

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

Applicant: Michael Alferman
172 Shady Brook Circle
Warrington, PA 18976

Owners Same.

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

**Requested
Relief:** Applicant seeks to modify the existing single-family dwelling to permit an Accessory Family Apartment. §175-37.B of the Doylestown Township Zoning Ordinance (“Ordinance”) permits an Accessory Family Apartment by special exception within the R-1, Residential Zoning District in which the property is located, provided the use meets the requirements of §175-16.H(12), §175-137 and §175-138. Applicant seeks a special exception accordingly.

**Hearing
History:** The application was filed in Doylestown Township on January 11, 2022. The hearing was held on February 21, 2022 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant, *Pro Se*

Mailing Date: March 25, 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 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 1.18 acres. The property accommodates the Applicant's single family dwelling with customary residential improvements.
4. Applicant seeks to modify the existing single-family dwelling to permit an Accessory Family Apartment. §175-37.B of the Doylestown Township Zoning Ordinance ("Ordinance") permits an Accessory Family Apartment by special exception within the R-1, Residential Zoning District in which the property is located, provided the use meets the requirements of §175-16.H(12), §175-137 and §175-138. Applicant seeks a special exception accordingly.
5. Applicant testified that the Accessory Family Apartment is for he and his wife. Their son and his wife will live in the main dwelling.
6. All renovations to the existing single family dwelling, necessary to convert same to an Single Family Dwelling with Accessory Family Apartment, will be interior to the existing building footprint.
7. The property has considerable room for necessary parking consistent with the Ordinance.
8. The existing dwelling is connected to public water and sewer.
9. Applicant testified to complying with all provisions of §175-37.B of the Doylestown Township Zoning Ordinance
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 as a single-family residential dwelling consistent with the requirements of the Ordinance.
2. Applicant seeks to further use the property to support an Accessory Family Apartment.
3. §175-37.B of the Ordinance permits a use H-12 Accessory Family Apartment by special exception.
4. §175-16.H(12) of the Ordinance defines an Accessory Family Apartment, thereby itemizing the specific conditions preceding the Board's authority to grant a special exception for the permitted use.
5. §175-137 and §175-138 of the Ordinance contain the general and specific standards to be considered when the Board is assessing a request for special exception.
6. The competent evidence presented leads the Board to conclude that the Applicant has complied with, or has indicated a future intent and ability to comply with, all specific conditions of the H-12 Accessory Family Apartment use.
7. 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. Cmmw. 396, 449 A.2d 781 (1982)*. Here, no witnesses appeared in opposition to the requested relief, and therefore no evidence was presented to establish 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. Cmwlt. 1989)*.
8. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to grant the Applicant's request for special exception, as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS the special exception pursuant to §175-37.B, §175-16.H(12), §175-137 and §175-138 of the Doylestown Township Zoning Ordinance to permit Applicant to modify the existing single-family dwelling to permit an Accessory Family Apartment. §175-37.B of the Doylestown Township Zoning Ordinance ("Ordinance") permits an Accessory Family Apartment by special exception within the R-1, Residential Zoning District in which the property is located, provided the use meets the requirements of §175-16.H(12), §175-137 and §175-138. Applicant has established compliance with all relevant Ordinance provisions.

**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: Mark & Christine Lemmo
7 Oxford Lane
Doylestown, PA 18901

Owners: Same.

Subject Property: Tax Parcel No. 09-007-150-012, which is located at the address of the Applicants set forth above.

Requested Relief: Applicants seek to place a fence in the rear yard of the Subject residential Property. The fence is proposed to encroach upon a water and sanitary sewer easement which crosses the property. §175-16.H(3)(c)[3] prohibits fences which encroach on public or private easements. Applicants seek a variance accordingly.

Hearing History: The application was filed in Doylestown Township on January 20, 2022. The hearing was held on February 21, 2022 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicants, *Pro Se*

Mailing Date: March 25, 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 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 45,524 square feet. The property accommodates the Applicants' single-family dwelling and customary residential improvements. Presently, Applicants are in the process of having an in-ground swimming pool constructed.
4. Applicants seek to place a fence in the rear yard of the Subject Property. The fence is proposed to encroach upon a water and sanitary sewer easement which crosses the property. The proposed fence crosses the easement in two locations as depicted on the site plans submitted with the application as Attachments A&B.
5. §175-16.H(3)(c)[3] prohibits fences which encroach on public or private easements. Applicants seek a variance accordingly.
6. The Subject Property is unusual in shape. It fronts on a cul-de-sac, and has a narrow street frontage. The rear yard is not rectangular or square. The property has five sides.
7. The thirty foot (30') wide water and sanitary sewer easement bisects the rear of the property and leaves little yard to the rear of the house and pool, but a generous amount of yard to the rear of the easement.
8. Applicants seek to "square up" the rear yard by placing the fence as proposed, as opposed to merely fencing the immediate pool area perimeter.
9. Applicants propose removable fence sections where the fence crosses the easement.
10. No trees will be removed or disturbed as part of the fence placement.
11. No one spoke in opposition to the application. Applicant indicates that his neighbors are not opposed. He has not heard any opposition from the Home Owners' Association.
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. Applicants seek to place a fence in the rear yard of the Subject Property. The fence is proposed to encroach upon a water and sanitary sewer easement which crosses the property. The proposed fence crosses the easement in two locations as depicted on the site plans submitted with the application as Attachments A&B.
3. §175-16.H(3)(c)[3] prohibits fences which encroach on public or private easements. Applicants seek a variance accordingly.
4. 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).
5. 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.
6. The evidence establishes that the relief sought by the Applicants is the minimum variance necessary.
7. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located.
8. 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 §175-16.H(3)(c)[3] of the Doylestown Township Zoning Ordinance to permit Applicants to place a fence in the rear yard of the single-family dwelling. The fence is proposed to encroach upon a water and sanitary sewer easement which crosses the property. §175-16.H(3)(c)[3] prohibits fences which encroach on public or private easements. Applicants request for a variance from this provision is GRANTED subject to the following specific conditions:

1. The fence must contain removable sections where the fence crosses the easement area to facilitate removal in the event the easement area needs to be accessed.
2. Applicants are required to maintain, replace, and repair the fence as needed.

3. The sections crossing the easement must be removed upon request by Doylestown Township, Bucks County Water & Sewer Authority, Doylestown Township Municipal Authority, and/or any other beneficiary of the easement. In the alternative, the fence must be removed at the Applicants expense.
4. Applicants must obtain all appropriate permits prior to construction of the fence. This condition includes applying for a fence permit with Doylestown Township.
5. Placement of the fence must be consistent with the site plans submitted with the zoning application as Attachments A&B (illustrating existing conditions, location of easement, and proposed location of fence).
6. Applicants shall obtain letters of consent for the relief requested from Bucks County Water & Sewer Authority, Doylestown Township Municipal Authority, and the builder/developer if indicated.
7. Applicants are reminded that the relief provided by the ZHB does not impact individual property and contractual rights under the Home Owners' Association rules and covenants.
8. There shall be no tree removal for placement of the fence.
9. 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, Vice Chairman

/s/ Samuel Costanzo
Samuel Costanzo, Secretary