

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

Applicants: Timothy and Linda U'Selis
44 Valley View Drive
Fountainville, PA 18923

Owners: Same.

**Subject
Property:** Tax Parcel No. 09-006-016, which is located at the address of the Applicants set forth above.

**Requested
Relief:** Applicants seek to construct an in-ground swimming pool on the subject lot. The pool, as proposed, results in 23% impervious surface coverage, which is in excess of the 20% impervious surface coverage permitted under §175-38 of the Doylestown Township Zoning Ordinance. Applicants seek a variance accordingly.

**Hearing
History:** The application was filed in Doylestown Township on May 8, 2021. The hearing was held on June 21, 2021 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicants, Pro Se

Mailing Date: August 5, 2021

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 27,553 square feet, gross lot area as represented by the Applicants. The property accommodates the Applicants' single-family dwelling and customary residential amenities.
4. Applicants seek to construct an in-ground swimming pool on the subject lot. The pool, as proposed, results in 23% impervious surface coverage, which is in excess of the 20% impervious surface coverage permitted under §175-38 of the Doylestown Township Zoning Ordinance. Applicants seek a variance accordingly.
5. Mr. U'Selis indicated that he and his family reside at the Subject Property. In order to increase the quiet enjoyment of the residential property, Applicants seeks zoning relief to construct the in-ground pool.
6. Applicants asserted that there are no easements on the Subject Property.
7. Applicants' rear yard is fenced.
8. Prior to the present application, Applicants had proposed a 16' x 32' swimming pool with additional decking and other impervious surface features.
9. Applicants have reduced the scope of the project, and propose to construct the pool consistent with the March 22, 2021 plan prepared by Integrated Engineering, LLC, which includes adding a 600 square foot pool (water), with 150 square feet of coping and a 32 foot equipment pad.
10. Existing impervious surface coverage on the lot is 5,566 square feet. Applicants are proposing to add 782 square feet. The resulting proposed impervious surface coverage is 6,348 square feet. When proposed coverage is compared to the lot area of 27,550 square feet, the proposed impervious surface coverage is 23%.
11. §175.38 of the Ordinance permits no more than 20% impervious surface coverage.
12. No one spoke in opposition to the application.

13. Applicants did provide letters of support from several neighboring property owners.

14. Applicants' site plan documents a 425 square foot detached garage to the rear of the Subject Property. The detached garage is 14.6 feet from the rear lot line and 11 feet from the side lot line. The 425 square foot structure is either an accessory structure, or a garage, as contemplated by §175-9 of the Ordinance. The Ordinance requires that the structure comply with the setback requirements of §175-39 of the Ordinance. Accordingly, the existing garage is within the 25 foot side yard and 50 foot rear yard setbacks required by §175-39. The Zoning Hearing Board considers the location of the garage as an existing condition but puts burden on Applicants to validate the location of same.

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

CONCLUSIONS OF LAW:

1. The Subject Property has been developed and used consistent with the requirements of the Ordinance.

2. An in-ground swimming pool is a reasonable residential amenity.

3. The Applicants have presented evidence of sufficient factors to warrant the grant of the dimensional variance requested 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).

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

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

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. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to grant the Applicants' request for relief, 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 to permit Applicants to construct an in-ground swimming pool on the subject lot with an impervious surface coverage of 23%, subject the following specific conditions:

1. Applicants shall provide to the Township an as-built survey plan illustrating the 23% impervious surface coverage to close out the permit process, to the satisfaction of the Township.
2. Applicants shall comply in all other respects 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

/s/ Samuel D. Costanzo
Samuel D. Costanzo

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

Applicant: Robert Campbell
236 Wells Road
Doylestown, PA 18901

Owner: Same.

**Subject
Property:** Tax Parcel No. 09-07-132, which is located at the address of the Applicants set forth above.

**Requested
Relief:** Applicant seeks a special exception, pursuant to §175-112.B(3)(b) of the Doylestown Township Zoning Ordinance ("Ordinance"), as authorized by §175-37 of the Ordinance, considering the additional factors contained in §175-38 of the Ordinance, to permit the construction of a 42' x 90' accessory building on the subject lot, where the existing use is nonconforming. In the alternative, a variance to permit the building.

**Hearing
History:** The application was filed in Doylestown Township on May 14, 2021. The hearing was held on June 21, 2021 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant, Pro Se

Mailing Date: August 5, 2021

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 Owner 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 gross lot area is approximately 5 acres. The property currently accommodates the Applicant's insurance business (Office Use), and accessory indoor storage of a car collection.

4. Applicant's insurance business and the accessory indoor storage of a car collection represent a lawful preexisting nonconforming use. Absent evidence to the contrary, the Zoning Hearing Board considers the insurance business a use D-1 Office, and the indoor storage of the car collection as accessory thereto.

5. The Ordinance characterizes D-1/Office Use as follows:

§175-16 Uses enumerated; use regulations

D. Office uses.

(1) D-1. Office. A building for business, professional or governmental offices, provided that:

(a) Such use shall be carried on wholly indoors and within the principal building.

(b) No office building shall include a store, beauty shop or other personal service shop.

(c) No office building shall include a store front, a store window or any other retail commercial characteristic which detracts materially from the character of the district or surrounding neighborhood.

(d) No structure designed for office use erected or renovated after the effective date of this chapter shall include any dwelling unit or units.

6. A D-1 Office is not a permitted use within the R-1, Residential District. (See, §175-37 permitted uses within the R-1 Zoning District).

7. Applicant seeks a special exception, pursuant to §175-112.B(3)(b) of the Doylestown Township Zoning Ordinance ("Ordinance"), as authorized by §175-37 of the Ordinance, considering the additional factors contained in §175-38 of the

Ordinance, to permit the construction of a 42' x 90' accessory building on the subject lot, where the existing use is nonconforming. In the alternative, a variance to permit the building.

8. Currently on site is a primary building and two (2) existing accessory buildings. The proposed building would be the fourth (4th) building on site (including the garage structure added to the rear of the primary building and possibly attached).

9. The application in question is rather technical with regard to identity of the preexisting lawful nonconforming use; the extent of the nonconforming use; and the size of the structures in place when the use became lawfully nonconforming.

10. The Applicant's proofs with regard to the technical application lacked clarity, and were insufficient for the Zoning Hearing Board to grant the relief requested by the Applicant.

11. Applicant did submit an unattributed site plan without clear designations as to the square footage of the several existing buildings on site. Further, Applicant was unclear on the precise dates upon which the structures were built or remodeled, reconstructed, reconfigured or added.

12. Applicant treated the application as a simple matter of placing a "Morton Building" on an existing tennis court to store and display classic cars. The building was proposed to complement existing buildings on site, and look like an "old barn". Because the structure was to be located on an existing 60' x 120' tennis court, there would be no increase in impervious surface coverage by adding the proposed building.

13. During the course of the testimony offered by the Applicant, and the nature of the proofs offered, the Zoning Hearing Board concluded that this matter would be considered a commercial land development and would further likely require variance relief as opposed to the special exception upon which Applicant focuses.

14. Multiple nearby and adjacent property owners offered comment with regard to the application and the proposed development. The essential theme to the public comment was the universal representation that the Campbells and the Campbell Insurance Agency were "great neighbors". The second common theme was that the building proposed was of considerable size and would likely negatively impact the view scape from the residential neighborhood adjacent to the Subject Property. Additional comment discussed the elimination of open space (likely visual open space) and potential negative impact on drainage and stormwater.

15. Applicant did submit a letter from one adjacent property owner offering no objection to the "storage unit building proposed".

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

CONCLUSIONS OF LAW:

1. The Subject Property has been developed as a lawful preexisting nonconforming D-1 Office use within the R-1, Residential Zoning District.

2. §175-9 defines a nonconforming use as follows:

NONCONFORMING USE

A use of a building or lot which does not comply with the applicable use regulations of this chapter or amendments thereto for the district in which it is located but which was in existence at the time the use regulations became effective and was lawful at the time it was established.

3. §175-112 regulates nonconforming uses. Specific to the present application, Applicant seeks a special exception pursuant to §175-112.B(3)(b), which reads as follows:

(3) Nonconforming uses shall not be altered, reconstructed, extended or enlarged, except in accordance with the following provisions:

...

(b) Any increase in volume or area shall not exceed an aggregate of more than 50% of the volume or area existent at the date the use became nonconforming, during the life of the nonconformity, and shall require approval as a special exception under the provisions of §175-137 (Zoning Hearing Board). Structures or land uses that have reached their maximum expansion allowance under previous ordinances are not eligible for any increase in volume or area under this chapter.

§175-112 of the Ordinance, as amended 4/9/1996 by Ordinance No. 250.

4. Applicant's proofs are simply insufficient for the Zoning Hearing Board to determine whether the Applicant meets the express standards and criteria for the special exception. As such, the Zoning Hearing Board does not reach the general standards and criteria with regard to special exceptions, as contained at §175-37.

5. With regard to Applicant's alternative request for relief in the nature of a variance, the Zoning Hearing Board denies same. The Applicant has not established the foundational elements for a variance, as contained within MPC §910.2(1) through (5), which provide that in order to grant a variance, the ZHB must make the following findings:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the appellant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

53 P.S. §10910.2. §175-136 of the Doylestown Township Zoning Ordinance contains the same or similar standards.

6. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to deny the Applicant's request for relief.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township, by a 3-0 vote, hereby DENIES Applicant's request for relief.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

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

/s/ Mitchell Aglow
Mitchell Aglow

/s/ Samuel D. Costanzo
Samuel D. Costanzo