

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

Application No. Z-8-2013

Applicant: Wilma C. Kummer Revocable Living Trust
652 Pebble Hill Road
Doylestown, PA 18901

Owner: Same

Subject Property: Tax Parcel No. 9-34-93, which is located at 2391 Turk Road in Doylestown Township.

Requested Relief: The Applicant proposes to subdivide the subject property into two lots to accommodate its two existing uses and, in order to do so, requests variances from the Doylestown Township Zoning Ordinance (“Ordinance”) as follows:

- (1) from §175-39 to permit a minimum lot area of .9726 acres for proposed lot #1, instead of the minimum required 5 acres;
- (2) from §175-17.F to permit an existing accessory building (garage) to be located at a setback distance from the rear property line, on proposed lot #2, of less than the required 50 feet; and
- (3) from §175-09 to permit the creation of a lot where the front yard does not abut a street right-of-way.

Hearing History: The application was filed in Doylestown Township on July 29, 2013. The hearing was held on September 26, 2013, at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant by: Kellie McGowan, Esq.
Eastburn & Gray
60 E. Court Street
PO Box 1389
Doylestown, PA 18901

Date of Issuance: October 22, 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 is 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. It is approximately 2.3997 acres in size as depicted on the Plan of Subdivision prepared by Irick, Everhardt and Mientus dated June 25, 2013, last revised September 23, 2013 (the "Subdivision Plan"), received into evidence as Exhibit A-2.

4. The subject property presently accommodates a 4-unit apartment building adjacent to its Turk Road frontage and, to the rear of the property, generally located in proximity to Old Pebble Hill Road, a single-family detached dwelling with typical residential accessory improvements, as well as a detached frame garage.

5. The single-family dwelling has access to Old Pebble Hill Road via a driveway easement over an adjacent property which is recorded in the Deed to that property. It has no frontage on Old Pebble Hill Road.

6. The 4-unit apartment building is a 3-story frame and stucco structure that was constructed in 1951. A multi-family residential dwelling is not permitted within the R-1 District pursuant to the Ordinance which was enacted after the construction of this building, creating a use non-conformity on the subject property.

7. The Owner's testimony was presented by Ben Ciliberto, a co-executor of the Trust. He established that his grandparents purchased the subject property in 1943; constructed their single-family home on it between 1943 and 1947, and constructed the 4-unit apartment building in 1951.

8. The Ordinance would classify the apartment building as "all other uses" for purposes of the dimensional requirements of §175-39. As such, it is presently non-conforming to the minimum lot area requirement of 5 acres. Additionally, it is non-conforming as to lot width and front yard setback distance as related to the apartment building.

9. The Applicant proposes to subdivide the property into 2 lots, one for each principal use. Proposed lot #1 will contain the apartment building and its accessory features. Proposed lot #2 will contain the single-family dwelling and detached garage.

10. Ciliberto credibly testified that the subdivision will enable the marketability for the use that each of the proposed lots would accommodate.

11. No construction or structural additions are proposed in connection with this application.

12. Proposed lot #1 will be .9726 acres in size and will continue its lot area non-conformity for "all other uses" in the R-1 District. Proposed lot #2 will be 1.23 acres in size (53,577 square feet) which meets the minimum lot area requirement of 40,000 square feet for a single family detached residential use.

13. The Applicant's landscape architect credibly testified that he located the property line to separate the two lots in as logical a location as possible to accommodate its existing features. As a result of that proposed new lot line, separating the lots on the subject property, the detached frame garage that serves the residence will be located 15 feet from its rear property line (bordering lot #1).

14. Ordinance §175-17.F, by reference to §175-39, requires a rear yard setback distance of 50 feet for the detached garage.

15. The only vehicular access to proposed lot #2, and the residence on it, is by means of a 10 foot wide access easement recorded in the Deed to the neighboring property which it burdens (Exhibit A-5). It has no frontage on a street right-of-way but has employed this access since its construction, prior to the enactment of the Doylestown Township's first Zoning Ordinance.

16. Irick testified that the Owners had investigated the creation of a flag lot, that would be permissible under the Ordinance, however it required a new access from Turk Road and would result in an increase in the number of variances necessary to afford the relief requested.

17. The Applicant testified that it was willing to accept a condition of approval, if granted, that would preclude any expansion of the non-conforming use on proposed lot #1 in the future.

18. A number of residential neighbors appeared at the hearing and determined, after the Applicant's agreement to no expansion of the non-conforming use, that they did not object to the relief requested in the application.

CONCLUSIONS OF LAW

1. The subject property is lawfully non-conforming as to its use with regard to the 4-unit apartment building that exists on it, its lot area, its lot width, and its front yard setback distance.

2. The Applicant's proposal to subdivide the subject property to create a lot for each of its principal uses is logical and necessary in order to market the property in the future. The proposed lot line, dividing the subject property into two lots, is logically located and consistent with sound engineering and planning principles.

3. The Board concludes that the strict application of Ordinance requirements would preclude this otherwise logical and necessary subdivision.

4. Upon imposition of a condition of relief that the expansion of the non-conforming apartment on proposed lot #1 will be precluded in the future, the Board concludes that there will be no negative impacts, if the proposed relief is granted, upon neighboring properties or uses.

5. The Board further concludes that the Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variances requested.

6. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to grant Applicant's request for relief as conditioned and set forth hereafter.

WHEREFORE, the Zoning Hearing Board of Doylestown Township GRANTS the following variances to enable the subdivision of the subject property into two lots as depicted on the Subdivision Plan:

- (1) from §175-39 to permit a lot area of .9726 acres for proposed lot #1, instead of the minimum required 5 acres;
- (2) from §175-17.F to permit the location of the existing accessory building at a setback distance of 15 feet instead of the required 50 feet; and
- (3) from §175-09 to permit the creation of proposed lot #2 that does not have a front yard abutting a street right-of-way.

The relief herein granted is subject to compliance with all other applicable governmental ordinances and regulations and the specific condition that the non-conforming apartment use on proposed lot #1 shall not be expanded in the future.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

By: W. Andrew McPherson
W. Andrew McPherson, Chairman

William J. Lahr
William J. Lahr, Vice Chairman

Richard K. Gaver
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.