

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

**Docket No.:** Z-1-24

**Applicants:** Russell H. and Jeroldine A. Lutz  
25 Stony Lane  
Warrington, PA 18976

**Owners:** Same.

**Subject  
Property:** Tax Parcel No. 09-042-077, which is located at the address of the Applicants set forth above.

**Requested  
Relief:** Applicants seek a special exception to construct a Use H-12 Accessory Family Apartment, consistent with §175-37.B. H-12 of the Doylestown Township Zoning Ordinance (“Ordinance”). Applicants also seek a variance from §175-16.H(12)a to permit the accessory family apartment use to exceed 25% of the total usable floor area of the principal residence, not including any garage.

**Hearing  
History:** The application was filed in Doylestown Township on January 8, 2024. The hearing was held on February 22, 2024 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

**Appearances:** Applicants, *Pro Se*

**Mailing Date:** April 8, 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 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 R1, Residential Zoning District of Doylestown Township. The lot area is 48,351 square feet (1.11 acres). The property accommodates the Applicants' 2,296 sf single-family residential dwelling, along with other residential amenities.

4. Applicants seek a special exception to construct a Use H-12 Accessory Family Apartment, consistent with §175-37.B. H-12 of the Doylestown Township Zoning Ordinance. Applicants also seek a variance from §175-16.H(12)a to permit the accessory family apartment use to exceed 25% of the total usable floor area of the principal residence, not including any garage.

5. 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.

6. Applicants offered testimony satisfying each of the specific and general criteria for the accessory family apartment, except for the 25% size limitation.

7. If Applicants were to comply with the 25% size limitation, the Accessory Family Apartment would be limited to 572 sf (2,296 x .25).

8. Applicants propose two bedrooms, one and one half bathrooms, a living room, utility room, and a kitchen. The Accessory Family Apartment would be accessible through an interior access from the principal dwelling, as well as direct exterior access.

9. Applicants testified that limiting the size of the Accessory Family Apartment to 572 square feet would be impractical and therefore not logically possible.

10. Applicants indicated that other Accessory Family Apartments exist in the neighborhood and general vicinity.

11. Applicants offered that in order to comply with the requirements of the Accessory Family Apartment Use, Applicants would be connecting to public water and public sewer.

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. Applicants have requested a dimensional variance to permit a proposed Accessory Family Apartment to exceed 25% of the total usable floor area of the principal residence, not including any garage.

3. 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). To this end, the ZHB finds and concludes that the proposed Accessory Family Apartment is a reasonable residential use, but that, under the particular circumstances of these facts, the resulting 572 sf use would not be practical.

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.

5. The evidence establishes that the relief sought by the Applicants 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. 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).

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(12)a of the Doylestown Township Zoning Ordinance and a special exception pursuant to §175-37.B. H-12 to construct a Use H-12 Accessory Family Apartment, exceeding 25% of the total usable floor area of the principal residence, not including any garage (maximum size of Accessory Family Apartment is not to exceed 1,040 sf), subject to compliance with the following conditions.

1. The in-law suite shall comply with §175-16 H-12 of the Ordinance, except for the 25% size limitation.
2. Construction of the accessory structure shall be consistent with testimony provided by Applicants during the hearing held and further subject to the plans provided.
3. Applicants are to provide a post-construction “As-Built” Plan to confirm for Doylestown Township that the project was developed without need for additional zoning relief.
4. Applicants 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, if necessary.
5. Applicants shall grant a deed restriction in accordance with §175-16(H)(12)(i).
6. Applicants must comply with all other applicable rules, regulations and governmental ordinances.

Thomas E. Panzer, Esq.  
Solicitor  
Doylestown Township  
Zoning Hearing Board  
High Swartz LLP  
116 East Court Street  
Doylestown, PA 18901  
(215) 345-8888  
E-Mail: tpanzer@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