

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

Docket No.: Z-8-24

Applicants: Jeff & Susan Baisley
106 Julie Lane
Doylestown, PA 18901

Owners: Same.

Subject Property: Tax Parcel No. 09-030-193, which is located at the address of the Applicants set forth above.

Requested Relief: Applicants seek to construct a covered front porch which encroaches into the required front yard setback. §175-39 of the Doylestown Township Zoning Ordinance requires a 35 foot front yard. Applicants seek a variance to accommodate the covered front porch.

Hearing History: The application was filed in Doylestown Township on April 22, 2024. The hearing was held on June 17, 2024 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicants, *Pro Se*

Mailing Date: August 1, 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 R-1, Residential Zoning District of Doylestown Township. The lot area is 22,237 square feet. The property accommodates the Applicants' single-family dwelling with customary residential amenities.
4. Applicants seek to construct a covered front porch which encroaches into the required front yard setback. §175-39 of the Doylestown Township Zoning Ordinance requires a 35 foot front yard. Applicants seek a variance to accommodate the covered front porch.
5. Applicants testified that the covered porch area would provide a covered area to shelter visitors/guests, packages, etc. from the elements prior to entering the dwelling.
6. Applicants testified that the house currently is currently setback at 36.8' in the front.
7. Applicants testified that several other homes on their block and in the neighborhood had covered porches that appear to be within the front yard setback or close to it.
8. Applicants testified that they would not need relief from compliance with the impervious surface coverage under the Ordinance.
9. No one spoke in opposition to the application.
10. 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 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.

3. The evidence establishes that the relief sought by the Applicants is the minimum variance necessary.

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

5. 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).

6. 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 §175-39 of the Doylestown Township Zoning Ordinance to permit Applicants to construct a covered front porch which encroaches into the required front yard setback allowing 28.5' when 35 feet is required by the Ordinance.

The relief herein granted is subject to the following conditions:

1. Construction of the covered porch shall be consistent with testimony provided by Applicants during the hearing held and further subject to the plans provided.
2. 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.
3. Applicants must comply with all other applicable rules, regulations and governmental ordinances.

Thomas E. Panzer, Esq.
Solicitor
Michael A. Luongo, Esq.
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

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

Docket No.: Z-10-24

Applicants: Robert & Susan Seiden
8 Windey Way Lane
Doylestown, PA 18901

Owners: Same.

Subject Property: Tax Parcel No. 09-030-009, which is located at the address of the Applicants set forth above.

Requested Relief: Applicants seek to place a solar panel array in the rear yard of the residential property. The structure is proposed to be located within ten (10) feet of both the side and rear lot lines. §175-39 of the Doylestown Township Zoning Ordinance requires a 25 foot side yard and a 50 foot rear yard, respectively. Applicants seek variances to accommodate the solar array.

Hearing History: The application was filed in Doylestown Township on April 26, 2024. The hearing was held on June 17, 2024 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicants by: Glen Kimball, Esq.
O'Connor Kimball LLP
Two Penn Center Plaza, Suite 1100
1500 John F. Kennedy Boulevard
Philadelphia, PA 19102

Protestants by: William E. Benner, Esq.
Benner and Wild
174 West State Street
Doylestown, PA 18901

Mailing Date: August 1, 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 beneficiaries of the Trust in which the Subject Property is contained within and therefore possessed of the requisite standing to make application to this Board.

3. During the hearing held, the following exhibits were marked and admitted by the Board:

- ZHB-1: Application filed April 26, 2024 with attachments:
 - a. Aerial Photo of Property with Proposed Structure
 - b. Land Survey dated 8/23/13 by TLC Surveying, Inc.
 - c. Deed (supplemented before hearing)
 - d. Trust Documents (supplemented before hearing)
- ZHB-2: Legal advertisement, proof of publication and posting
- ZHB-3: Doylestown Township Zoning Ordinance (the “Ordinance”)
- ZHB-4: Letters dated June 10, 2024 regarding William E. Benner, Esquire representing Charlotte M. Keenan, Kevin D’Arcy and Pamela D’Arcy

4. In support of Applicants’ request, Applicants submitted the following documents:

- A-1: Applicants’ Property Survey and Overhead Property Photograph
- A-2: Nine (9) Photographs of Applicants’ Neighboring Properties
- A-3: Three (3) Photographs of Location of Proposed Array
- A-4: Description, Dimensions and Specifications of Solar Array
- A-5: Email and Letters of Non-Opposition from Neighbors
- A-6: Doylestown Township Ordinance No.: 416, Adopted May 21, 2024
- A-7: Stake Out of Proposed Location for Array and Surrounding Area

5. The following Protestants requested and were granted party status:

- a. Charlotte M. Keenan, 874 Limekiln Road.
- b. Kevin & Pamela D’Arcy, 764 Limekiln Road.

6. Applicants had no objection to Mr. and Mrs. D’Arcy’s party status request.

7. Applicants objected to the party status granted to Ms. Keenan because she was unable to attend, however, her attorney was present for the hearing.

8. Ms. Keenan, through her attorney, requested a continuance, at the hearing, due to her unavailability from prepaid plans, which was denied by the Board.

9. The Subject Property is located in the R-1, Residential Zoning District of Doylestown Township. The lot area is 46,173 square feet. The property accommodates the Applicants' single-family dwelling with customary residential amenities.

10. Applicants seek to place a solar panel array in the rear yard of the residential property. The structure is proposed to be located within ten (10) feet of both the side and rear lot lines. §175-39 of the Doylestown Township Zoning Ordinance requires a 25 foot side yard and a 50 foot rear yard, respectively. Applicants seek variances to accommodate the solar array.

11. Applicants testified that they seek to have a carbon neutral footprint and this goal requires additional energy supply to the Subject Property.

12. Applicants need the additional proposed solar array to supplement their electricity usage due to the recent purchase of an electric vehicle and the installation of a jacuzzi.

13. Applicants were willing to plant 5-10 arborvitae along a portion of the rear property line to buffer the view from the D'Arcy's property.

14. Applicants were not willing to utilize any buffer along the portion of the rear property line by the Keenan's property as they believed Ms. Keenan was unable to see the structure.

15. Applicants testified that the reason they needed relief was because of the desired location of the array.

16. Applicants admitted that the structure could be installed in another location on the Subject Property without the need for relief, however, the shade from a mature tree on the property would not optimize the array's potential for energy production.

17. Applicants testified that they would not cut down the 30-35 year old Tulip Tree near the center of the rear yard on the Subject Property to accommodate the structure and increase its efficiency.

18. Applicants admitted that they have been able to reasonably use the Subject Property since 2014 after it was renovated.

19. Applicants admitted that it is their desire to be carbon neutral that requires the need for relief from the Ordinance.

20. Charlotte M. Keenan, Kevin D'Arcy and Pamela D'Arcy spoke in opposition to the Application.

21. Doylestown Township took no position with regard to this application.

CONCLUSIONS OF LAW:

1. The Zoning Hearing Board has jurisdiction pursuant to §909.1 of the Municipalities Planning Code, 53 PS §10909.1.

2. The Applicants are the beneficiaries of the Trust in which the Subject Property is contained within and therefore possessed of the requisite standing to make application to this Board.

3. The Zoning Hearing Board is charged with the responsibility to insure compliance with the technical requirements of the Zoning Ordinance.

4. The Applicants have failed to present evidence of sufficient factors to warrant the grant of the dimensional variance requested under the traditional standard found at §910.2 of the Municipalities Planning Code, §175-136 of the Doylestown Township Zoning Ordinance, and as articulated by the Pennsylvania Courts, including, *Valley View Civic Assoc. v. Philadelphia Zoning Board of Adjustment*, 501 Pa. 550, 462 A.2d. 637 (1983), as follows:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship has not been created by the appellant.
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use of development of adjacent property, nor be detrimental to the public welfare.
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

5. The Subject Property has been developed and reasonably used consistent with the requirements of the Ordinance.

6. Applicants failed to establish the legal basis required for granting relief through a variance from §175-39 of the Doylestown Township Zoning Ordinance which requires a 25 foot side yard and a 50 foot rear yard.

7. The competent evidence presented leads the Board to conclude that, if the variance relief is granted, there will be negative impacts upon surrounding properties or uses, as well as on the public welfare in general.

8. Specifically, the Board has determined that the Applicants' need for relief from the setback requirement impairs the appropriate use or development of adjacent property and would be detrimental to public welfare.

9. The evidence established that the relief sought by the Applicants is not the minimum variance necessary.

10. The variance sought will alter the essential character of the neighborhood or district in which the Subject Property is located.

11. The Subject Property is absent of unique physical circumstances or conditions peculiar to it that cause an unnecessary hardship.

12. There is no hardship. “[T]o establish unnecessary hardship, an applicant must show more than mere economic or personal hardship.” *Pietropaolo v. Zoning Hearing Board of Lower Merion Township*, 979 A.2d 969, 980 (Pa. Cmwlth. 2009). “[I]t is well-settled that in order to establish unnecessary hardship for a dimensional variance an applicant must demonstrate something more than a mere desire to develop a property as it wishes or that it will be financially burdened if the variance is not granted.” *Singer v. Philadelphia Zoning Board of Adjustment*, 29 A.3d 144, 150 (Pa. Cmwlth. 2011) (internal citations omitted).

13. Applicants failed to establish a hardship, not self-created, justifying the relief requested. If a hardship does exist, the hardship is self-created. “Whether a self-created hardship is substantial or minor is of no moment.” *Goldstein v. Zoning Hearing Bd. Of Lower Merion*, 19 A.3d 565, 569 (Pa. Cmwlth. 2011). The solar array could be installed on the Subject Property without any need for relief but for the Applicants' personal preference or desire to place it in the proposed location.

14. The Zoning Hearing Board does not accept as credible the testimony of the Applicants with regard to the minimum relief necessary, lack of detriment to public welfare, and the existence of the requisite unnecessary hardship. The ZHB is the ultimate judge of credibility and resolves all conflicts in the evidence. *Tri-County Landfill, Inc. v. Pine Township Zoning Hearing Board*, 83 A.3d 488, 518 (Pa. Cmwlth. 2014); *Szewczyk v. Zoning Board of Adjustment of City of Pittsburgh*, 654 A.2d 218 (Pa. Cmwlth. 1995).

15. The Commonwealth Court explained that while the requirements for a dimensional variance are less stringent than a use variance, the “burden on an applicant seeking a variance is a heavy one, and the reasons for granting the variance must be substantial, serious and compelling.” *Singer v. Philadelphia Board of Adjustment*, 29 A.3d 144, 149 (Pa. Cmwlth 2011).

16. The Applicants have failed to present evidence of sufficient factors to warrant the grant of the dimensional variances requested, even 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).

17. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to DENY the Applicants' request for relief, as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township, by 3-0 public vote taken, hereby DENIES the relief requested by Applicants from the Doylestown Township Zoning Ordinance

Thomas E. Panzer, Esq.
Solicitor
Michael A. Luongo, Esq.
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
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