

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

Docket No.: Z-10-23

Applicants: Brian & Shannon Monson
42 Anvil Lane
Warrington, PA 18976

Owners: Same.

**Subject
Property:** Tax Parcel No. 09-042-087, which is located at the address of the Applicants set forth above.

**Requested
Relief:** Applicants seek to construct a detached two-story garage with an accessory family apartment on the second floor of the new structure. Applicants seek a special exception pursuant to §175-37 B H-12 of the Doylestown Township Zoning Ordinance ("Ordinance") to permit the accessory family apartment , and a variance from §175-16 H-12(b) to permit the accessory family apartment to be located in other than an existing building.

**Hearing
History:** The application was filed in Doylestown Township on August 11, 2023. The hearing was held on September 28, 2023 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicants, *Pro Se*

Mailing Date: November 10, 2023

DECISION

FINDINGS OF FACT:

1. The Zoning Hearing Board of Doylestown Township (“Board”) 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 1.3 acres. The property accommodates the Applicants’ single-family dwelling, shed, and greenhouse.

4. Applicants seek to construct a detached two-story garage with an accessory family apartment on the second floor of the new structure. Applicants seek a special exception pursuant to §175-37 B H-12 of the Doylestown Township Zoning Ordinance to permit the accessory family apartment, and a variance from §175-16 H-12(b) to permit the accessory family apartment to be located in other than an existing building.

5. A special exception is defined under the Doylestown Township Zoning Ordinance as, “A permission or approval granted to use land for a purpose other than those specified as uses permitted outright within a zoning district, granted by the Township Zoning Hearing Board in accordance with the standards contained in this chapter.” See, Ordinance §175-9.

6. §912.1 of the Municipalities Planning Code (“MPC”) provides for the Zoning Hearing Board to hear requests for special exceptions “to be granted or denied by the board pursuant to express standards and criteria ... [permitting] the board [to] attach such reasonable conditions and safeguards... as it may deem necessary ...” See, §912.1 of the MPC.

7. §175-137 and §175-138 similarly provide standards and criteria for the granting of special exceptions.

8. §175-37 B H-12 provides that the accessory family apartment is permitted by special exception.

9. The provisions of the Ordinance defining an accessory family apartment are found at §175-16.H(12), and read as follows:

H-12. Accessory family apartment. One accessory dwelling unit to a single-family detached dwelling shall be permitted as a residence by family members or a family caregiver, provided that the conditions set forth in this section are met, and further provided that the accessory use, in all respects, complies with this chapter relating to the zoning district wherein the proposed accessory dwelling unit is to be constructed or to be used.

[Added 5-4-1993 by Ord. No. 224; amended 2-16-2021 by Ord. No. 401]

- (a) The accessory family apartment shall occupy no more than 25% of the total usable floor area of the principal residence, not including any garage.
- (b) Accessory family apartments shall be part of the principal residence or may be contained in the existing accessory structure such as a garage.
- (c) The required off-street parking for the principal dwelling plus one additional off-street parking space for the accessory family apartment shall be provided.
- (d) There shall be no changes to the exterior of the residence which suggests that the dwelling unit is other than a single-family dwelling or which would otherwise detract from the single-family character of the neighborhood. Manufactured homes, industrialized housing, recreational vehicles, travel trailers, and any other wheeled or transportable structure shall not be used as an accessory family apartment.
- (e) No more than one accessory family apartment shall be permitted per single-family detached dwelling.
- (f) A maximum of two occupants are permitted in such units. Accessory family apartment shall be occupied by family members or a family caregiver.
- (g) Each accessory family apartment shall be registered with the Township Zoning Officer, who shall keep a record of its use to ensure compliance with this chapter. A fee shall be imposed by the Township Board of Supervisors for the registration of said use, which said fee shall be fixed periodically by the Board of Supervisors by resolution. Registration of an accessory family apartment shall expire upon conveyance of the property, at which time the new property owner may reregister said use if warranted.
- (h) A certification shall be received from the Bucks County Board of Health or other regulatory agency certifying that the wastewater facilities are adequate to accommodate the single-family dwelling as well as the accessory family apartment as defined in this subsection.
- (i) The record owner of the property shall grant a deed restriction limiting such use in accordance with the foregoing provisions

in favor of the Township, which agreement shall contain the following provisions:

- [1] A description of the dimensions and location of accessory use.
- [2] Being in a recordable document acceptable to the Township for filing with the Bucks County Recorder of Deeds Office. All costs for the preparation and recording of the foregoing document are the responsibility of the applicant for the accessory use.
- [3] The rental of an accessory family apartment shall not be permitted, nor shall it be used in any way as an income property.

10. Applicant offered testimony satisfying each of the specific and general criteria for the accessory family apartment, except for §175-16.H(12)(b). The house in question was built in 1803 and does not contain a garage. Accordingly, Applicants seek to build a garage with the accessory family apartment atop the garage.

11. No one spoke in opposition to the application.

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. §175-37 provides that Use H12 accessory family apartment is permitted within the R-1 Zoning District by special exception. MPC §912.1 and Ordinance §175-137 and §175-138 provide the authority and general criteria for the special exception.

3. §175-16.H(12)(b) provides the specific criteria for the accessory family apartment use.

4. The Board considers the provision of §175-16.H(12)(b) to be a dimensional variance as opposed to a use variance.

5. The Pennsylvania Supreme Court has articulated a relaxed variance standard for dimensional variances. See, Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d. 43 (1998).

6. The Board concludes that the Applicants have met the relaxed standard for a variance to permit construction of the additional structure to house the garage and accessory family apartment.

7. 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.

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

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

10. 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. Cmwlt. 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. Cmmw. 396, 449 A.2d 781 (1982). Here, the objecting witnesses failed 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. Cmwlt. 1989).

11. 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 special exception pursuant to §175-37 B H-12 and a variance from §175-16 H-12(b) of the Doylestown Township Zoning Ordinance to facilitate construction of a detached two-story garage with an accessory family apartment on the second floor of the new structure. The special exception pursuant to §175-37 B H-12 of the Ordinance is to permit the accessory family apartment. The variance from §175-16 H-12(b) of the Ordinance is to permit the accessory family apartment to be located in other than an existing building.

In addition to Applicants complying with all criteria of the H-12 use, the relief granted is subject to the following conditions:

1. Construction of the detached garage shall be consistent with testimony provided by Applicant during the hearing held and further subject to the plans provided.
2. Relief is subject to Applicants complying with all other rules, regulations and obtaining all appropriate permits.
3. Applicant is to provide a post-construction “As-Built” Plan to confirm for Doylestown Township that the project was developed without need for additional zoning relief.

ZONING HEARING BOARD OF DOYLESTOWN TOWNSHIP

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By: /s/ William J. Lahr
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/s/ Samuel Costanzo
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