

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

Applicants: Bradley K. and Barbara G. Seiden
132 Steeplechase Drive
Doylestown, PA 18901

Owners: Same.

Application No. Z-13-2018

Subject Property: Tax Parcel No. 09-062-040 which is located at the address of the Applicants set forth above.

Requested Relief: Applicants seek a special exception under §175-37.B of the Doylestown Township Zoning Ordinance (“Ordinance”) to permit a H-1 Home Based business to operate from the Subject Property. In addition, the Applicants appeal a determination of the Zoning Officer finding the property Owners in violation of the Ordinance for failure to obtain the special exception.

Hearing History: The application was filed in Doylestown Township on March 20, 2019. The hearing was held on June 17, 2019 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.¹

Appearances: Applicants by: Kellie A. McGowan, Esq.
Eastburn and Gray, PC
60 East Court Street
P.O. Box 1389
Doylestown, PA 18901

Township by: Michael J. Meginniss, Esq.
Begley, Carlin & Mandio, LLP
680 Middletown Boulevard
Langhorne, PA 19047

¹ Applicants submitted waivers of the Municipalities Planning Code hearing provisions. The waivers were admitted into evidence.

Joseph Giedgowd Pro Se'
133 Steeplechase Drive
Doylestown, PA 18901

Mailing Date: August 1, 2019

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 property is 0.272 acres in size and accommodates the Applicants' single-family detached dwelling, driveway and related improvements.

4. On October 22, 2018, Doylestown Township issued an Enforcement Notice indicating that the Owners of the Subject Property were "Operating an H1 Home Based Business, **KICKSMART** (sic), from an R1 residential property, without Zoning Hearing Board approval. Twp. Code Section 175-37 B H-1. Tax Parcel: 09-062-040". The Enforcement Notice continued that a use under Section 175-37 B H-1 requires a special exception to operate lawfully.

5. Applicants timely appealed the Enforcement Notice and, in the alternative, requested a special exception under §175-37.B.H-1 to allow the use.

6. Mrs. Barbara Seiden described the genesis of the home-based business as follows:

- a. Mrs. Seiden started a business providing swim lessons to children of special needs. At the outset, she used hotel pools for the lessons. The hotels terminated the relationship due to liability issues.
- b. Mrs. Seiden therefore installed an "endless pool" in her garage. The endless pool supports the business as Mrs. Seiden looked for a new location.

- c. The endless pool arrangement worked well for the business. Nonetheless, Mrs. Seiden found a location on Broad Street in Doylestown, but that location proved to be cost prohibitive.
- d. Mrs. Seiden has since found yet another new location located on Route 313. The lease for the new location is effective October 1, 2019. With the new location, the use of the endless pool can be reduced as the new location increases in use.
- e. Despite the proposed new location, Mrs. Seiden prefers not to abandon the garage use in that the use provides less distraction and an environment more easily controlled for people with special needs.
- f. Mrs. Seiden does carry certain certifications, including adaptive swim instruction. She teaches swimming at the Fanny Chapman pool, and has a passion for swimming and teaching swimming.

7. Doylestown Township Zoning Ordinance defines an H-1 home-based business, at §175-37.B.H-1. The H-1 home-based business is distinguished from an H-2 no-impact home-based business, in significant part, in that the H-1 anticipates client visits to the property, where H-2 does not. The specific requirements for an H-1 home-based business under the Ordinance follow:

- (1) H-1 Home-based business: a business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling and which involves some customer, client or patient traffic, whether vehicular or pedestrian, pickup, meeting location, delivery or removal functions to or from the premises in excess of those normally associated with a residential use. The business or commercial activity must satisfy the following requirements:
[Amended 6-1-1993 by Ord. No. 227; 6-26-2001 by Ord. No. 301; 11-18-2008 by Ord. No. 345]
 - (a) The home-based business shall be accessory to a residence and carried on wholly indoors and within a dwelling or other structure accessory thereto and shall be clearly incidental and subordinate to its use for residential purposes by its occupants.
 - (b) The business activity shall be compatible with the residential use of the property and surrounding residential uses and shall meet the minimum and maximum area, height and dimensional requirements of the district in which the use is located.
 - (c) Such use shall be limited to single-family detached dwellings.
 - (d) There shall be no use of show windows, display or advertising visible outside the premises, except as provided for signs herein.
 - (e) There shall be no exterior storage of material or building material.

- (f) There shall be no parking of commercial vehicles, except that parking of not more than one commercial vehicle exceeding a one-ton loading capacity and with no more than two axles or four wheels, whichever is less, including any construction or landscaping vehicles and trailers used for their transportation (i.e., front-end loaders, cranes, cement mixers, riding lawn mowers, etc.) shall be permitted only within a completely enclosed building.
- (g) The appearance of the residential structure shall not be altered or the home-based business within the residence be conducted in a manner which would cause the premises to differ from the residential character by the use of colors, materials, construction, lighting, show windows or advertising visible on the premises to attract customers or clients, other than an identification sign not exceeding two square feet, notwithstanding any other provisions of this chapter.
- (h) A sign displaying the name and address of the home-based business may be permitted, subject to the following requirements: no more than one such sign shall be erected on the lot; the area of the sign shall not exceed two square feet in size; and the sign shall be either fixed flat on the main wall of the building or may be erected in the front yard, but not within 10 feet of the cartway.
- (i) No articles shall be sold or offered for sale except such as may be produced on the premises.
- (j) There shall be no stockpiling, storage or inventory of products of a substantial nature.
- (k) There shall be no commodities sold or services rendered that require receipt or delivery of merchandise, goods or equipment by other than passenger motor vehicle or by parcel or letter carrier mail service using vehicles typically employed in residential deliveries.
- (l) The home-based business shall be carried on only by inhabitants of the dwelling and not more than two additional employees.
- (m) The floor area devoted to a home-based business shall not occupy more than 25% of the ground floor of the principal residential structure or 500 square feet, whichever is less; all portions of the floor area to be used for the home-based business shall be accessible to employees and clients without having to enter or walk through the areas of the residence devoted to solely residential use, and all areas to be used for employees and client visits shall be in one location and not separated by rooms or hallways which are used for residential purposes.
- (n) No equipment or process shall be used in a home-based business which creates discernible noise, vibration, glare, fumes, odors or electrical interference at the property line, and no equipment or process shall be used which creates visual or audible interference in any radio or television receiver off the lot or causes fluctuations in line voltage off the lot.

- (o) No manufacturing, repairing or other mechanical work shall be performed in any open area. All such activities shall be conducted in such a manner that they are not detectable or noticeable at or beyond the property line.
- (p) The business activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use in the neighborhood.
- (q) The maximum number of off-street parking spaces shall be limited to six parking spaces, which shall not include any garage spaces and shall be designed to comply with the appropriate provisions of Article V of this chapter.
- (r) No more than one home-based business shall be permitted per residential dwelling.
- (s) The hours of operation shall be limited to Monday through Saturday, and activities shall occur between the hours of 8:00 a.m. to 9:00 p.m.
- (t) Parking spaces required by the home-based business in addition to those required for the residential use must be located to the side or to the rear of the principal residence and must be separated from adjoining properties by a ten-foot-wide planted buffer.
- (u) The business may not involve any illegal activity.

8. The Applicants have offered testimony consistent with the specific terms of the H-1 Use including: no additions, there are no signs advertising the use, there is no exterior storage, there is no parking of commercial vehicles, no items are sold, no products are stockpiled, there are no commodities or deliveries of merchandise or goods.

9. In the past, the Applicants have had two employees, but have agreed to limit the use of instructors to only habitants of the dwelling.

10. The Applicants have agreed to assure that there is no equipment or process creating a discernable noise, vibration, glare, fumes or odor.

11. The Applicants have demonstrated a minimum of three off-street parking spaces.

12. Despite the Ordinance allowing the business activity to carry on from 8:00 AM until 9:00 PM, the Applicants have agreed to limit the hours of operation from Monday through Saturday, 8:00 AM to 7:00 PM.

13. The Applicants have done noise testing and have concluded that the motor for the endless pool produces approximately 60 decibels at the property line. Accordingly, they consider the use compliant with the noise provisions of the Ordinance.

14. Applicants have indicated that the business has been very successful, which is one of the reasons Applicants sought to find the off-premises location. Since

receiving the October 22, 2018 Enforcement Notice, Applicants have reduced the scope of the use and have agreed to certain conditions requested by Doylestown Township. Accordingly, the Applicants consider the use consistent with the neighborhood.

15. Multiple residents spoke during the public comment section of the hearing. A summary of the comments follows:

- a. John Sweet, 122 Steeplechase Drive, Doylestown, believes the business has outgrown the property and as a result, has brought considerable traffic to the neighborhood. Mr. Sweet also observes what he considers loitering and lingering. Mr. Sweet finds that the business use has negatively affected the quiet neighborhood.
- b. Meghan Burkins, 3320 Lancashire Road, Doylestown, is a customer of KICKSTART. She considers the KICKSTART program successful for young swimmers. In arriving or leaving from the Seiden residence, she found the neighborhood and use to be quiet.
- c. Roseann Price, 463 Tally Ho Way, Doylestown, lives in the neighborhood. Runs and walks in the neighborhood for exercise. Ms. Price is not concerned with the traffic and finds the home-based business a positive influence in filling a need.
- d. Laura Chinofsky, 7 Maple Lane, North Wales, is a client of KICKSTART, she provided a positive testimonial and indicated that when she drops off or picks up from KICKSTART at 6:30 PM, the neighborhood and use is quiet.
- e. Bob Scarazzo, 21 Steeplechase Drive, Doylestown, lives two miles away, but is in the neighborhood, observed that while in the neighborhood he was not aware that the business was being operated.
- f. Kristin Henderson, 272 Fox Chase Lane, Doylestown, is supportive of the use and the business.
- g. Randall Henderson, 272 Fox Chase Lane, Doylestown, indicated that he visits the neighborhood and drives by the Seiden's four times each day as well as riding his bicycle by the house and sees no disruption caused by the home-based business.
- h. Yea Shun Cheng, 130 Steeplechase Drive, Doylestown, lives directly next door. Ms. Cheng indicated that the Seidens are wonderful neighbors and the use was not disruptive, but has now become too intense. She has observed that traffic has increased. Ms. Cheng did concede that after the Enforcement Notice was issued, there has been improvement in the use.

- i. Mr. Bud Hutchinson, 180 Queensbury Place, Doylestown, offered supportive comments for the home-based business and its success for its students.
- j. Amy Mazzanti, 142 Hart Avenue, lives in the immediate area. Ms. Mazzanti has not seen an increase in traffic. She walks in the neighborhood. She does not believe that the use negatively affects the neighborhood. She does not believe that the home-based business adds any additional traffic to the neighborhood.
- k. Gloria Shotz, 37 Doyle Street, Doylestown, offered supportive comments for the home-based business.
- l. Loretta Benotto, 256 Fox Chase Lane, Doylestown, offered comment that the home-based business is not appropriate for the neighborhood in that it is not truly residential.
- m. Mr. Robert Mitchell, 51 Steeplechase Drive, Doylestown, offered inquiry into the home-based business standard and the Township's legislative permission by way of making a home-based H-1 business a permitted use by special exception.
- n. Meredith Goldstein, 3764 Swetland Drive, Doylestown, offered favorable comments for the home-based business and its effectiveness for its students.
- o. Andrea Hanna, 4574 Summer Hill Drive, Doylestown, offered favorable comments for the home-based business and its effectiveness for its students.
- p. Katie McCollum, 214 Stags Leap Circle, Doylestown, lives in the neighborhood and supports the use.

16. Doylestown Township took no position with regard to the request for special exception, but did request certain conditions in the event that the special exception was granted.

CONCLUSIONS OF LAW

1. The Subject Property has been developed and used as is permitted by right in the R-1 Zoning District.

2. The Applicants have demonstrated compliance with each of the elements of the H-1 home-based business requirements. Accordingly, the Zoning Hearing Board concludes that the use described is in fact a residential accessory use in the nature of an H-1 home-based business.

3. The Zoning Hearing Board acknowledges that the Township of Doylestown has legislatively allowed certain commercial activity administered from residential properties where the commercial activity is accessory and secondary to the residential dwelling use. That H-1 use includes some customer or client traffic. The use is permitted under the Ordinance pursuant to the special exception process and standard.

4. In response to complaints and observations by neighboring property owners, the Zoning Hearing Board has imposed conditions on the request for relief in order to mitigate the impact of the use.

5. Applicants have agreed to those conditions. Further, by Applicants' testimony, Applicants voluntarily reduced the intensity of the home-based business by leasing space off-site to provide for the primary business use, retaining the home-based business as a secondary or special circumstance location, consistent with the present decision.

6. The Applicants have agreed to the validity of the Enforcement Notice.

7. 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 AFFIRMS the Enforcement Notice and GRANTS a special exception under §175-37.B of the Doylestown Township Zoning Ordinance to permit a H-1 Home Based business to operate from the Subject Property.

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

1. After 30 days from the date of this decision, the Home Based business shall have no employees except for family holding lessons at the premises;
2. The use shall have no adverse impact with respect to noise;
3. The garage door shall be closed at all times during lessons;
4. The business use shall have only one customer on the premises at one time;
5. The hours of operation shall be limited to 8:00 AM to 7:00 PM, Monday through Saturday; and
6. No greater than two clients within one hour.

**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

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-8-2019

Applicants: Anthony C. and Christa R. Peressini
21 Greenway Drive
Doylestown, PA 18901

Owners: Same.

**Subject
Property:** Tax Parcel No. 09-004-083-011 which is located at the address of
the Applicants set forth above.

**Requested
Relief:** Applicants seek to construct a fence in the rear yard of the
Subject Property. A 20-foot wide Storm Sewer Drainage
Easement in favor of Doylestown Township exists in the rear
yard. Applicants request a variance from §175-16.H-3.c.3 of the
Doylestown Zoning Ordinance (“Ordinance”) to permit a fence to
be located within that existing public easement.¹

**Hearing
History:** The application was filed in Doylestown Township on March 20,
2019. The hearing was held on June 17, 2019 at the Doylestown
Township Building, 425 Wells Road, Doylestown, PA 18901.²

Appearances: Applicants by: Kellie A. McGowan, Esq.
Eastburn and Gray, PC
60 East Court Street
P.O. Box 1389
Doylestown, PA 18901

Mailing Date: August 1, 2019

¹ In a letter dated June 4, 2019, the Applicants reduced the request for relief. The encroachment requested was initially 17 feet and was revised to a 12 foot encroachment, and further agreed to install a gate at a location in the rear of the property providing full access to the easement area by the Township.

² Applicants submitted waivers of the Municipalities Planning Code hearing provisions. The waivers were admitted into evidence.

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. The Applicants purchased the property in May 2018.
3. The Subject Property is located in the R2B, Residential Zoning District of Doylestown Township. The property is 13,848 square feet and accommodates the Applicants' single-family detached dwelling, driveway and related improvements.
4. The Site Plan offered into evidence as Exhibit C-6 shows a stormwater easement along the side lot line of the Subject Property. Applicants initially intended to construct a fence encroaching 17 feet into the stormwater easement. Prior to the hearing, Applicants proposed to bring the fence closer to the home, and away from the side lot line, thereby reducing the encroachment from 17 feet to 12 feet into the stormwater easement.
5. The Subject Property is a quarter acre lot. The fence is for safety and security. The home ownership association for the area requires black aluminum fencing. Applicants are making every effort to appropriately fence the yard, while accommodating the existing stormwater easements which run along the rear and side of the property.
6. Applicants have agreed to certain conditions mitigating the impact of fencing the residential property on any easement areas.
7. No one spoke in opposition to the application.
8. Doylestown Township took no position with regard to this application.

CONCLUSIONS OF LAW

1. The Subject Property has been developed and used as is permitted by right in the R2B Zoning District.
2. Applicants propose to install a 4 foot aluminum 3 channel fence in the rear yard. A stormwater easement runs along the side and rear yards.
3. Ordinance §175-16.H-3.c.3 prohibits fences within the easement area. Applicants seek a variance to place the fence 12 feet into the easement area along the side lot line.
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. The Applicants agree to certain conditions which minimize any impacts to the Township's maintenance of the stormwater system within the easement area.
5. The evidence establishes that the relief sought by the Applicants is the minimum variance necessary. The Board is mindful that the Applicants have reduced their request for relief thereby mitigating the request.
6. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located. Fences are permitted within the rear yards in the R2B Zoning District and within the homeownership association at issue. Applicants are complying with the homeownership association rules with regard to the nature of the fence, which serves as an indication that the application is consistent with the character of the neighborhood.
7. The Applicants have presented evidence of sufficient factors to warrant the grant of the dimensional variance requested.
8. Accordingly, the Doylestown Township Zoning Hearing Board determined, by a 2-0-1 vote, to grant relief to the Applicants and the Subject Property as is set forth hereafter.³

³ Board Member Samuel Costanzo abstained from voting on the decision.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS a variance from §175-16.H-3.c.3 of the Doylestown Township Zoning Ordinance in order to permit a fence to be located within an existing public easement consistent with Exhibit C-6, the amended fence plan, which is attached hereto and incorporated by reference.

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

1. The Applicants/Owners are required to remove any portion of the fence, if necessary, for maintenance and repairs of the storm sewer system located within the easement on the property; and
2. Applicants/Owners are to install a gate at a location to the rear of the property providing full access for Doylestown Township to the easement area.

**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 - ABSTAINED
Samuel Costanzo, 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.