

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

Application No. Z-13-2019

Applicant: Katharine Weeder, Esq.
129 Watercrest Drive
Doylestown, PA 18901

Owner: Same.

Subject Property: Tax Parcel No. 09-022-079-014 which is located at the address of the Applicant set forth above.

Requested Relief: Applicant seeks to house one (1) horse and one (1) miniature horse, on the subject property, for two (2) weeks in June and two (2) weeks in October, annually. Applicant proposes to house the horses in a 12' x 24' shed with an adjoining fenced area. Applicant seeks a variance from Doylestown Township Zoning Ordinance (“Ordinance”) §175-37.A.H-11 and §175-16.H(11), use H-11, to allow the use, with two (2) horses, on a lot less than five (5) acres in size, and to allow the accessory structure for the horses to be located closer than 100 feet from one of the property lines.

Hearing History: The application was filed in Doylestown Township on July 16, 2019. Hearings were held on August 22, 2019, September 16, 2019, October 21, 2019, and November 18, 2019 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.¹

Appearances: Applicant by: Pro Se'

Doylestown Township by: Bryce McGuigan, Esquire
Begley, Carlin & Mandio, LLP
680 Middletown Boulevard
P.O. Box 308
Langhorne, PA 19047-0308

¹ During the October 21, 2019 hearing held, Applicant requested to amend the application to include “...a variance from Doylestown Township Zoning Ordinance §175-16(A)(1)(a) and §175-16(A)(1)(c)(1) in addition to other sections already mentioned...”.

Paul Kopperman by: Pro Se'
32 Pine Wood Drive
Doylestown, PA 18901

Nancy Taylor by: Pro Se'
48 Pine Wood Drive
Doylestown, PA 18901

Linda Gallagher by: Pro Se'
40 Pine Wood Drive
Doylestown, PA 18901

Stephen Houk by: Pro Se'
24 Pine Wood Drive
Doylestown, PA 18901

John Oschsenreither by: Pro Se'
137 Water Crest Drive
Doylestown, PA 18901

Richard Ziegler by: Pro Se'
46 Sherwood Lane
Doylestown, PA 18901

Mailing Date: December 5, 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 hearings held on:

- a. August 22, 2019: hearing, evidence presented, matter continued.
- b. September 16, 2019: site visit, hearing, evidence presented, matter continued.
- c. October 21, 2019: hearing, evidence presented, record closed.
- d. November 18, 2019: verbal decision rendered publicly, written decision to follow 45 days from October 21, 2019 (12-5-19).

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 following exhibits were presented during the hearings held:

ZHB Exhibits:

- ZHB-1: Application dated June 22, 2019 received July 16, 2019 with attachments including an Addendum for Relief, site plans dated December 22, 2009 and March 3, 2010; two photographs.
- ZHB-2: Proof of publication of notice of 8/22/19 hearing.
- ZHB-3: Proof of mailing.
- ZHB-4: Proof of posting.
- ZHB-5: Doylestown Township Zoning Ordinance.
- ZHB-6: Attachment No. 2/Amendment to the Zoning Application.
- ZHB-7: Collection of emails in favor of and in opposition to Applicant's request for relief.
- ZHB-8: List of attendees at September 16, 2019 site visit.
- ZHB-9: Additional email.

Applicant Exhibits:

- A-1 – A-10: Photographs of subject site and miniature horse Cheyenne and Cello.
- A-11: Amendment to the application for zoning relief (reducing the scope of the relief requested to two mini horses for two weeks in June and two weeks in October only).
- A-12: Site plan dated February 3, 2010 with annotations reflecting the miniature barn, shed and paddocks.
- A-13: Memorandum of Law.
- A-14: Kohl v. New Sewickley Township Zoning Hearing Board (Commonwealth Court)
- A-15: Kohl v. New Sewickley Township Zoning Hearing Board (Court of Common Pleas)
- A-16: September 14, 2019 report – Toby Kessler, Gilmore & Associates, Inc.

- A-17: *Curriculum Vitae*, Toby Kessler, P.G.
- A-18: *Curriculum Vitae*, Eric Clase, P.E.
- A-19: Memorandum in Response to October 17, 2019 Township Position Letter.

Township Exhibit:

- T-1: Written argument, dated October 17, 2019, in opposition to the application.

Protestant Exhibit:

- P-1: Written statement in opposition to application (public comment).

4. The Subject Property is located in the R-1, Residential Zoning District of Doylestown Township. It accommodates the Applicant's single-family detached dwelling.

5. Applicant seeks to keep two horses on a 2.37 acre residential lot two weeks at a time two times per year (June and October).

6. During the course of testimony, the Applicant amended the requested relief to allow two miniature horses instead of the initially requested full size plus one mini. Applicant has represented that miniature horses are no greater than 38 inches in height. Applicant further represented that two horses were required because of "bonding". Applicant further represented that the horses would be used as therapy horses.

7. The keeping of livestock is not permitted within the R-1, Residential Zoning District of Doylestown Township on properties less than 5 acres. Applicant requests a variance from §175-37.A.H-11 to allow the use.

8. "Livestock" is a defined term within the Doylestown Township Zoning Ordinance, at §175-9, as follows:

Includes all cattle, horses, ponies, donkeys, mules, hogs, sheep, goats, rabbits, hares, poultry and any other similar creature raised for human use or profit, but shall not include dogs, cats or similar creatures customarily kept as household pets.

9. The specific horses in question are Cheyenne (31.2 inches tall) and Cello (36 inches tall). Eventually, Applicant would work in a third horse, presumably two on the property at one time. The horses are being trained for nursing home care. The training includes "socializing" by bringing the therapy horses to different locations.

Applicant invited the neighbors to participate in the socializing aspect by visiting Cheyenne and Cello.

10. Applicant suggested conditions on the grant of relief including allowing the use only four weeks per year and granting Doylestown Township Officials site visit privileges to inspect the use.

11. With regard to physically accommodating the use, Applicant has placed a small barn in the center of the “rear” yard. The Applicant explained how the animal waste would be handled and illustrated the proposed paddock or exercise area immediately adjacent to the barn for the horses’ outdoor exercise.

12. The barn, referred to by the Applicant as a “shed”, is 86 feet from one of the adjacent properties. The Doylestown Township Zoning Ordinance requires that the structure be located no closer than 100 feet from the property lines. Applicant seeks a variance accordingly.

13. Public comment included questions regarding difficulty in policing the proposed conditions; whether the keeping of horses, even mini horses, was appropriate in a neighborhood environment. Neighboring property owners also questioned environmental safety issues including waste runoff, smell, potential flies and rodents.

14. Applicant addressed each of the concerns.

15. Applicant conceded that the Subject Property does not carry a hardship related to the physical features of the property. The property has been used as the Weeder home for 19 years. Should the relief not be granted, the property may continue to be used as a single-family residential dwelling.

16. Ms. Weeder was not aware of any other livestock kept in the neighborhood.

17. On September 16, 2019, the parties participated in a site visit at the Weeder home and did walk the property and view adjacent properties from the shed location.

18. Applicant presented testimony from Mr. Toby Kessler, P.G. (Professional Geologist). In summary, Mr. Kessler opined that the keeping of two horses as proposed by the Applicant would have no negative impact on water quality (in relation to comments regarding runoff and potential well water contamination). Mr. Kessler offered no opinion regarding air quality and odors.

19. Applicant presented the testimony of Eric Clase, P.E., Gilmore & Associates. Mr. Clase offered opinions regarding environmental issues. In part, Mr. Clase testified that placing a stand of Spruce trees would absorb a considerable amount of stormwater and that the additional trees with the existing trees, along with the topography onsite, would hold urine or feces from running off the Subject Property, onto neighboring properties. Mr. Clase also commented that the proximity between septic systems on adjacent properties and the horse paddock does not pose a health or

safety issue in that typical minimum separation distance between septic systems and wells is 100 feet.

20. Multiple nearby property owners testified. The testimony focused on several themes. Among them, neighbors believe that horses in the neighborhood would reduce the value of their homes. Similarly, multiple neighbors indicated that they would have not made improvements to their homes had they known that horses would be permitted in the residential neighborhood.

21. Adjacent property owners emphasized the lack of a hardship to justify the request for relief and the challenge in enforcing the conditions offered by the Applicant. Additionally, neighbors were not convinced of the lack of environmental impacts.

22. One neighbor, Mr. Ed Krensel, 38 Water Crest Drive, was not opposed to the use. He indicated that in the 25 years of living in the neighborhood, he has seen four horses kept on various properties, now gone. He also characterized the miniature horses as smaller than some of the neighborhood dogs. Further, Mr. Krensel emphasized that the neighborhood is full of wildlife, which may have a greater impact than the miniature horses.

23. Applicant submitted multiple written arguments in support of granting relief. Doylestown Township submitted written legal argument in opposition.

24. Doylestown Township actively opposed the present application. Doylestown Township's opposition includes argument that Applicant has failed to satisfy the burden of granting a variance and that the Township will be unable to effectively oversee any of the conditions suggested by the Applicant.

CONCLUSIONS OF LAW

1. The Subject Property supports a single-family residential dwelling, which is permitted by right in the R-1 Zoning District.

2. Applicant seeks to keep two miniature horses on the 2.37 acre residential property, in a small shed located in the rear aspect of the residential lot. The keeping of the two horses would be limited to two weeks at a time, two times per year (June and October).

3. Applicant originally requested a variance from Doylestown Township Zoning Ordinance §175-37.A.H-11 and §175-16.H(11), use H-11, to allow the use, with two (2) horses, on a lot less than five (5) acres in size, and to allow the accessory structure for the horses to be located closer than 100 feet from one of the property lines.

4. At the final hearing held, Applicant argued that §175-16.A(1)(a) is ambiguous and that §175-16.H(11) speaks in terms of raising livestock. Ms. Weeder indicates that she is not raising livestock and therefore she is not in need of a variance.

5. The relevant Ordinance provisions follow:

§175-37 permitted uses (within the R-1 Residential Zoning District of Doylestown Township)

A building or structure may be erected or altered, to be used either in whole or in part, and a lot may be used or occupied for any of the following uses and no other, provided that such uses, buildings or structures shall comply with such regulations as yard, lot sizes, lot width, building area and heights, impervious surfaces, easements, buffer yards, off-street parking and other provisions as specified herein.

A. Uses by right. Any of the following uses shall be permitted, provided that the regulations of this chapter have been met:

...

H-11 Livestock in residential areas

§175-16.H(11) H-11. Raising of livestock. Livestock shall be permitted on residential properties in accordance with the following regulations:

[Amended 1-15-2019 by Ord. No. 394]

- (a) A minimum lot area of five acres shall be required.
- (b) No more than two animals shall be permitted for every five acres of lot area.
- (c) Accessory structures shall be located only in the side or rear yards and no closer than 100 feet from the property lines.

...

§175-9 Livestock Defined

Includes all cattle, horses, ponies, donkeys, mules, hogs, sheep, goats, rabbits, hares, poultry and any other similar creature raised for human use or profit, but shall not include dogs, cats or similar creatures customarily kept as household pets.

6. Applicant has argued that several of the terms within the Ordinance are ambiguous, and should be interpreted in favor of the Applicant. Applicant cites Kohl v. New Sewickley Township Zoning Hearing Board, 108 A.3.d. 968 (Pa.Commw.Ct.2015).

While the Zoning Hearing Board agrees with the legal premise advanced by Applicant, the Zoning Hearing Board does not consider the terms of the Ordinance ambiguous. For instance, Applicant argues that the phrase "...keeping of livestock, horses..." is ambiguous. Neither that term or that phrase are used in the Doylestown Township Zoning Ordinance and will not be addressed.

7. Applicant argues that the term “miniature horses” is not found in the Ordinance. The Zoning Hearing Board considers the definition of livestock at §175-9 free from all ambiguities and including miniature horses.

8. Applicant further argues that the term “raising of livestock” is ambiguous as applied to the Applicant in that Applicant seeks to keep the miniature horses on the property for only four weeks of the year.

9. Since the term raise is not defined within the Zoning Ordinance, the Zoning Hearing Board refers to common language and usage. The Webster’s College Dictionary, 1999, definition of raise is instructive, “7. To promote the growth or development of; grow or breed; *to raise corn*. 8. To serve in the capacity of parent to; bring up; rear; to raise children.” There is no doubt that the nurturing, socializing, and training of the miniature horses does in fact rise to level of “raising”.

10. The Zoning Hearing Board next turns its analysis to the need for variance. Applicant is unable to meet the §175-16.H(11) provisions (a), (b) or (c). The Board considers all three of the initial requirements of Use H-11 as reasonable requirements to limit the raising of livestock within residential zoning districts to properties with enough physical ground to reduce the impact on the surrounding community. Applicant is unable to meet the 5 acre requirement, and seeks to place the use on a lot less than half the required size. Applicant seeks permission to raise two animals on the undersized lot. Applicant has located the shed/barn structure closer than 100 feet from an adjacent property line.

11. The Applicant has failed to establish that the grant of the variance from any of the three provisions is justified by the physical features of the property. The use of the property to support a single-family residential dwelling will remain undisturbed should the variance relief be denied.

12. The Board concludes that the variances sought will alter the essential character of the neighborhood or district in which the Subject Property is located.

13. The lot is unusually oriented in such a fashion that it is surrounded by seven adjacent residential properties, some of which will be impacted more than others. Several of the adjacent property owners have requested and were granted party status. The Board further concludes that the relief sought by the Applicant is not the minimum variance necessary for the aforementioned reasons.

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

15. Accordingly, the Doylestown Township Zoning Hearing Board determined, by a 2-1 vote, to DENY 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 DENIES the requested variances from the Doylestown Township Zoning Ordinance §175-37.A.H-11 and §175-16.H(11), use H-11, to allow the use, with two (2) horses (or two (2) mini horses as the application has been amended), on a lot less than five (5) acres in size, and DENIES allowing the accessory structure for the horses to be located closer than 100 feet from one of the property lines.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

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

/s/ Mitchell Aglow
Mitchell Aglow, Vice Chairman

NAY /s/ Samuel Costanzo
Samuel Costanzo, Secretary

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

Application No. Z-14-2019

Applicants: John & Linda Vataha
96 Willowbrook Drive
Doylestown, PA 18901

Owners: Same.

Subject Property: Tax Parcel No. 09-014-042-013 which is located at the address of the Applicant set forth above.

Requested Relief: Applicants seek to use the Subject Property to support their 501(c)(3) non-profit organization, Mobile Minis. The Mobile Mini program utilizes eight miniature therapy horses. The activity on-site includes use of barn area for grooming, storage and stalls. Outdoor activity includes walking the horses as necessary. The barn will also be used for sessions allowing guests and volunteers to interact with the miniature horses by advance sign up only. Applicants seek either a variance from §175-32.A (use H-11) of the Doylestown Zoning Ordinance (“Ordinance”), or a special exception under §175-32.B (Use H-1), or both, to allow the proposed use. In addition, applicants seek variances from both §175-16.H-1 (Home Based Business) and §175-16.H-11 (Raising of Livestock), to allow the use.

Hearing History: The application was filed in Doylestown Township on July 22, 2019. Hearings were held on August 22, 2019, September 26, 2019 and October 21, 2019 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.¹

Appearances: Applicants, Pro Se'

Mailing Date: December 5, 2019

¹ Applicants did sign waivers of the Municipalities Planning Code (MPC) hearing requirements to facilitate the continuances.

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-1A, Residential Zoning District of Doylestown Township. It accommodates the Applicants' single-family detached dwelling.
4. The Subject Property is 10.04 acres in size.
5. John and Linda Vataha testified regarding the request for relief to operate their existing 501(c)(3) non-profit organization, Mobile Minis, to operate from their residential property located at 96 Willowbrook Drive in Doylestown Township. The Vatahas described the use as follows:
 - a. Mobile Minis is a charity which visits the physically and mentally challenged, or provides for the physically and mentally challenged to visit the Mobile Minis facility 3-4 days per week.
 - b. Miniature horses, consistent with the two registries within the United States for miniatures horses; the American Miniature Horse Association (AMHA) and the American Miniature Horse Registry (AMHR), providing guidelines for miniature horses which cannot exceed 38 inches at the withers (which the AMHR defines as located at the last hairs of the mane), with two divisions: the "A" Division for horses 34 inches and under, and the "B" Division for horses 34-38 inches. The larger of the two, the "B" Division, weigh on the order of 170-190 pounds.
 - c. The miniature horses are transported by a modified van to various service locations including homes, nursing homes, and schools.
 - d. The use presently supports eight (8) miniature horses.
 - e. The ratio of volunteers to horses is 1:1.
 - f. With regard to the operation of the use on site, the Applicants indicated that they constructed a 36' x 56' barn to support the use and that the property has a significant circular drive with additional space to park the Mobile Mini van and provide for efficient and safe flow of volunteers and visitor.

- g. The bulk of the parking is located within the macadam parking areas located within the front and side yards.
- h. The property allows for a considerable paddock/exercise area for the miniature horses.
- i. The use cannot be seen from the road.
- j. The sessions on site are 1.5-2 hour session, no later than 2:30 PM and not occurring on the weekend.
- k. Mobile Minis have no employees, but do use volunteers as indicated above.
- l. The waste produced by the miniature horses is “scooped” twice per day and removed by a commercial waste contractor once per week.

6. Multiple adjacent property owners spoke, all in favor of the application. Public comment include Mr. John Kontz, 154 Wilkshire Road, an adjacent property owner who is fully in support of the use. Mr. Charles McHenry, 140 Willowbrook, two properties from the Subject Property, fully supported the use. Ms. Barbara Brown, a volunteer, supports the use and confirmed the lack of impact the use has on any adjacent property.

7. The Applicants submitted multiple photographs and tax parcel maps to illustrate the size and scope of the use in relation to the size and scope of the Subject Property.

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 R-1A, Residential Zoning District of Doylestown Township.

2. The H-1 home-based business use is a permitted use in the R-1A Zoning District, by special exception. The H-1 home-based business use preamble reads as follows:

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:...

The Zoning Hearing Board considers the activity described by the Applicants with regard to Mobil Minis, to fit that H-1 home-based business preamble.

3. The H-1 home-based business definition as contained §175-16 of the Doylestown Township Zoning Ordinance is highly specific and contains 21 elements. Of the 21 specific elements, the Applicants require a variance from the following 6:

- (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.

The Mobile Mini use described complies in all respects with condition (a) except for the fact that the activity will take place, in part, outdoors.

- (l) The home-based business shall be carried on only by inhabitants of the dwelling and not more than two additional employees.

While the Mobile Mini use has no “employees”, as all participants are volunteers, the ratio of miniature horses to volunteers is 1:1. Accordingly, the Mobile Minis will regularly have 8 and up to 12 volunteers.

- (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.

The Mobile Mini use, as described, will exceed 500 square feet, by virtue of use of the adjacent barn and paddock area, which is comprised within the 10.04 acre property.

- (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.

The miniature horses, although roughly 1/5 the size of a normal horse, and therefore producing approximately 1/5 of the normal waste produced by a horse, will generate solid waste not normally associated with residential use. The Applicants

have demonstrated an adequate disposal plan, which must be approved by any responsible reviewing agency or entity.

- (q) The maximum number of off-street parking spaces shall be limited to six parking spaces...

The Applicants have illustrated more than sufficient parking area on the 10 acre parcel to accommodate the greater than six parking spaces necessary to support the use.

- (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.

The Applicants have demonstrated that the natural features of the property and existing vegetation are sufficient to buffer any parking areas from adjacent properties. More importantly, the efficient layout and existing features lend themselves to parking for the home-based business in the side and front of the subject dwelling. Same facilitates effective flow, and is adequately buffered and screened from residential uses.

4. The Zoning Hearing Board considers the Applicants' presentation, comprised of both verbal and documentary evidence, sufficient to conclude that the Applicant meets the definition of an H-1 home-based business, after providing variances from the specific provisions identified above.

5. The Zoning Hearing Board is convinced that granting said relief upon this 10 acre parcel will have no negative impacts upon surrounding properties or uses.

6. The evidence establishes that the relief sought by the Applicants is the minimum variance necessary. Specific to that point, the Zoning Hearing Board denies the Applicants' request for a variance under H-11, raising of live stock. The Zoning Hearing Board concludes that the H-11 use has fewer controls available to facilitate the Township monitoring the use.

7. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located. To this point, the Zoning Hearing Board observes that the 10.04 acre parcel at issue is one of the larger parcels in the area and is screened and buffered by it natural topography.

8. The Applicants have presented evidence of sufficient factors to warrant the grant of the variance requested.

9. 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 the following relief from the Doylestown Township Zoning Ordinance in order to permit Applicants to board eight (8) and up to twelve (12) miniature therapy horses on the Subject property:

1. A special exception under §175-32.B (Use H-1 Home Based business), and
2. A variance from §175-16.H-1(a), (l), (m), (p), (q), and (t), to allow the Applicants to operate the non-profit organization, Mobile Minis, as described by the Applicants.

The relief herein granted is subject to compliance with all other applicable governmental ordinances and regulations. The request for a variance from §175-32.A (use H-11) is DENIED.

**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.