

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

Docket No.: Z-5-25

Applicants: Brian & Christine McCarthy
80 W. Sandy Ridge Road
Doylestown, PA 18901

Owners: Same.

**Subject
Property:** Tax Parcel No. 09-001-009-003, which is located at the address of the Applicants set forth above.

**Requested
Relief:** Applicants seek to construct a detached garage to be used, in part, for an Accessory Family Apartment. Applicants seek a special exception under §175-32.B of the Doylestown Township Zoning Ordinance ("Ordinance") to permit the Use H-12 Accessory Family Apartment, subject to the specific requirements of §175-16.H(12) of the Ordinance. Applicants also seek a variance from §175-16.H(12) to permit the use within a new accessory structure, and a variance from §175-16.H(3) to permit the accessory structure (detached garage) to locate closer to the street line than the principal building (the house).

**Hearing
History:** The application was filed in Doylestown Township on April 11, 2025. The hearings were held on May 22, 2025, June 26, 2025, and July 24, 2025, at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant by: Joseph A. McGinley, Esq.
201 N. Main Street
Doylestown, PA 18901

Protestant by: Krista Harper, Esq., *Pro Se*
90 W. Sandy Ridge Road
Doylestown, PA 18901

Mailing Date: September 8, 2025

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. During the hearings held, the Zoning Hearing Board marked the following exhibits:

A. Zoning Hearing Board Exhibits

ZHB-1 Application filed April 16, 2025, with list of adjacent property owners; floor plans for a two story one bedroom combination garage/apartment; elevations; site plan (without attribution); plan set consisting of existing features plan prepared by Charles Shoemaker, Inc. dated February 28, 2025; building permit plan dated March 11, 2025; erosion control plan dated March 11, 2025.

ZHB-2 Legal notices establishing first hearing, May 22, 2025.

ZHB-3 Doylestown Township Zoning Ordinance.

ZHB-4 Email confirming continuance (Applicants were away on vacation; Applicant's contractor, Jason Stout, was present on behalf of Applicants).

ZHB-5 August 26, 1998, Decision Doylestown Township Zoning Hearing Board, referable to the subject property (granting relief to facilitate subdivision resulting in the subject lot and the Harper lot).

ZHB-6 Declaration of Restrictive Covenants dated October 20, 1998, referring to Lot 2 (tax parcel number 09-001-009-003); restricting the use of the subject property to a single family dwelling, running with the land in perpetuity.

ZHB-7 April 21, 1999, Decision Doylestown Township Zoning Hearing Board - relief granted in relation to construction of a two car detached garage (30 x 24 x 20 feet in height) closer to the street line than the principle structure. The Decision refers to the Plan Of Minor Subdivision Lonsdale Tract, with emphasis on note 12, "by agreement with the Doylestown Township Board of Supervisors at the June 16, 1998 meeting, there shall be no additional dwellings constructed on the property. The property shall be placed in conservation easement, and the two proposed lots shall be deed restricted from further subdivision. Specific requirements of the

conservation easement shall be as specified in the conservation easement document to be recorded contemporary (SIC) with the mylars".

B. Protestant Exhibits

- P-1 Building plans for existing accessory structure, referred to as "existing cabana", or "pool house" (two-story structure with covered front and rear porches)
- P-2 Final Plan – Record Plan Minor Subdivision Lonsdale Tract dated August 7, 1998
- P-3 Declaration of Restrictive Covenants, dated October 20, 1998
- P-4 Photographs:
1. Google Earth image of subject property prior to improvements
 2. Photographic image of the front of the subject property as viewed from adjacent property owner Krista Harper's front door (from Zillow circa 2016)
 3. View of Subject Property from Protestant's front porch over Protestant's privacy fence
 4. View of the rear of Applicant's single family dwelling (from Zillow circa 2016)
 5. View of Applicant's rear yard from Harper rear yard circa 2025
- P-5 Elevations of proposed improvements and site plan (unattributed), consistent with ZHB-1

3. The Applicants are the Owners of the Subject Property and therefore possessed of the requisite standing to make application to this Board.

4. Adjacent property owner, Krista Harper, Esq., offered verbal and documentary evidence in opposition to the application.

5. The Subject Property is located in the R-1A, Residential Zoning District of Doylestown Township. The lot area is 314,939 square feet (7.23 acres-gross).

6. The lot may be described as a deep narrow flag lot with multiple existing accessory structures located toward the front of the lot, albeit some 500 feet from the street line at West Sandy Ridge Road, and natural features located to the center and rear of the lot.

7. Consistent with ZHB-5, the subject lot and the adjacent Harper lot were created by a subdivision circa 1988. The lot had been previously subdivided as well. By Decision dated August 26 1998, the Doylestown Township Zoning Hearing Board did grant certain relief to the previous owners Taylor and Nancy Lonsdale, 80 West Sandy Ridge Road. See Exhibit ZHB-5. The 1998 Zoning Decision granted relief to permit the property owner to subdivide the subject 12.5 acre property into two lane lots. The lot referred to as "Lot 2" was to be "approximately 7.5-8.3 acres in size" and would contain the existing cottage which is presently occupied by tenants, a converted shed, used for storage, and a pole barn. The other lot, "Lot 2A", was to be retained by the Applicants and "would be approximately 4.2-5.0 acres in size containing the main house, a one car garage, smokehouse, springhouse and root cellar." Prior to the subdivision, there was a prohibition on further subdivision. A variance was granted to permit the subdivision conditioned upon no further subdivision to be emphasized by a conservation easement and, "with the understanding that there be no additional dwellings constructed on the property and that both properties would be placed under a conservation easement and subject to restriction from any further subdivision." (Finding of Fact #11)

Conditions to the August 26, 1998, Decision are as follows: 1) that no additional dwellings are to be constructed on either lot; 2) that each lot be served at any time by only one single family residence (with the exception of the possibility of a temporary residence while the barn on proposed Lot 2 was being converted into a single family residence). This condition shall be construed to mean that in the event that the barn is converted to a single family residence, the use of the cottage on this lot, for that purpose, shall be abandoned; 3) the execution of a conservation easement between the owner/owners of the lots created pursuant to the subdivision, under terms acceptable to Doylestown Township; and 4) that the final plan of subdivision shall contain the note or restriction against any further subdivision of either lot created pursuant thereto.

8. As the buildings on the two lots (subject lot and the Harper lot) were once used as a single agricultural/residential property, the structures, now on different properties, are in close proximity to each other, especially in light of the considerable size of the two properties.

9. The subject property accommodates the Applicant's single family dwelling; a two-story garage/pool house, to the south side, within the front yard (i.e. anterior to the street in relation to the principle dwelling); frame garage to the north, and several other smaller accessory structures, along with an in-ground swimming pool.

10. Applicants seek to construct a detached garage to be used, in part, for an Accessory Family Apartment. Applicants seek a special exception under §175-32.B of the Doylestown Township Zoning Ordinance ("Ordinance") to permit the Use H-12 Accessory Family Apartment, subject to the specific requirements of §175-16.H(12) of the Ordinance. Applicants also seek a variance from §175-16.H(12) to permit the use within a new accessory structure, and a variance from §175-16.H(3) to permit the accessory structure (detached garage) to locate closer to the street line than the principal building (the house).

11. An accessory family apartment is permitted within the R-1a Residential Zoning District of Doylestown Township by special exception, pursuant to §175-32.B of the Doylestown Township Zoning Ordinance ("Ordinance").

12. By its own admission, Applicant does not meet each of the specific requirements of the §175-16.H(12) Accessory Family Apartment use.

13. Applicant seeks two variances, as follows:

- 1) A variance from §175-16.H(12)b to construct a new and separate building to house the accessory family apartment use.

§175-16H(12)b reads as follows:

"Accessory family apartments shall be part of the principle residence or may be contained in the existing accessory structure such as a garage."

A new and separate structure is contemplated.

- 2) A variance from §175-16.H(3)(d)(6) to permit the accessory structure to locate closer to the street line than the primary structure (the single family dwelling).

§175-16H16.H(3)(d)(6) reads as follows:

"All accessory structures shall be located behind the principle building set back line closest to the street on which the principle building fronts."

The building is a flag lot, and takes access to West Sandy Ridge Road through an extensive paved driveway which is located, in part, on the "flag pole" portion of the lot. The proposed accessory structure is to be located in front of the existing single family dwelling.

14. Applicant, Brian McCarthy, and Applicant's contractor, Jason Stout, testified in support of the application.

15. The proposed improvements on the subject property are approximately 500 feet from West Sandy Ridge Road.

16. The proposed improvements are approximately 52 feet from the Harper property.

17. As proposed, the accessory structure is designed to accommodate a garage, to house at least one vehicle, a covered carport on one end, a covered porch on the other end, and an accessory family apartment on the second floor. The footprint of the structure is on the order of 1,193 square feet, including the covered porch and covered carport. The

building is proposed at two full stories. The accessory family apartment would consist of living room, bathroom, two bedrooms, and a kitchen.

18. Applicant indicated that the accessory family apartment would be used more for visiting family members or Applicant's children as they reach the age of majority. There were no specific plans for the inhabitant of the accessory family apartment. Further, the accessory family apartment would be used to accommodate family visitors, rather than long term resident family members.

19. The improvements would not be seen from Sandy Ridge Road.

20. The improvements would be seen from adjacent property owner Harper's property.

21. Applicant conceded that the prior property owners did obtain relief for a cabana/pool house. Applicant asserted that no one presently sleeps in the pool house and that the pool house is not an appropriate structure to use as a dwelling.

22. Exhibit ZHB-7 represents the decision granting relief to permit the accessory structure known as "the cabana" or "pool house". The April 21, 1999 decision originated with the owners of 80 West Sandy Ridge Road, Denise and George Vinter, requesting a variance from the provisions of §175-16.H(3)(e) of the Doylestown Township Zoning Ordinance to permit the erection and location of an accessory structure (a detached garage) located in front of the single family dwelling (i.e. at a distance less than the setback of the principle building from the street line). The Zoning Hearing Board granted the relief. The garage that has been identified in ZHB-7 is now referred to as the "cabana" or "pool house".

23. Party protestant Krista Harper testified that she and her husband bought the property immediately adjacent to the subject property and restored the dwelling thereon. The Harpers and the Applicant share a driveway to West Sandy Ridge Road. The Harper's front door faces the Applicant's front door. (This testimony is corroborated by the site plan submitted (ZHB-1) and P-4 & 5).

24. Ms. Harper testified to a cordial relationship with her neighbors, the Applicant, but decried the present request for relief as violative of the existing conservation easement (Exhibit P-3), as well as being a visual imposition on the Harper viewscape and an imposing structure which changes the character of the subdivided properties.

25. Protestant Harper offered argument that the proposed structure and additional use (the H(12) accessory family apartment use) provides negative impacts to the neighborhood, does not meet standards for the Ordinance, does not meet the standards for a special exception, does not meet the standards for a variance, does not represent unique circumstances and, presents no hardship, unless the hardship has been created by the Applicant.

26. Applicant requires a dimensional variance (from §175-16.H(3)) to place the proposed accessory structure in the front yard.

27. The standard for a variance is found at §175-136 of the Doylestown Township Zoning Ordinance, as well as, Municipalities Planning Code §910.2, 53 P.S. §10910.2.

28. The Courts have long indicated that the burden on an applicant seeking a variance is a heavy one. In some cases, the burden is lessened where a dimensional variance is requested. See, Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d. 43 (1998). However, the Courts have emphasized that the relaxed standard is still a substantial, serious and compelling standard. See, Singer v. Philadelphia Board of Adjustment, 29 A.3d 144, 149 (Pa. Cmwlth 2011).

29. The Zoning Hearing Board concludes that the Applicants have not established a hardship to justify the variance requested. The Applicants have reasonable use of the property by way of the existing single-family dwelling use, with existing accessory structures. The proposed accessory structure in the front yard interferes with Protestant Harper's quiet enjoyment of her adjacent property and therefore does not justify deviation from a Zoning Ordinance, under the present circumstances.

30. The Applicant has 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).

31. Applicants' desire or preference to construct the second large accessory structure in the front yard is insufficient to justify the relief required. See, Kneebone v. Zoning Hearing Bd. of the Twp of Plainfield, 2022 Pa. Lexis 504 (Pa. 2022).

32. As a consequence the Zoning Hearing Board finds that Applicant has failed to meet its burden of establishing entitlement to a variance from §175-16.H(3)(d)(6).

33. §175-37 B H-12 provides that the accessory family apartment is permitted by special exception.

34. 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.

35. §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.

36. §175-137 and §175-138 similarly provide standards and criteria for the granting of special exceptions.

37. 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.

38. Applicant offered testimony, and documentary evidence, attempting to address each of the specific and general criteria for the accessory family apartment, except for §175-16.H(12)(b).

39. Applicant fails to meet the standard for special exception in that the variance for the location of the new building, and therefore the building itself, is denied, and therefore, Applicant is unable to meet, or obtain relief from §175-16.H(12)(b).

40. The Zoning Hearing Board is constrained to agree with party protestant Harper.

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

42. 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, to support a single family dwelling, but with additional uses and structures which were preexisting, presumably lawful, and permitted by the aforementioned zoning decisions.

2. §175-32.B provides that Use H12 accessory family apartment is permitted within the R-1a Zoning District by special exception, where all specific and general requirements are met.

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

4. MPC §912.1 and Ordinance §175-137 and §175-138 provide the authority and general criteria for the special exception.

5. MPC §910.2 and Ordinance §175-136 provide the authority and general criteria for a variance.

6. In order to successfully prove the basis for a variance from the Doylestown Township Zoning Ordinance, Applicant must establish the following:

§ 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.

See also, Municipalities Planning Code §910.2, 53 P.S. §10910.2.

7. The Courts have long indicated that the burden on an applicant seeking a variance is a heavy one. In some cases, the burden is lessened where a dimensional variance is requested. See, Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh, 554 Pa. 249, 721 A.2d. 43 (1998). However, the Courts of have emphasized that the relaxed standard is still a substantial, serious and compelling standard. See, Singer v. Philadelphia Board of Adjustment, 29 A.3d 144, 149 (Pa. Cmwlth 2011).

8. The Zoning Hearing Board concludes that the Applicants have not established a hardship to justify the variances requested. There is no hardship driving the placement of the Applicant's proposed two-story accessory building location. The Applicants have reasonable use of the property by way of the existing single-family dwelling use, with multiple accessory structures. Applicant has not justified the need for the dimensional variance requested. As to the use, similarly there is no hardship, therefore Applicant fails to meet the burden of establishing the need to deviate from the definition of the accessory structure.

9. The Applicant has failed to present evidence of sufficient factors to warrant the grant of the 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).

10. Applicant's desire or preference to construct the two-story accessory structure in the front yard is insufficient to justify the relief required. See, Kneebone v. Zoning Hearing Bd. of the Twp of Plainfield, 2022 Pa. Lexis 504 (Pa. 2022).

11. 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. The evidence presented by neighbor Harper supports this conclusion.

12. The evidence establishes that the relief sought by the Applicant is not the minimum variance necessary. In fact, Applicant has not established that any relief is necessary.

13. The variance sought will alter the essential character of the area or district in which the Subject Property is located. The two adjacent properties (the Subject Property and the Harper property) are uniquely symbiotic. They were once a single lot. The structures, including the home of both Applicant and Protestant are in close proximity to one another despite the large lot size.

14. The denial of the requested variances from one of the specific requirements of a use H-12 Accessory Family Apartment, as well as the credible testimony of the adjacent property owner, regarding negative impacts of the proposed use and structure on Protestant's quiet enjoyment of the adjacent residential property, frustrates Applicant's burden to meet the subjective and 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. Commw. 396, 449 A.2d 781 (1982). Here, the Protestant is credited with testimony and documentary evidence, produced during the hearings held, establishing 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).

15. Accordingly, the Doylestown Township Zoning Hearing Board determined, 2-0, to DENY the Applicant's request for relief, as is set forth hereafter.

ORDER

Upon consideration and after multiple hearings, the Zoning Hearing Board of Doylestown Township hereby DENIES Applicants' request for variances from §175-16.H(12) of the Doylestown Township Zoning Ordinance to permit an Accessory Family Apartment use within a new accessory structure, and a variance from §175-16.H(3) to permit the accessory structure (detached garage) to locate closer to the street line than the principal building (the house), and further DENIES Applicants' request for a special exception pursuant to §175-37.B H-12 of the Ordinance to permit Applicants to add an accessory family apartment on the Subject Property.

Thomas E. Panzer, Esq.
Michael A. Luongo, 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/ Samuel Costanzo
Samuel Costanzo, Secretary