

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

**Applicant:** Frank P. Johnston  
100 Rogers Road  
Furlong, PA 18925

**Owner:** Same.

**Subject Property:** Tax Parcel No. 09-028-019, which is located at the address of the Applicant set forth above.

**Requested Relief:** Applicant seeks to construct a detached garage as accessory to the single-family dwelling. The garage, as proposed, leaves a sixteen (16) foot side yard setback, where §175-16.H-3(d)(2) of the Doylestown Township Zoning Ordinance (“Ordinance”) requires the garage to meet setbacks applicable to the principal building, twenty five (25) feet. Applicant originally requested a variance for impervious surface of 28%, where §175-38 of the Ordinance permits a maximum of 20%.<sup>1</sup>

**Hearing History:** The application was filed in Doylestown Township on March 24, 2021. The hearing was held on May 27, 2021 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.<sup>2</sup>

**Appearances:** Applicant, Pro Se

**Mailing Date:** July 9, 2021

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<sup>1</sup> Based upon a revision in Applicant’s impervious surface calculation methodology, the Applicant withdrew the variance request for impervious surface coverage. Applicant believes post-construction impervious surface coverage is a compliant 19.77%.

<sup>2</sup> Applicant signed a waiver from the 60 day hearing provision of the MPC and the Doylestown Township Zoning Ordinance.

## **D E C I S I O N**

### **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 45,738 square feet. The property accommodates the Applicant's single-family dwelling and other customary residential improvements, including swimming pool, pavilion, shed, driveway and walkways.

4. Applicant seeks to construct a 28' x 30' detached garage as accessory to the single-family dwelling. The garage, as proposed, leaves a sixteen (16) foot side yard setback. §175-16.H-3(d)(2) of the Doylestown Township Zoning Ordinance ("Ordinance") requires the garage to meet setbacks applicable to the principal building, twenty five (25) feet. Applicant seeks a variance accordingly.

5. Applicant has resided in the subject dwelling for 37 years.

6. The lot is not flat. It slopes from right to left as one faces the lot from the street.

7. The existing single-family dwelling is located to the high side of the lot. The driveway and most of the other improvements are to the high side of the lot.

8. The garage is proposed to be located at the terminus of the driveway immediately adjacent to the house and the deck to the rear of the house.

9. The plan submitted reflects a 16 foot side yard from the proposed garage to the side lot line. The application requested a 15 foot side yard. The Board relies on the plan and the testimony of the Applicant and concludes that the Applicant is able to place the garage 16 feet from the side lot line.

10. Applicant plans to have the proposed garage match the existing single-family dwelling in color, style and architecture.

11. No one spoke in opposition to the application. Applicant represented that he has spoken to several of his neighbors who have voiced no objection.

12. 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. The lot exhibits unusual topographic features in that it slopes from right to left as viewing the lot from the street line. The slope prohibits construction to the left side of the single-family dwelling.

3. Placement of the garage to the right of the subject dwelling at the terminus of the driveway is the most reasonable and logical placement.

4. §175-16 H3(D) of the Doylestown Township Zoning Ordinance provides as follows:

(d) Structures, such as storage sheds, bathhouses, detached garages, and private greenhouses, provided that they do not exceed 20 feet in height and that they meet the following requirements:

**[Amended 9-1-1992 by Ord. No. 219; 1-15-2019 by Ord. No. 394]**

[1] Structures with a floor area of 144 square feet or less shall be no closer than seven feet to any property line.

[2] Structures with a floor area of more than 144 square feet shall meet the setback requirement for principal buildings for the applicable zoning district.

5. §175-39 of the Ordinance requires a 25 foot side yard setback for a single-family detached building in the R-1, Residential Zoning District.

6. Applicant has requested a dimensional variance to locate the garage within 16 feet of the side lot line.

7. The Pennsylvania Supreme Court has relaxed the standards for obtaining a variance, as contained within §10910.2 of the Pennsylvania Municipalities Planning Code (MPC §910.2), for dimensional variances through the case of Hertzberg v. Zoning Board of Adjustment of Pittsburgh, 721 A.2d 43 (Pa.1998).

8. The Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variance requested. The Board considers the sloped property and the limited options for placing the garage as a result thereof to be a qualifying legal hardship.

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

10. The evidence establishes that the relief sought by the Applicant is the minimum variance necessary. The Board observes that while the Applicant did request

reducing the side yard to 15 feet, Applicant has reduced that request by agreeing to a 16 foot side yard.

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. The Board observes that Applicant's neighbors have indicated that they have no objection to Applicant's plans for the garage as proposed.

12. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for relief, as is set forth hereafter.

## **O R D E R**

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS a variance from §175-16.H-3(d)(2) of the Doylestown Township Zoning Ordinance to permit Applicant to place a 28' x 30' detached garage, as accessory to the single-family dwelling, in the required side yard, leaving a sixteen (16) foot side yard setback, where §175-16.H-3(d)(2) of the Ordinance requires the garage to meet setbacks applicable to the principal building, twenty five (25) feet, subject to the following specific conditions:

1. Applicant must calculate net buildable site area and present those calculations to the Township as part of the building permit application.
2. Applicant must verify post-construction net buildable site area and impervious surface calculations as well as confirming the dimensions of the side yard between the new detached garage and the side lot line.
3. The detached garage may not be used as living quarters. No commercial activity shall be conducted within or from the detached garage.
4. The color and style of the detached garage must be consistent with the primary single-family dwelling.
5. Applicant 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, Vice Chairman

/s/ Samuel Costanzo  
Samuel Costanzo, Secretary

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

**Applicants:** Charles A. Kowalski, III and Heather Ann Hughes  
524 Saint Lawrence Way  
Furlong, PA 18925

**Owners:** Same.

**Subject Property:** Tax Parcel No. 09-038-006, which is located at the address of the Applicants set forth above.

**Requested Relief:** Applicants seek a variance to place a 24' x 40' accessory building within the 25 foot side yard setback required by §175-16 H3(D)2 and §175-39 of the Doylestown Township Zoning Ordinance.

**Hearing History:** The application was filed in Doylestown Township on April 21, 2021. The hearing was held on May 27, 2021 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

**Appearances:** Applicants, Pro Se

**Mailing Date:** July 9, 2021

## D E C I S I O N

### **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 gross lot area is 1.03 acres. The property accommodates the Applicants' single-family dwelling, and no accessory structures.

4. Applicants seek a variance to place a 24' x 40' accessory building within the 25 foot side yard setback required by §175-16 H3(D)2 and §175-39 of the Doylestown Township Zoning Ordinance.

5. §175-16 H3(D) of the Doylestown Township Zoning Ordinance provides as follows:

(d) Structures, such as storage sheds, bathhouses, detached garages, and private greenhouses, provided that they do not exceed 20 feet in height and that they meet the following requirements:

**[Amended 9-1-1992 by Ord. No. 219; 1-15-2019 by Ord. No. 394]**

[1] Structures with a floor area of 144 square feet or less shall be no closer than seven feet to any property line.

[2] Structures with a floor area of more than 144 square feet shall meet the setback requirement for principal buildings for the applicable zoning district.

6. Applicants are proposing a 24' x 40' accessory building (960 square feet).

7. §175-39 of the Ordinance requires a 25 foot side yard setback for a single-family detached building.

8. Applicants' rationale for placing the 960 square foot accessory building in the location 5 feet from the side lot line is to provide easy access from the terminus of the existing driveway.

9. There are no unique physical features of or on the property to limit Applicants from complying with the Ordinance requirements to place the 960 square foot accessory structure within the required building setback of 25 feet.

10. Multiple adjacent property owners testified in opposition to the Applicants' request to place the 960 square foot accessory structure 5 feet from the side lot line. The concerns included fundamentally respecting the plain language of the Ordinance. Other concerns included the size of the structure and its proposed location being excessive for the neighborhood. Neighbors were concerned with how the location of the proposed structure may affect the adjacent property owners' view scape.

11. Applicants responded to the concerns of nearby property owners by offering a written "endorsement of variance" signed by two nearby property owners as well as a number of Google Map images which Applicants asserted represented other accessory structures greater than 960 square feet closer to the lot line than the 25 foot side yard setback required.

12. Assistant Zoning Officer Sinclair Salisbury explained that the rule with regard to detached garages previously permitted the structure to locate within fifteen (15) feet of the side lot line, with no limit on the size of the accessory structure. The size of the accessory structure was limited and remains limited by the impervious surface provisions of the Doylestown Township Zoning Ordinance. The 15 foot rule was amended as indicated in the above Finding of Fact in 1992 and again in 2019. In the present matter, a twenty five (25) foot side yard is required.

13. 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. Applicants seek a variance to place a 24' x 40' (960 square foot) accessory building within the 25 foot side yard setback required by §175-16 H3(D)2 and §175-39 of the Ordinance.

3. In considering an application for a variance, the Board is required to apply the provisions of §10910.2 of the Pennsylvania Municipalities Planning Code (MPC §910.2). §910.2 provides that the Board has the authority to grant a variance if it finds the Applicants have met their burden of proof with respect to the following five elements:

- a. 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 Subject Property.
- b. The variance is necessary to enable the reasonable use of the Subject Property.
- c. Any unnecessary hardship has not been created by the Applicant.

- d. The variance 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 be detrimental to the public welfare.
- e. The variance represents the minimum variance that will afford relief and the least modification possible of the regulations at issue.

4. The Pennsylvania Supreme Court has provided that where the issue is one of a dimensional variance, the justification required for such a variance is reduced, but not eliminated. Hertzberg v. Zoning Board of Adjustment of Pittsburgh, 721 A.2d 43 (Pa.1998)

5. The Commonwealth Court has cautioned, however that where no hardship is shown, or where the asserted hardship amounts to a landowner's request for convenience, the unnecessary hardship criteria required to obtain a variance is not satisfied even under the relaxed standards set forth in Hertzberg. See, Society Hill Civic Association v. Philadelphia Zoning Board of Adjustment, 42 A.3d 1178 (Pa. 2012).

6. The Board concludes that the Applicants have failed to demonstrate 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 Subject Property sufficient to justify the variance requested.

7. The Applicants have failed to demonstrate that the requested relief is necessary to enable the reasonable use of the Subject Property.

8. The Applicants have failed to demonstrate that any unnecessary hardship has not been created by the Applicants.

9. The Applicants have failed to demonstrate that the requested relief 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 be detrimental to the public welfare. Of paramount significance in this conclusion is the observation of multiple neighbors regarding the proposed size and placement of the 960 square foot accessory structure.

10. Applicants have failed to demonstrate that the requested relief represents the minimum variance that will afford relief and the least modification possible to the regulations at issue. In fact, the Zoning Hearing Board concludes that the Applicants may place the accessory structure within the building setback without any need for zoning relief.

11. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to deny the Applicants' request for relief, as is set forth hereafter.

**O R D E R**

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby DENIES Applicants' request for a variance from §175-16 H3(D)2 and §175-39 of the Doylestown Township Zoning Ordinance to place a 24' x 40' (960 square foot) accessory building within the 25 foot side yard setback.

**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