

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

Applicants: Richard & Rebecca Haring
500 N. Shady Retreat Road
Doylestown, PA 18901

Owners: Same.

Subject Property: Tax Parcel No. 09-044-040, which is located at the address of the Applicants set forth above.

Requested Relief: Applicants seek to use a proposed rebuilt detached garage to support an Accessory Family Apartment. Pursuant to §175-37.B of the Doylestown Township Zoning Ordinance ("Ordinance"), An Accessory Family Apartment is permitted within the R-1, Residential Zoning District by special exception. Applicants seek a special exception accordingly. In addition, Applicants seek variances from the specific provision defining the Accessory Family Apartment, found at §175-16(H)(12)(a), including a variance to permit the use to be located in the newly constructed accessory building and to permit the use to exceed 25% of the useable floor area of the primary dwelling. Applicants further seeks a variance from §175-16(H)(3)(d) to permit the building height of the newly constructed garage to exceed 20 feet.

Hearing History: The application was filed in Doylestown Township on February 28, 2022. The hearing was held on April 18, 2022, at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.¹

Appearances: Applicant by: Joseph M. Blackburn, Esq.
Wisler Pearlstine, LLP
301 N. Sycamore Street
Newtown, PA 18940

Mailing Date: June 2, 2022

¹ The hearing was originally scheduled for March 21, 2022, but Applicant requested a postponement to April 18, 2022. Applicant provided a written waiver of the time frames within which to hold the initial hearing provided under the Municipalities Planning Code ("MPC") and Ordinance.

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. Applicant is the owner of property located at 500 N. Shady Retreat Road in Doylestown Township, which property is more particularly identified as Bucks County Tax Parcel No. 09-044-040 (the "Property").
3. The Property consists of approximately 1.12± acres, is located in the R-1 Residential Zoning District of Doylestown Township, and is currently improved with an approximately 4,600 square foot farmhouse dwelling unit constructed in or about 1800, and an approximately 404 square foot (footprint), 1-car, detached garage.
4. The Property is a corner lot, as that term is defined by the Doylestown Township Zoning Ordinance ("Zoning Ordinance") in that it maintains frontages along both N. Shady Retreat Road and Chestnut Valley Drive.
5. The Property maintains the following legally existing nonconformities:
 - a. an approximately 19.7' front yard setback from N. Shady Retreat Road, whereas a 50' setback is otherwise required; and
 - b. an approximately 20.6% impervious coverage ratio whereas a maximum coverage of 20% is otherwise permitted.
6. Applicant desires to construct living accommodations on the Property for use by its elderly parents.
7. Due to the historic character of the existing farmhouse dwelling, the Accessory Family Apartment can neither be incorporated into the existing dwelling, nor reasonably incorporated into an addition thereto.
8. Although not historic, the size and condition of the existing detached garage preclude its conversion for such use.
9. Moreover, the existing 1-car detached garage does not provide ample covered parking or storage for the Property.
10. Accordingly, Applicant proposes to demolish the existing detached garage on the Property and construct a new, 2-story, approximately 1,800 square foot detached garage (the "New Garage").
11. The first floor of the New Garage would serve to provide the necessary covered parking and storage for the Property.

12. The second floor of the New Garage would consist of an approximately 1,800 square foot H-12 Accessory Family Apartment for use by Applicant's parents.

13. The New Garage would be located entirely over existing impervious. In fact, Applicant is able to reclaim existing impervious and convert the same to pervious surface as a part of this proposal, bringing the Property's existing nonconforming impervious coverage into conformance with the application limits.

14. The New Garage would be shielded from view from both N. Shady Retreat Road and Chestnut Valley Drive by existing, mature vegetation.

15. In order to permit the construction and use of the New Garage as set forth hereinabove, Applicant has requested the Doylestown Township Zoning Hearing Board to consider the grant of the following relief from the Zoning Ordinance:

- a. A special exception pursuant to §175-37.B to permit an H-12 Accessory Family Apartment on the Property. In furtherance of this request, Applicant averred as follows:
 - i. Adequate parking exists on the Property to accommodate the necessary off-street parking of 2 spaces for the principal dwelling and one space for the apartment;
 - ii. There will not be more than one accessory family apartment on the Property;
 - iii. A maximum of two (2) occupants will occupy the apartment, who will be family members of the Applicant;
 - iv. The apartment will be registered with the Township Zoning Officer;
 - v. Certification will be obtained from the Bucks County Board of Health or other regulatory agency certifying that wastewater facilities adequate to accommodate the principal dwelling as well as the apartment exist; and
 - vi. Applicant will grant a deed restriction limiting the use of the apartment in accordance with the foregoing.
- b. A variance from the provisions of §175-16(H)(12)(a) to permit the H-12 apartment to be larger than 25% of the usable floor area of the primary dwelling on the Property. If limited to 25% of the floor area of the primary dwelling, the H-12 apartment would only be permitted to be 1,157 square feet in area, which would not provide suitably sized living quarters. Moreover, the Property remains in compliance with all building coverage limits, and

would in fact be brought into compliance with the impervious coverage limits as a part of the proposal;

- c. A variance from the provisions of §175-16(H)(12)(b) to permit the H-12 apartment to be located within the New Garage. Despite the New Garage replacing an existing garage, the Board does not consider it permitted by-right; and
- d. A variance from the provisions of §175-16(H)(3)(b) to permit the New Garage to be greater than 20' in height. It should be noted that the increase height is required in order to accommodate the H-12 apartment on the second floor, which would not be able to be accommodated in the New Garage if limited to a 20' building height. Moreover, the New Garage satisfies all setbacks required for principal structures, which are otherwise permitted to be 35' in height, and would be permitted to be 35' tall itself if attached to the principal dwelling by a breezeway or other connection.

16. The Board finds that the variances, do not alter the essential character of the neighborhood or zoning district in which the building/use is located, nor substantially or permanently impair the appropriate use or development of adjacent properties or be detrimental to the public welfare.

17. The Board finds that the variances represent the minimum variance which will afford relief to Applicant and represents the least modification possible to the regulations at issue.

18. No one spoke in opposition to the application.

19. 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 Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variances 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).

3. 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.

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

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

6. The grant of the requested variances satisfies Appellant's burden to meet the objective criteria set forth in the Ordinance for a special exception. *New Bethlehem Borough Council v. McVay*, 78 Pa. Commw. 167, 467 A.2d 395 (Pa. Cmwlth. 1983). A use permitted by special exception is presumptively consistent with the public health, safety and welfare; the denial of a special exception can be based only on proof that the use would create an adverse effect on the public welfare in a way not normally associated with proposed use. *Kern v. Zoning Hearing Board of Tredyffrin Township*, 68 Pa. Commw. 396, 449 A.2d 781 (1982). Here, there were no objecting witnesses to present proof that the proposed use would present a substantial threat of harm to the health, safety and welfare of the community. *Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg*, 126 Pa. Commw. 235, 559 A.2d 107 (PA. Cmwlth. 1989).

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

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS variances from §175-37.B, §175-16(H)(12)(a), and §175-16(H)(3)(d) of the Doylestown Township Zoning Ordinance to permit an Accessory Family Apartment, which is permitted within the R-1, Residential Zoning District by special exception. The Board further GRANTS the special exception pursuant to §175-37.B. The variance relief includes variances from the specific provision defining the Accessory Family Apartment, found at §175-16(H)(12)(a), including a variance to permit the use to be located on the full second floor in a newly constructed, two story, 1,800 square foot, accessory building and to permit the use to exceed 25% of the useable floor area of the primary dwelling. Additional variance relief includes a variance from §175-16(H)(3)(d) to permit the building height of the newly constructed garage to exceed 20 feet (approximately 23 feet in height as measured to the mean height of the peak of roof).

The relief 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

/s/ Samuel D. Costanzo
Samuel D. Costanzo

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

Applicant: James Edelen
317 Bunker Hollow Road
Doylestown, PA 18901

Owner: Same.

**Subject
Property:** Tax Parcel No. 09-018-004, which is located at the address of the Applicant set forth above.

**Requested
Relief:** Applicant seeks to construct a covered deck to the rear of the existing single-family dwelling. The covered deck, as proposed, increases the impervious surface coverage on site to 28.1%, which exceeds the 20% permitted under §175-38 of the Doylestown Township Zoning Ordinance. Applicant seeks a variance accordingly.

**Hearing
History:** The application was filed in Doylestown Township on March 8, 2022. The hearing was held on April 18, 2022 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant, *Pro Se*

Mailing Date: June 2, 2022

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, having purchased same in 2017, and is 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 17,638 square feet. The property accommodates the Applicant's single-family residential dwelling and usual residential improvements.
4. The Subject Property was developed in 1989. The Subject Property carries an existing impervious surface coverage of 25.9%.
5. Applicant seeks to construct a covered deck to the rear of the existing single-family dwelling, essentially replacing and expanding an existing deck. The covered deck, as proposed, increases the impervious surface coverage on site by 2.2% to 28.1%.
6. A maximum of 20% impervious surface coverage is currently permitted under §175-38 of the Doylestown Township Zoning Ordinance. Applicant seeks a variance accordingly.
7. The site plans submitted by Applicant in support of the application illustrate the proposed improvements, including adding 383 square feet of impervious surface area to the subject lot by constructing a covered deck to replace and expand an existing uncovered deck and patio.
8. Applicant indicated that other property owners in the neighborhood have constructed similar improvements.
9. Applicant has proposed a nonstructural stormwater BMP to address impervious surface coverage in excess of the 20% permitted.
10. No one spoke in opposition to the application.
11. 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, but for the pre-existing legally nonconforming impervious surface ratio of 25.9%, as built in 1989.

2. Applicant seeks to increase the impervious surface ratio by 2.2%, to 28.1% to accommodate a covered deck attached to the single family residential dwelling.

3. The Board concludes that the Applicant has 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 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, especially in light of the conditions imposed on the grant of the variance relief.

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. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to grant the Applicant's 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 Applicant to increase the impervious surface coverage on site to 28.1%, which exceeds the 20% permitted under §175-38 of the Ordinance, subject to the following specific conditions:

1. Applicant is to present the proposed stormwater management plan to the Township for review and assessment for sufficiency and modification or approval; and
2. Applicant shall comply in all other respects with the rules and regulations of Doylestown Township, County of Bucks, and the Commonwealth of Pennsylvania.

**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