

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

Docket No.: Z-14-24

Applicants: Krista & Headley Harper
90 W. Sandy Ridge Road
Doylestown, PA 18901

Owners: Same.

Subject Property: Tax Parcel No. 09-001-009-024, which is located at the address of the Applicants set forth above.

Requested Relief: Applicants seek to remove an existing 3,000 square foot cinder block building and replace same with a smaller carriage house. The 5.24 acre property currently supports a single-family residential dwelling, a barn, and the cinder block accessory structure. The proposed use for the proposed carriage house is to serve as a Use H-12 Accessory Family Apartment, or a Use H-1 Home Based Business in the nature of a law office or art studio. Applicants seek a special exception pursuant to §175-32.B of the Doylestown Township Zoning Ordinance (“Ordinance”) for the H-12 or the H-1 use. In addition, Applicants seek variances from the specific provisions of either the H-12 or H-1 uses as defined at §175-16.H(1) and H(12) of the Ordinance, respectively, including size, location, and use being contained within a new structure. Additionally, Applicants seek relief under §175-112.B, asserting that the cinder block building is a preexisting lawful nonconformity.

Hearing History: The application was filed in Doylestown Township on May 30, 2024, at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant by: Krista P. Harper, Esq.
87 N. Broad Street
Doylestown, PA 18901

Mailing Date: September 6, 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-1A, Residential Zoning District of Doylestown Township. The lot area is 5.24 acres. The property accommodates the Applicants' single-family dwelling, and several accessory buildings, most notably a 3,000 square foot cinder block building which was previously thought to be used as a "chicken coop". The 3,000 square foot cinder block accessory structure measures 100' x 30'. There is also a 200 year old two-story frame and stone barn on the property.

4. The 5.24 acre property may fairly be described as long and narrow. It is encumbered by a natural gas easement, supporting natural gas access across the Subject Property.

5. Applicants seek to remove an existing 3,000 square foot cinder block building and replace same with a smaller carriage house. The 5.24 acre property currently supports a single-family residential dwelling, a barn, and the cinder block accessory structure. The proposed use for the proposed carriage house is to serve as a Use H-12 Accessory Family Apartment, or a Use H-1 Home Based Business in the nature of a law office or art studio. Applicants seek a special exception pursuant to §175-32.B of the Doylestown Township Zoning Ordinance for the H-12 or the H-1 use. In addition, Applicants seek variances from the specific provisions of either the H-12 or H-1 uses as defined at §175-16.H(1) and H(12) of the Ordinance, respectively, including size, location, and use being contained within a new structure. Additionally, Applicants seek relief under §175-112.B, asserting that the cinder block building is a preexisting lawful nonconformity.

6. Applicants' plans for reconstruction include reducing the size of the nonconforming 3,000 square foot cinder block structure. Applicants intend to build at a size approximately 50% smaller. The design of the building will be more aesthetically desirable. The design of the building will be more usable. Impervious surface coverage is not being increased. Adequate parking exists for additional accessory uses.

7. Applicants have contacted adjacent neighbors. The adjacent neighbors have no objection to the proposal.

8. Applicant was candid in expressing the alternative requests for relief, either for an accessory family apartment (Use H-12), or a home based business (Use H-1), in the nature of a law office or art studio. Applicant did emphasize that parents are aging and

may be in need of accommodations in close proximity to their adult children (the Subject Property Owners). In the alternative, the Subject Property Owners will eventually be of an age where they may need to be served by the accessory family dwelling. In the event that the new accessory structure will not be used as an accessory family dwelling, it may be used to support either Applicant's law business (without heavy client traffic), or an art studio, with no foot traffic.

9. While the property is surrounded by residential uses, the property is somewhat private and secluded.

10. §175-32 of the Doylestown Township Zoning Ordinance permits by right an H-3 Residential Accessory Structure and an H-2 No Impact Home Based Business, along with the B-1 Single-Family Detached Dwelling.

11. The Ordinance permits a H-1 Home Based Business and a H-12 Accessory Family Apartment, by special exception.

12. The specific criteria for an H-1 home-based business, as defined by §175-16 H-1 of the Ordinance, follow.

§175-16.H Accessory uses.

- (1) **H-1 Home-based business:** a business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling and which involves some customer, client or patient traffic, whether vehicular or pedestrian, pickup, meeting location, delivery or removal functions to or from the premises in excess of those normally associated with a residential use. The business or commercial activity must satisfy the following requirements: [Amended 6-1-1993 by Ord. No. 227; 6-26-2001 by Ord. No. 301; 11-18-2008 by Ord. No. 345]
 - (a) The home-based business shall be accessory to a residence and carried on wholly indoors and within a dwelling or other structure accessory thereto and shall be clearly incidental and subordinate to its use for residential purposes by its occupants.
 - (b) The business activity shall be compatible with the residential use of the property and surrounding residential uses and shall meet the minimum and maximum area, height and dimensional requirements of the district in which the use is located.
 - (c) Such use shall be limited to single-family detached dwellings.

- (d) There shall be no use of show windows, display or advertising visible outside the premises, except as provided for signs herein.
- (e) There shall be no exterior storage of material or building material.
- (f) There shall be no parking of commercial vehicles, except that parking of not more than one commercial vehicle exceeding a one-ton loading capacity and with no more than two axles or four wheels, whichever is less, including any construction or landscaping vehicles and trailers used for their transportation (i.e., front-end loaders, cranes, cement mixers, riding lawn mowers, etc.) shall be permitted only within a completely enclosed building.
- (g) The appearance of the residential structure shall not be altered or the home-based business within the residence be conducted in a manner which would cause the premises to differ from the residential character by the use of colors, materials, construction, lighting, show windows or advertising visible on the premises to attract customers or clients, other than an identification sign not exceeding two square feet, notwithstanding any other provisions of this chapter.
- (h) A sign displaying the name and address of the home-based business may be permitted, subject to the following requirements: no more than one such sign shall be erected on the lot; the area of the sign shall not exceed two square feet in size; and the sign shall be either fixed flat on the main wall of the building or may be erected in the front yard, but not within 10 feet of the cartway.
- (i) No articles shall be sold or offered for sale except such as may be produced on the premises.
- (j) There shall be no stockpiling, storage or inventory of products of a substantial nature.
- (k) There shall be no commodities sold or services rendered that require receipt or delivery of merchandise, goods or equipment by other than passenger motor vehicle or by parcel or letter carrier mail service using vehicles typically employed in residential deliveries.
- (l) The home-based business shall be carried on only by inhabitants of the dwelling and not more than two additional employees.
- (m) The floor area devoted to a home-based business shall not occupy more than 25% of the ground floor of the principal residential structure or 500 square feet, whichever is less; all portions of the floor area to be used for the home-based business shall be accessible to employees and clients without

having to enter or walk through the areas of the residence devoted to solely residential use, and all areas to be used for employees and client visits shall be in one location and not separated by rooms or hallways which are used for residential purposes.

- (n) No equipment or process shall be used in a home-based business which creates discernible noise, vibration, glare, fumes, odors or electrical interference at the property line, and no equipment or process shall be used which creates visual or audible interference in any radio or television receiver off the lot or causes fluctuations in line voltage off the lot.
- (o) No manufacturing, repairing or other mechanical work shall be performed in any open area. All such activities shall be conducted in such a manner that they are not detectable or noticeable at or beyond the property line.
- (p) The business activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use in the neighborhood.
- (q) The maximum number of off-street parking spaces shall be limited to six parking spaces, which shall not include any garage spaces and shall be designed to comply with the appropriate provisions of Article V of this chapter.
- (r) No more than one home-based business shall be permitted per residential dwelling.
- (s) The hours of operation shall be limited to Monday through Saturday, and activities shall occur between the hours of 8:00 a.m. to 9:00 p.m.
- (t) Parking spaces required by the home-based business in addition to those required for the residential use must be located to the side or to the rear of the principal residence and must be separated from adjoining properties by a ten-foot-wide planted buffer.
- (u) The business may not involve any illegal activity.

13. Applicant complies with all specific requirements of H-1 Home Based Business use except H-1(c), in that the use will not be limited to the single-family dwelling. It will be in the accessory structure, and H-1(m) in that the area devoted to the home based business will occupy more area than 25% of the ground floor of the principal residential dwelling. The proposed accessory structure is approximated at 1,500 square feet.

14. Applicant requests a variance from the specific provisions of the H-1 Use at H-1(c) and H-1(m).

15. The specific criteria for an H-12 Accessory family apartment, as defined by §175-16 H-12 of the Ordinance, follow:

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.

16. Applicant meets the specific requirements of the accessory family apartment use except for items H-12(a) and H-12(b). The accessory family apartment will occupy greater than 25% of the total usable floor area of the principal residence, but will not exceed 1,500 square feet, and H-12(b) the accessory family apartment will be contained in a newly constructed accessory structure, as opposed to an existing accessory structure.

17. Applicant requests variances from H-12(a) and H-12(b) of the H-12 accessory family apartment use.

18. No one spoke in opposition to the application.

19. 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, but for the dimensionally nonconforming 3,000 square foot cinder block accessory building which encroaches into the side lot line.

2. Based on Applicants' proposal, Applicants will be reducing the extent of the nonconformity by reducing the size of the building.

3. Applicants require a special exception for either the proposed H-1 or H-12 Use.

4. §175-137 the Ordinance provides the standards for the grant of special exceptions. §175-137 of the Ordinance reads as follows:

5. § 175-137 Special exceptions.

A. Where this chapter has provided for stated special exceptions to be granted or denied by the Board pursuant to express standards and criteria, the Board shall hear and decide requests for such special exceptions in accordance with such standards and criteria. In granting a special exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in this chapter, as it may deem necessary to implement the purposes of this chapter.

B. The relief granted pursuant to the grant of a special exception shall expire five years from the date of the written decision granting the special exception by the Zoning Hearing Board, five years from the date of the Board of Supervisors approval at a public meeting of a preliminary subdivision and/or land development plan based, in part, upon the special exception, or five years from the date of a final Order of Court arising from an appeal from the granting of the special exception, but same shall not be extended if the appeal arises from the grant of a subdivision and/or land development approval where the special exception or special exceptions were a part of same. [Added 4-14-2004 by Ord. No. 317]

6. Applicants require variances from certain provisions of the Ordinance as indicated within the above Findings of Fact. The standard for a variance is located at §175-136 as follows:

§ 175-136 Variances.

The Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship on the applicant. The Board may by rule prescribe the form of application and may require preliminary application to the Zoning Officer.

A. The Board may grant a variance, provided that the following findings are made where relevant in a given case:

- (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 applicant.
- (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 or 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.

7. Whenever the Zoning Hearing Board considers the request for relief, the additional factors shall be considered, as follows:

§ 175-138 Additional factors to be considered.

A. In passing upon applications for special exceptions and variances, the Board shall consider all relevant factors and procedures specified in other sections of this chapter, including Article IV, Use Regulations, as well as the following.

- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments. No special exceptions or variances shall be granted within the floodway

for any proposed use, development or activity that will cause any increase in flood levels.

(2) The danger that materials may be swept onto other lands or downstream to the injury of others.

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

(4) The availability of alternative locations not subject to flooding for the proposed use.

(5) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.

(6) The suitability of the property for the use desired and the extent to which the new or expanded use is regulated by appropriate conditions and safeguards.

(7) The public interest in or the need for the proposed use and that the use will serve the best interests of the Township, the convenience of the community and the public health, safety and general welfare.

(8) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions. Where applicable, a certificate of adequacy of sewage and water facilities shall be provided.

(9) The effects of the proposed change with respect to the most appropriate use of land; conserving the value of buildings; safety from fire, panic and other dangers; adequacy of light and air; the overcrowding of land; congestion of population; and the adequacy of public and community services.

(10) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

(11) The size, scope, intent and character of the exception requested and assurance of the compatibility of the proposed use with the spirit, purpose and intent of the Comprehensive Plan and with all applicable requirements of this chapter and

the Township Subdivision and Land Development Ordinance.^[1]

[1] Editor's Note: See Ch. 153, Subdivision and Land Development.

(12) The safety of access to the property for ordinary and emergency vehicles and the probable effects of proposed development on highway congestion and assurance that adequate access arrangements are provided in order to protect roadways from undue congestion and hazard.

(13) The operation in connection with any special exception or variance shall not be more objectionable to nearby properties by reason of noise, fumes, vibration or lights than would be the operation of any permitted use.

(14) Such other factors which are relevant to the purpose of this chapter.

B. The Board may refer any application and accompanying documentation pertaining to any request for a special exception or variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities and the adequacy of the plans for protection of public health, safety and welfare and other related matters.

C. Special exceptions and/or variances shall only be issued after the Board has determined that the granting of such will not result in additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with local laws or ordinances.

8. The Zoning Hearing Board finds that the existing structure in question (the 3,000 square foot cinder block building) is an existing lawful nonconformity.

9. The Zoning Hearing Board finds that the Applicant has met the standard for the modest variances requested in conjunction with its request for an H-1 or H-12 Use for the proposed replacement accessory structure. The variances from the aforementioned specific requirements of the proposed uses are granted.

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. Cmwlth. 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, no objecting witnesses appeared or offered 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. The requested special exceptions are granted.
12. 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.
13. The evidence establishes that the relief sought by the Applicant is the minimum variance necessary.
14. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located.
15. The Zoning Hearing Board imposed certain conditions to safeguard against any of the aforementioned potential problems.
16. 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 requested relief as follows: (1) confirmation that the 3,000 square foot accessory structure represents a preexisting nonconforming structure (dimensionally); (2) a special exception pursuant to §175-32.B of the Doylestown Township Zoning Ordinance for either the H-12 or the H-1 use, at your election, but not simultaneously, to one use within the new accessory structure proposed at a time; and, (3) variances from the specific provisions of both the H-12 or H-1 uses as defined at §175-16.H(1) and H(12) of the Ordinance, respectively, including size, location, and use being contained within a new structure.

The relief GRANTED is subject to the following conditions:

1. The new accessory building shall not increase the existing dimensional nonconformity;
2. The new accessory structure shall not exceed a 1,500 square foot footprint;
3. Applicant must apply for a certificate of occupancy prior to use of the new accessory structure, and must obtain a new certificate of occupancy upon transitioning from the H-1 use to the H-12 use or the H-12 use to the H-1 use;
4. Applicant shall submit a plot plan and erosion and sedimentation control plan to be reviewed by the township engineer as part of the building permitting process;
5. Applicant must submit an "As Built" plan to close out the permit process, post construction, and before use and occupancy;
6. Applicants must comply in all other respects with all other applicable governmental ordinances regulations including obtaining a building permit.

**ZONING HEARING BOARD
OF DOYLESTOWN TOWNSHIP**

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/s/ Mitchell Aglow
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