr. Salisbury testified that he inspected the deck and that it was constructed consistent with code requirements.
14. The Board finds that the deck is reasonably sized.
15. Doylestown Township took no position with regard to this application.

CONCLUSIONS OF LAW

1. The Subject Property has been developed as a single-family residence which use is permitted by right in the R-1 Zoning District in which it is located.
2. The Subject Property is lawfully nonconforming to the minimum lot area requirement of the Ordinance.
3. The structure is nonconforming to the minimum side yard setback distance required.
4. Although constructed illegally, the rear deck meets building code standards, is logically located, and is reasonable in size.
5. The lawful nonconformities that exist on the Subject Property as to its lot area and side yard setback distance preclude the construction of a reasonably sized and logically located residential deck structure.
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.
10. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to grant relief to the Applicant and the Subject Property as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS a variance from §175-39 of the Doylestown Township Zoning Ordinance in order to permit the location of a residential rear deck at a side yard setback distance of 13 feet, instead of the required 25 feet, in substantial compliance with Exhibit B-1.B, a Sketch Plan of the property, prepared by the Applicant. The relief herein granted is subject to compliance with all other applicable governmental ordinances and regulations and the specific condition that any required building permits for the deck be obtained from Doylestown Township and any necessary fees therefore be paid by the Applicant.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

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

/s/ Richard K. Gaver
Richard K. Gaver, Vice Chairman

/s/ Mitchell Aglow
Mitchell Aglow, 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-8-2017

Applicant: Winchester Acquisitions, L.P.
404 N. Sumneytown Pike, Suite 200
North Wales, PA 19454

Owner: Franklin A. & Elizabeth K. Burke Revocable Living Trust
3725 Bristol Road
Doylestown, PA 18901

**Subject
Property:** Tax Parcel No. 09-007-006 which is located at the address of the
Owner set forth above.

**Requested
Relief:** The Applicant proposes the construction of 8 single-family
attached dwelling units in conjunction with the use of an historic
structure on the property and requests a variance from §175-
16.B.15.g.5 of the Doylestown Township Zoning Ordinance
("Ordinance") to permit this development with a minimum base
site area of less than the 10 acres required.

**Hearing
History:** The application was filed in Doylestown Township on September
22, 2017. The hearing was held on October 26, 2017 at the
Doylestown Township Building, 425 Wells Road, Doylestown,
PA 18901.

Appearances: Applicant by: Edward F. Murphy, Esq.
Wisler Pearlstine, LLP
PO Box 1186
301 North Sycamore Street
Newtown, PA 18940

Mailing Date: November 20, 2017

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 equitable Owner of the Subject Property pursuant to an Agreement of Sale dated May 17, 2017 (Exhibit B-1.A) and an Addendum thereto dated June 1, 2017 (Exhibit B-1.B). Accordingly the Applicant is 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. It is 8.917 gross acres in size and is improved with a stone, 2-story, single-family detached dwelling, a stone and frame barn, a detached garage, and associated improvements.
4. On March 9, 2009, the Commonwealth of Pennsylvania condemned a portion of the Subject Property, approximately 2.598 acres in size, for use in connection with the development and construction of the Route 202 Parkway. Exhibit B-1.D is a March 9, 2009 Deed In-Lieu of Condemnation for that portion of the Subject Property.
5. Prior to the condemnation, the Subject Property was approximately 11.347 acres in size.
6. Exhibit B-1.E is a September 20, 2017 letter from Jeffrey P. Garton, Esq., the Doylestown Township Municipal Solicitor, that established that the structures on the Subject Property have been included in the official list of historic structures as compiled by the Bucks County Conservancy and approved by the Township Board of Supervisors, pursuant to Ordinance §175-30.A.2.
7. Accordingly, the Subject Property is in an overlay zoning district entitled the Historic Resources Map Overlay.
8. The Applicant proposes to develop the Subject Property pursuant to the requirements for Use B-15 set forth at §175-16.B-15.
9. The development of the Subject Property as a Use B-15, “single-family attached dwelling units in conjunction with use of historic structures”, is permitted by conditional use approval from the Doylestown Township Board of Supervisors pursuant to §175-37.D.1.
10. The Applicant’s engineering testimony was presented by Gregory Glitzer, PE, who was qualified to testify as an expert in civil engineering at the hearing.

11. Glitzer established that the Subject Property is bordered to the north and south by residential developments, to the west by a nursery, and to the east by the Route 202 Parkway. The Subject Property also fronts on Bristol Road.

12. §175-16.B.15.g.5 requires a minimum base site area of 10 acres for the development of a B-15 Use.

13. Based upon the credible evidence presented, the Board finds that but for the condemnation of the Subject Property, which was not within the control of the property Owner, it would have met the minimum base site area requirements of this Ordinance section.

14. The development proposes the retention of the existing farmhouse, the stone barn, and existing outbuildings including a springhouse to be renovated and improved for sale as a single unit in a planned unit development.

15. Also proposed are 8 single-family attached dwelling units within 4 structures as depicted on Exhibit B-1.C, a Sketch Plan prepared by Gilmore & Associates, Inc., dated June 23, 2017.

16. Glitzer credibly established that the number of units proposed meet the density requirements of the Ordinance.

17. Access to the units will be by means of a cul-de-sac that aligns with an access street across Bristol Road to an existing residential development.

18. The development of the Subject Property will include connection of the bike and hike trail system in Doylestown Township to adjacent properties.

19. Glitzer established that the proposed development will preserve open space consistent with Ordinance requirements and will be served by public water and sewer. There will be a planted buffer, 30 feet wide, along the property borders that will soften the impact of the proposed development upon existing residential uses.

20. There is no stormwater management on the Subject Property presently and Glitzer indicates that a stormwater management facility to accommodate the development will be designed and constructed in accordance with applicable governmental regulations.

21. Three residential neighbors testified at this hearing with interest in the types of materials to be employed, as well as the size and potential market price for the proposed unit. None of them expressed any opposition to the Applicant's request for zoning relief.

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

CONCLUSIONS OF LAW

1. The Subject Property has been developed as a single-family residence which is permitted by right in the R-1 Zoning District in which it is located.

2. The Subject Property contains an historic structure that has been included on the Doylestown Township list of historic resources. That structure, and existing outbuildings, are to be maintained and improved for sale as a single-family residence.

3. The development of the Subject Property as a Use B-15, "single-family attached dwelling units in conjunction with use of historic districts", is permitted in the R-1 District upon conditional use approval from the Doylestown Township Board of Supervisors.

4. The Board concludes that the Subject Property was originally 11.347 acres in size.

5. As a result of the adjacent construction and development of the Route 202 Parkway, the Commonwealth of Pennsylvania condemned a portion of that property, approximately 2.598 acres in size, reducing it to its existing 8.917 acres.

6. The Board concludes that the condemnation of a portion of the property was a situation not created by the Applicant nor preventable.

7. The condemnation, the Board concludes, reduced the minimum site area below the required 10 acres for the development of a B-15 Use as required by §175-16.B-15.g.5.

8. That reduction in size created a hardship on the Subject Property which prevented its development as permitted.

9. The density of dwelling units proposed is consistent with Ordinance requirements.

10. The dimensional variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located nor substantially or permanently impair the appropriate use or development of adjacent property, nor is it detrimental to the public welfare.

11. 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.

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

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

14. The Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variance requested.

15. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to grant relief to the Applicant and the Subject Property as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS a variance from §175-16.B.15.g.5 of the Doylestown Township Zoning Ordinance in order to permit the development of a B-15 Use, i.e., “single-family attached dwelling units in conjunction with use of a historic structure” substantially as depicted on Exhibit B-1.C, the Sketch Plan prepared by Gilmore & Associates, Inc., dated June 23, 2017, as may be modified by the Board of Supervisors during the conditional use approval hearing and/or land development, on the Subject Property which contains less than the required 10 acres of gross site area.

The relief herein granted is subject to compliance with all other applicable governmental ordinances and regulations and the following specific conditions:

- 1. Receipt of conditional use approval for the development from the Doylestown Township Board of Supervisors; and
- 2. Receipt of final land development approval.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

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

/s/ Richard K. Gaver
Richard K. Gaver, Vice Chairman

/s/ Mitchell Aglow
Mitchell Aglow, 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.