

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

**Application No.** Z-1-2013

**Applicant:** Penelope P. Fleming  
52 Warden Road  
Doylestown, PA 18901

**Owner:** Same

**Subject Property:** Tax Parcel No. 9-9-64-9, which is located at the address of the Applicant set forth above

**Requested Relief:** The Applicant requests a special exception pursuant to §175-37.B.H-1 of the Doylestown Township Zoning Ordinance ("Ordinance") to permit a home-based business in the nature of a ceramics studio providing instructional classes within a structure on the subject property.

**Hearing History:** The application was filed in Doylestown Township on January 11, 2013. The hearing was held on February 28, 2013 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

**Appearances:** Applicant by: William E. Benner, Esq.  
Benner and Wild  
174 W. State Street  
Doylestown, PA 18901

Mark and Linda Eichhorn, Pro Se'  
54 Warden Road  
Doylestown, PA 18901

**Date of Issuance:** March 18, 2013

## 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 owner 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. It is approximately 2.058 acres in size and accommodates the Applicant's single family detached dwelling, appurtenant decks, and an access driveway and walkways.
4. The Applicant purchased the property in July, 2000. In 2001, she constructed a permitted shed and fence. In 2003, she constructed a permitted addition to the home including an enlarged garage addition in order to provide a studio, craft room and study for her art as a ceramicist, as well as for household storage.
5. The Applicant is a self-employed artist and ceramics teacher. She is now retired from her previous employment as an art teacher in school districts and educational institutions. Approximately two years after the construction of the addition to the home, she began offering classes, starting at the end of 2005, within the garage addition, for three ceramics students.
6. The Applicant credibly testified that she was unaware of the requirement for obtaining a special exception for such a use, or of any of the criteria of the Ordinance regarding home-based businesses.
7. According to her testimony, in 2007, she began offering two classes and then, after her retirement from public education in June 2012, has increased the classes.
8. Fleming testified that several of her Warden Road neighbors became ceramics students of hers in her garage classroom. Additionally, according to her testimony, she only received one complaint since she began operations, so she assumed that the business she was operating in the garage was innocuous to the neighborhood, known to it, and acceptable to it.
9. However, some months ago, apparently upon complaint of one of the neighbors, the Doylestown Township Director of Code Enforcement, Sinclair Salisbury, issued an enforcement notice to her requesting that she cease operations of the ceramics classes due to her failure to obtain appropriate zoning relief.
10. Fleming testified that she concluded the classes that were currently being conducted and then, in response to the enforcement notice, ceased offering the classes,

on advice of her attorney, so as to enable her to seek to comply with the requirements of the Ordinance regarding home-based businesses.

11. A home-based business, as defined at Ordinance §175-16.H-1, is permitted by special exception in the R-1 Zoning District in which the subject property is located, pursuant to §175-37.B.

12. Accordingly, the Applicant seeks a special exception to operate and conduct her ceramics lessons in an area within the garage on the subject property.

13. §175-16.H-1 defines a home-based business as follows:

“...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.”

14. The Applicant proposes to conduct ceramics classes, with a maximum number of 8 students per each class. In order to obtain the special exception, the Applicant must establish compliance with the criteria for a home-based business use set forth at Ordinance §175-16.H-1.

15. The credible testimony presented by the Applicant has established compliance with all of those criteria as follows:

(a) The ceramics classes will be carried on wholly indoors within the attached garage and will be incidental and subordinate to its use for residential purposes by the Applicant.

(b) The evidence indicates that the proposed ceramics classes will be compatible with the residential use of the property and surrounding residential uses. The Applicant has established compliance with all of the dimensional requirements of the Ordinance.

(c) The home-based business is proposed to be attached to a single family detached dwelling.

(d) The applicant will employ no show windows, display or advertising visible outside of the property.

(e) There will be no exterior storage of material.

(f) There will be no parking of commercial vehicles on the subject property in connection with the home-based business.

(g) The appearance of the residential structure will not be altered nor will the proposed home-based business be conducted in a manner which would cause the premises to differ from the residential character of the neighborhood.

(h) Signage is not proposed by the Applicant at this time.

(i) There will be no articles sold or offered for sale.

(j) There will be no stockpiling, storage or inventory of products of a substantial nature.

(k) There will be no deliveries to the property other than vehicles typically employed in residential deliveries.

(l) The ceramics classes shall be conducted only by the Applicant and there will be no additional employees.

(m) The Applicant credibly established that 25% of the ground floor area of the principal residence is 744 square feet. The floor area to be devoted to the home-based business is 456 square feet.

(n) The home-based business will create no discernable noise, vibration, glare, fumes, odors or electrical interference nor will it create visual or audible interference with any transmissions or fluctuations in line voltage off the subject property.

(o) There will be no manufacturing, repairing or other mechanical work performed in any open area.

(p) The proposed home-based business will not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use.

(q) The Applicant has provided, as depicted on Exhibit B-1.B, the site plan six off-street parking spaces in compliance with the Ordinance.

(r) There will be no other home-based business on the subject property other than the one proposed.

(s) The hours of operation are limited to Monday through Saturday between the hours of 8:00 a.m. to 9:00 p.m.

(t) The additional parking spaces provided are located to the side of the principal residence and separated from the Eichhorn property by a 15 foot wide buffer that is approximately 40 foot long. In addition, the Applicant propose the construction of an 8 foot high privacy fence, extending 32 feet in length, in the same area, so as to lessen the visual and sound impacts of the proposed home-based business upon Mr. and Mrs. Eichhorn.

(u) The proposed home-based business does not involve any illegal activity.

16. Mr. and Mrs. Eichhorn were granted party status as the most immediately impacted contiguous neighbors. These parties felt that the request for the special exception was effectively a change in zoning to make the property and neighborhood a commercial one. Their concerns included that the special exception request constitutes a change in zoning and will establish negative precedence. The activity generated by students coming and going to the ceramics class causes their dogs to bark and requires them to keep them indoors during that time but additionally they feel that they have a loss of visual privacy and that the fact that the driveway on the subject property is gravel makes noise with cars going in and out. They also have concerns about ceramic toxicology safety of the kilns used to heat the pottery produced by students

17. Another residential neighbor, Nat Vernaci, of 68 Warden Road, testified with concerns about the impact of the traffic in his neighborhood and with the fact that this will establish a precedent. For example, Mr. Vernaci testified that he is a CPA and this would enable him to open a home-based business on his property.

18. On the other hand, there were a number of Warden Road residents who came out in support of the application. Collectively, they credibly established for the Board that the ceramics classes that had been conducted on the subject property by the Applicant have had no significant negative impact upon their use or enjoyment of their property.

19. The Township's Director of Code Enforcement, Sinclair Salisbury, confirmed that there are several kilns, similar to the ones used on the subject property, in the Township and that there are no specific fire suppression measures needed to make sure of their safety. One of the residential neighbors, a mechanical engineer, indicated that the very nature of a kiln of the sort employed by the Applicant is safe.

## **CONCLUSIONS OF LAW**

1. The subject property has been developed and used as a single family detached dwelling, permitted by right in the R-1 Zoning District.

2. A home-based business is permitted, by special exception, in the R-1 Zoning District, pursuant to §175-37.B.

3. The credible and competent evidence presented by the Applicant establishes compliance with all of the criteria set forth at Ordinance §175-16.H-1 to enable the Applicant to achieve a special exception for that use.

4. The Board concludes, after considering the relevant additional factors required to be considered by them in connection with any special exception request, set forth at §175-138, that the home-based business proposed is appropriate for the subject

property, consistent with the legislative intent of the Ordinance which establishes its right to exist in residential districts in Doylestown Township.

5. The Board determined to impose conditions upon the use, acceptable to the Applicant, which are set forth hereafter.

6. Accordingly, the members of the Doylestown Township Zoning Hearing Board in attendance at this hearing<sup>1</sup> determined, unanimously, to grant the Applicant's request for a special exception, conditioned as set forth hereafter.

WHEREFORE, the Zoning Hearing Board of Doylestown Township grants a special exception pursuant to §175-37.B of the Doylestown Township Zoning Ordinance, to permit the use of a 456 square foot area of the garage for ceramics classes as a home-based business defined at Ordinance §175-16.H-1, subject to compliance with all other applicable governmental ordinances and regulations and the following two specific conditions:

- (1) There shall be no off-street parking permitted for persons attending classes on the subject property; and
- (2) Classes shall be limited to 8 students maximum at any given time.

**ZONING HEARING BOARD OF  
DOYLESTOWN TOWNSHIP**

**By:** William J. Lahr, lsl  
William J. Lahr, Vice Chairman

Richard K. Gaver, lsl  
Richard K. Gaver, Secretary

***IMPORTANT NOTE:*** Pursuant to §175-136 and §175-137 of the Doylestown Township Zoning Ordinance, the relief granted herein shall expire five (5) years from the date of this decision.

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<sup>1</sup> Board Chairman W. Andrew McPherson recused himself from participation in this hearing.