

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

Docket No.: Z-9-23

Applicant: Lori Rissinger-Collins
202 Briarwood Court
Doylestown, PA 18901

Owner: Same.

Subject Property: Tax Parcel No. 09-022-109, which is located at the address of the Applicant set forth above.

Requested Relief: Applicant seeks to construct a detached two car garage with an accessory family apartment on the second floor, to be used for a family member. Applicant seeks the following relief from the Doylestown Township Zoning Ordinance (“Ordinance”):

1. A special exception pursuant to §175-32.B, to permit Use H-12 accessory family apartment in the R-1A Residential District;
2. A variance from §175-34, to permit a rear yard setback distance of 60 feet, where a minimum of 75 feet is required;
3. A variance from §175-16(H)(12)(b), to allow an accessory family apartment to be part of a proposed accessory structure (above a detached garage), where an accessory family apartment is otherwise required to be part of the principal residence or contained in an existing accessory structure;
4. A variance from §175-16(H)(12)(a), to permit an accessory family apartment to occupy 29% of the total usable floor area of the principal residence, where a maximum of 25% of the floor area of the principal residence is permitted; and,
5. A variance from §175-17(F)(1), to permit an accessory structure to be set back 100 feet from the street line, where the accessory structure would otherwise be required to be set back to a distance no less than the actual setback of the principal residence from the street line which is 116.6 feet.

Hearing History: The application was filed in Doylestown Township on August 2, 2023. The hearings were held on September 28, 2023 and November 20, 2023 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant by: Matthew McHugh, Esquire
Klehr Harrison Harvey Branzburg LLP
1835 Market Street, Suite 1400
Philadelphia, PA 19103

Mailing Date: January 4, 2024

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 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-1A, Residential Zoning District of Doylestown Township. The lot area is 3.621 acres. The property accommodates the Applicant's single-family dwelling with usual and customary improvements.

4. Applicant seeks to construct a detached two car garage with an accessory family apartment on the second floor, to be used for a family member. Applicant seeks the following relief from the Doylestown Township Zoning Ordinance ("Ordinance"): (1) a special exception pursuant to §175-32.B, to permit Use H-12 accessory family apartment in the R-1A Residential District; (2) a variance from §175-34, to permit a rear yard setback distance of 60 feet, where a minimum of 75 feet is required; (3) a variance from §175-16(H)(12)(b), to allow an accessory family apartment to be part of a proposed accessory structure (above a detached garage), where an accessory family apartment is otherwise required to be part of the principal residence or contained in an existing accessory structure; (4) a variance from §175-16(H)(12)(a), to permit an accessory family apartment to occupy 29% of the total usable floor area of the principal residence, where a maximum of 25% of the floor area of the principal residence is permitted; and, (5) a variance from §175-17(F)(1), to permit an accessory structure to be set back 100 feet from the street line, where the accessory structure would otherwise be required to be set back to a distance no less than the actual setback of the principal residence from the street line which is 116.6 feet.

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)(a) and §175-16.H(12)(b).

11. The Zoning Hearing Board finds that the irregularly shaped lot and the location of the dwelling on the irregularly shaped lot drives the need for the dimensional variance, specifically the front and rear yard setbacks.

12. No one spoke in opposition to the application.

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. §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) provides the specific criteria for the accessory family apartment use.

4. The Board considers the provisions of §175-16.H(12)(a) and §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 detached two car garage with an accessory family apartment on the second floor.

7. The Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variance requested under the relaxed variance standard.

8. 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.

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

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

11. The Board concludes that there are unique physical characteristics involved with the Subject Property that cause an unnecessary hardship which is not self-created by the Applicant and prohibits use of the Subject Property in strict compliance with the provisions of the Zoning Ordinance.

12. 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. Cmwlth. 1989).

13. 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 the following relief from the Doylestown Township Zoning Ordinance to permit Applicant to construct a detached two car garage with an accessory family apartment on the second floor, to be used for a family member:

1. A special exception pursuant to §175-32.B, to permit Use H-12 accessory family apartment in the R-1A Residential District;
2. A variance from §175-34, to permit a rear yard setback distance of 60 feet, where a minimum of 75 feet is required;
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4. A variance from §175-16(H)(12)(a), to permit an accessory family apartment to occupy 29% of the total usable floor area of the principal residence, where a maximum of 25% of the floor area of the principal residence is permitted; and,
5. A variance from §175-17(F)(1), to permit an accessory structure to be set back 100 feet from the street line, where the accessory structure would otherwise be required to be set back to a distance no less than the actual setback of the principal residence from the street line which is 116.6 feet.

The relief herein granted is subject to the following conditions:

1. The first floor of the accessory structure can only be used for mechanicals/storage and not a livable area.
2. The in-law suite shall comply with §175-16 H-12 of the Ordinance.
3. Construction of the accessory structure shall be consistent with testimony provided by Applicant during the hearings held and further subject to the plans provided.

4. 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.
5. Applicant must comply with the Bucks County Board of Health regulations.
6. Applicant must comply with the building permit plan process, including preparing an erosion and sedimentation control plan to the satisfaction of the Township professionals and staff.
7. Applicant shall grant a deed restriction in accordance with §175-16(H)(12)(i).
8. Applicant must comply with all other applicable rules, regulations and governmental ordinances.

Thomas E. Panzer, Esq.
Michael A. Luongo, Esq.
Solicitors
Doylestown Township
Zoning Hearing Board
High Swartz LLP
116 East Court Street
Doylestown, PA 18901
(215) 345-8888
E-Mail: tpanzer@highswartz.com
mluongo@highswartz.com

**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