

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

**Application No.** Z-12-2018

**Applicant:** Thomas Bolger  
155 Mickley Road  
Whitehall, PA 18052

**Owner:** John H. Thompson  
c/o Thompson Lexis  
50 W. Swamp Road  
Doylestown, PA 18901

**Subject  
Property:** Tax Parcel No. 09-011-048 which is located at 620 N. Main  
Street, Doylestown, PA 18901.

**Requested  
Relief:** Applicant seeks to use a portion of the property as a Domino's  
Store, and requests a variance from §175-16.E-5 of the  
Doylestown Township Zoning Ordinance ("Ordinance") to allow  
a Use E-5 Eating Place within the C-1, Commercial Zoning  
District.

**Hearing  
History:** The application was filed in Doylestown Township on September  
24, 2018. The hearing was held on November 19, 2018 at the  
Doylestown Township Building, 425 Wells Road, Doylestown,  
PA 18901.

**Appearances:** Applicant, Pro Se'

**Mailing Date:** December 21, 2018

## 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 Lessee of a portion of the Subject Property and therefore possessed of the requisite standing to make application to this Board. The Owner of the property, John H. Thompson, was present and did speak during the hearing.

3. The Subject Property is located within the C-1, Commercial Zoning District of Doylestown Township. The leased space within the multi-tenant building, to be dedicated to the proposed use, is on the order of 1,731 square feet.

4. Domino's franchisee, Thomas Bolger, testified in support of the application. Mr. Bolger indicates that he operates 10 Domino's Pizza franchises. One of the local Domino's franchises, located at 3752 Old Easton Road, is to be closed. Domino's has offered Mr. Bolger the opportunity to open a franchise within that franchise district. Mr. Bolger has identified the Subject Property as a favorable location.

Due to the franchisor model, seating is required within the customarily takeout service establishments provided by Domino's. Mr. Bolger anticipates that 65% of the Domino's business from the proposed location will be delivery and 35% will be takeout. There will be room for instore seating for 8 patrons at the proposed location.

5. Mr. Bolger indicated that the demand for parking at his current Buckingham Dominos' franchise is 6 spaces, including employees. He characterized the parking at the Subject Property as "considerably more". Mr. Bolger anticipates no shortage of parking on location.

6. Property Owner John H. Thompson testified regarding the present use of the property and parking thereon. Mr. Thompson indicated that the property supports a multi-tenant building and includes 19 parking spaces on-site which are shared by various tenants. Mr. Thompson anticipated no shortage of parking with the addition of the Domino's Pizza use. Further, Mr. Thompson is aware that the Applicant needs to establish adequate parking during the use and occupancy permitting process.

7. Sinclair Salisbury, Director of Code Enforcement for Doylestown Township, testified that he is familiar with the property at issue and the various uses therein, and indicates that parking appears adequate.

8. No one spoke in opposition to the application.

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

## **CONCLUSIONS OF LAW**

1. The Subject Property is being lawfully used as a multi-tenant commercial space, which is permitted within the C-1, Commercial Zoning District of Doylestown Township.

2. Applicant seeks to place a Domino's Pizza franchise in the multi-tenant space. The Domino's franchise is characterized as a Use E-5, Eating Place. E-5, Eating Places are not permitted by right within the C-1, Commercial Zoning District. Accordingly, Applicant seeks a variance from §175-16.E-5.

3. The credible evidence establishes that use of a portion of the Subject Property as the E-5 Eating Place described by the Applicant, in the nature of a Domino's franchise location, is both reasonable and logical in its placement.

4. 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.

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

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

7. The Applicant has presented evidence of sufficient factors to warrant the grant of the use variance requested.

8. Accordingly, the Doylestown Township Zoning Hearing Board determined, by a 2-0 vote<sup>1</sup>, to grant relief to the Applicant and the Subject Property as is set forth hereafter.

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<sup>1</sup> William Lahr, Board Chairman, recused himself from participation.

**ORDER**

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS a variance from §175-16.E-5 of the Doylestown Township Zoning Ordinance to permit use of a portion of the property for an E-5 Eating Place as described by the Applicant.

The relief herein granted is subject to compliance with all other applicable governmental ordinances and regulations including satisfying the Director of Code Enforcement that adequate parking exists onsite for the combined uses, as part of the use and occupancy permitting process.

**ZONING HEARING BOARD OF  
DOYLESTOWN TOWNSHIP**

**By:** /s/ Mitchell Aglow  
Mitchell Aglow, Secretary

/s/ Samuel Costanzo  
Samuel Costanzo

***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-11-2018

**Applicant:** Deborah Fox  
110 Cherry Lane  
Doylestown, PA 18901

**Owners:** Kenneth and Deborah Fox  
110 Cherry Lane  
Doylestown, PA 18901

**Subject  
Property:** Tax Parcel No. 09-032-062 which is located at the address of the Applicant set forth above.

**Requested  
Relief:** Applicant appeals an enforcement notice dated January 24, 2018, identifying, among other things, an impervious surface coverage violation due to impervious surface coverage of 31.4%. Applicant also seeks a variance from §175-38 of the Doylestown Township Zoning Ordinance (“Ordinance”) to allow impervious surface coverage in excess of the 20% allowed to accommodate existing improvements to the property, including building additions, a driveway, and several paver patios.<sup>1</sup>

**Hearing  
History:** The application was filed in Doylestown Township on August 17, 2018. The first hearing was held on September 17, 2018. That hearing was continued at the request of the Applicant as Applicant was developing a plan to address the impervious surface coverage issues. A second hearing was held on October 25, 2018. That hearing was continued for the same reason. A final hearing was held November 19, 2018 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

**Appearances:** Applicant by: G. Michael Carr, Esq.  
Eastburn and Gray, PC  
60 East Court Street  
PO Box 1389  
Doylestown, PA 18901

**Mailing Date:** December 21, 2018

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<sup>1</sup> On November 19, 2018, in conjunction with the final hearing in this matter, Doylestown Township withdrew the enforcement notice given efforts by the Applicant to cure the violations at issue.

## 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 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 within the R-1, Residential Zoning District of Doylestown Township. It accommodates the Applicant's single-family detached dwelling with amenities which include a driveway, porch and patios, an in-ground swimming pool with surrounding coping and paver decking, retaining walls, steps, walks, a hot tub and a shed. The gross square footage of the lot is on the order of 33,107 square feet (which includes the ultimate right-of-way). The impervious surface calculation upon filing the application was 9,757 square feet for an impervious surface coverage of 29.5%.<sup>2</sup>

4. The Applicant did present an Existing Features Plan dated March 16, 2018, last revised November 2, 2018, reflecting revised calculations after removing impervious surface. The Plan was prepared by Cavanaugh's Surveying Services and reflected a reduction in impervious surface by removing substantial areas of driveway, patios, walls, steps, walks and the hot tub. The resulting impervious surface square footage is 7,260 square feet.

5. The Applicant characterizes the 7,260 square feet as 21.9% impervious surface coverage. The Board accepts the factual determination that the impervious surface is 7,260 square feet. However, the actual amount of the net square footage of the lot has not been definitively established, due to the inclusion of the ultimate right-of-way within the lot area calculation.

6. The Board accepts that the impervious surface calculation percentage is substantially less than originally calculated in that the Applicant has reduced impervious surface by 2,497 square feet since receiving the enforcement notice.

7. The lot at issue is undersized in that the R-1, Residential District requires a 40,000 square foot minimum lot area.

8. Ms. Fox did testify as to her initial lack of knowledge regarding permitting and impervious surface limitations due to the division of responsibility

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<sup>2</sup> As discussed during the hearing, the Ordinance requires lot area calculation to exclude ultimate right-of-way and any easements (see §175-9 defining "lot" and "lot area, minimum" and "right-of-way", which includes "ultimate right-of-way".) Accordingly, the square footage of the lot has been overstated by the Applicant. Removing the ultimate right-of-way from the area calculation brings the impervious surface calculation substantially closer to the 31.4% identified by the Township in the enforcement notice filed and marked as part of the record as advertised.

within her household. Circumstances dictate that she is responsible for selling the home, and as part of that process, she began her education on those issues.

9. Ms. Fox reviewed a number of photographs presented during the November 19, 2018 hearing. She testified to substantial portions of the u-shaped driveway being removed, multiple paver patios removed, a freestanding hot tub, steps and a stone retaining wall removed. Ms. Fox underscored that the remaining impervious surface coverage is essential to the use and saleability of the home, especially in light of the rear yard amenities including the in-ground swimming pool.

10. Ms. Fox's testimony and the photographs presented are consistent with the Existing Features Plan presented by the Applicant.

11. During the initial hearing held, on September 17, 2018, multiple adjacent and nearby property owners appeared interested in the matter advertised. During the third hearing held, November 19, 2018, no one spoke in opposition to the application.

12. Doylestown Township initially took a position with regard to enforcing the January 24, 2018 enforcement notice and the Applicant's variance request. Following the Applicant's obvious effort to bring the property into compliance, the Township withdrew its opposition to the variance request and determined not to pursue the enforcement notice.

### **CONCLUSIONS OF LAW**

1. The use of the Subject Property as a single-family detached home is permitted by right within the R-1, Residential Zoning District of Doylestown Township.

2. The Subject Property is legally nonconforming as to lot area.

3. The Subject Property is not legally nonconforming as to excess impervious surface coverage.

4. The Applicant received an enforcement notice dated January 24, 2018 indicating that impervious coverage on the lot exceeded the 20% allowable in that impervious surface was measured at 31.4%. Applicant appealed that enforcement notice.

5. Applicant requested a variance from §175-38 to allow impervious surface coverage on the Subject Property at greater than the 20% allowable to accommodate the existing residential amenities. (see §175-9 defining "lot" and "lot area, minimum" and "right-of-way", which includes "ultimate right-of-way"). Doylestown Township opposed that request.

6. The credible evidence establishes that the Applicant has reduced impervious surface coverage on the Subject Property from an initial 9,757 square feet to an existing 7,260 square feet.

7. Using the Applicant's lot area calculation of 33,107 square feet, the Applicant has reduced impervious surface from 29.5% to 21.9%. The Board rejects the Applicant's calculation of square footage as overstated (as a percentage of lot area) in that the Ordinance requires measurement of the lot area excluding ultimate right-of-way. Applicant's calculations include ultimate right-of-way. While Applicant argues that the ultimate right-of-way is of no consequence from a practical standpoint, the Board is constrained by the terms of the Ordinance. Accordingly, the Board views the variance request in terms of square footage and utilizes the percentage as a range check.

8. Immediately prior to the hearing, and after the Applicant had reduced the impervious surface coverage by the 2,497 square feet, Doylestown Township withdrew the enforcement notice. The variance request remains.

9. The credible evidence has established that, by reducing the impervious surface coverage on-site by 2,497 square feet leaving 7,260 square feet of impervious surface, the amenities left on-site are reasonable and logical for the use of the single-family dwelling. In light of the undersized lot, the Board is mindful that the Applicant did make considerable effort to reduce the impervious surface coverage on-site.

10. 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. The Board is mindful that the Applicant testified to no known stormwater issues on-site or in the immediate area .

11. The evidence establishes that the relief sought by the Applicant is the minimum variance necessary. Notably, the Board is impressed that the Applicant did remove the 2,497 square feet of impervious surface, but emphasized that the remaining impervious surface was necessary to retain the residential recreational use of the rear yard.

12. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located. The Board is mindful that the neighborhood is residential in character and Applicant has underscored the family friendly residential amenities to this property

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

14. Accordingly, the Doylestown Township Zoning Hearing Board determined, by a 3-0 vote, 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 §175-38 of the Doylestown Township Zoning Ordinance in order to allow impervious surface coverage greater than 20% to accommodate the impervious surface features remaining on the Subject Property as depicted in the Existing Features Plan submitted during the hearing held November 19, 2018 (Cavanaugh's Surveying Services, last revised November 2, 2018). Specifically, the Applicant is permitted to retain 7,260 square feet of impervious surface on the lot. The 7,260 square feet of impervious does exceed the 20% allowable.

The relief herein granted is subject to compliance 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, Secretary

/s/ Samuel Costanzo  
Samuel Costanzo

***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.