

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

Application No. Z-9-2016

Applicant: Jeffrey Baisley
 106 Julie Lane
 Doylestown, PA 18901

Owner: Same

**Subject
Property:** Tax Parcel No. 9-30-193, which is located at the address of the
 Applicant set forth above.

**Requested
Relief:** The Applicant has filed an appeal from an enforcement notice
 alleging failure to obtain a zoning permit for construction of an
 accessory structure. Alternatively, the Applicant requests a
 variance from §175-38 of the Doylestown Township Zoning
 Ordinance (“Ordinance”) to allow an impervious surface
 coverage ratio of greater than the 20% required thereby.

**Hearing
History:** The application was filed in Doylestown Township on September
 15, 2016. The hearing was held on November 21, 2016 at the
 Doylestown Township Building, 425 Wells Road, Doylestown,
 PA 18901.¹

Appearances: Applicant, Pro Se¹

Doylestown Township by: Michael J. Meginniss, Esq.
 Begley, Carlin & Mandio, LLP
 680 Middletown Boulevard
 Langhorne, PA 19047

Mailing Date: January 3, 2017

¹ The Applicant signed a waiver of 60 day hearing requirement permitting the hearing to commence on November 21, 2016 (Exhibit B-5).

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 of Doylestown Township. It accommodates the Applicant's single-family detached dwelling with typical residential access ways and a walkway, a detached storage shed, an in-ground swimming pool, and a recently constructed deck and patio.

4. On August 8, 2016, Sinclair G. Salisbury, the Doylestown Township Director of Code Enforcement, issued an enforcement notice to the Applicant (Exhibit B-1.M) for his failure to apply for a zoning permit for the construction of the patio pursuant to §175-16.H-3 of the Ordinance.

5. The Applicant timely appealed that enforcement notice.

6. Mr. Salisbury testified on the background of the issuance of the enforcement notice. His credible testimony establishes the following:

- a. On April 28, 2016, the Applicant applied for a building permit from Doylestown Township for the construction of the deck and a 700 square foot patio. That building permit application was received into evidence as Exhibit B-1.H.
- b. After review of the building permit application, Mr. Salisbury issued a rejection letter dated May 9, 2016 (Exhibit B-1.J) indicating that the building permit application was denied as the patio proposed would result in an impervious surface coverage ratio on the Subject Property in excess of 20%.
- c. Ordinance §175-38 limits the impervious surface coverage ratio, in the R-1 Zoning District, to 20%.
- d. In Exhibit B-1.J, Mr. Salisbury pointed out that the proposed deck would meet the impervious surface coverage limitations provided the filing of an amended application removing the request to build the patio, if the deck were constructed so as to allow stormwater to drain through it to porous property beneath.
- e. On May 11, 2016 Salisbury and the Applicant conversed about the building permit denial. The Applicant understood that the

construction of the proposed deck would cause an exceedance of the impervious surface coverage maximum and authorized Salisbury to note on Exhibit B-1.M that the building permit application was amended to request construction of the deck only, eliminating the patio proposed.

- f. Thereafter, Salisbury issued a building permit, dated May 11, 2016, to the Applicant for the construction of the deck only with permeable surface underneath (Exhibit B-1.K).
- g. On August 5, 2016, Township Inspector Jesse Hill conducted an inspection of the deck to determine if final grading had taken place and observed that the patio had been constructed on the Subject Property.
- h. Based upon these Findings, the Board further finds that the enforcement notice was issued by Salisbury in accordance with the Ordinance.

7. Alternative to his appeal of the enforcement notice, the Applicant also seeks a variance from §175-38 in order to permit the patio, which is now constructed, and an additional 195 square feet of patio on the Subject Property.

8. The construction of the deck only results in an impervious surface coverage ratio of 19.5% on the Subject Property. The construction of the unpermitted patio results in an impervious surface coverage ratio of 22.6%.

9. If the additional patio area of 195 square feet were constructed, the resultant impervious surface coverage ratio on the Subject Property would be 23.49%.

10. Mr. Baisley testified that he has no dispute with the enforcement notice and that he built the patio because of a "...lack of understanding...". He testified that his contractor, JW Land, indicated to him that while he was there constructing the deck, he had the time and ability to construct the proposed patio and, according to the Applicant, told him that it would be okay to construct it and apply for permission thereafter.

CONCLUSIONS OF LAW

1. The use of the Subject Property as a single-family residence is permitted by right in the R-1 Zoning District of Doylestown Township.

2. The enforcement notice, dated August 8, 2016 (Exhibit B-1.M) was lawfully issued by the Township Director of Code Enforcement consistent with Ordinance requirements.

3. The Board concludes that the Applicant was aware, as a result of his authorization to amend the building permit application to exclude the construction of a patio, that the construction of that patio would violate the impervious surface coverage limitations of Ordinance §175-38.

4. Notwithstanding that knowledge, the Board concludes that the Applicant unlawfully and without permit caused the 700 square foot patio to be constructed on the Subject Property. The Board concludes that the construction of that patio was a knowing violation of the Ordinance by the Applicant who now seeks, after the fact, approval to maintain it on the Subject Property.

5. The permitted improvements on the Subject Property, prior to the unlawful construction of the patio, resulted in a conforming impervious surface coverage ratio of 19.5%.

6. The Applicant's evidence established no unique physical circumstances or conditions of the Subject Property that result in an unnecessary hardship which precludes its permitted use as a single-family residence.

7. The Subject Property can and has been developed in conformity with Ordinance provisions with the exception of the unpermitted patio. The variance sought to permit the continued existence of the patio is not necessary to enable reasonable use of the Subject Property.

8. The hardship, if any exists, has been created by the Applicant.

9. The variance sought does not represent the minimum variance that will afford relief or the least modification possible of the regulation at issue.

10. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to deny the Applicant's requests for relief, as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby DENIES the Applicant's appeal from the Township enforcement notice dated August 8, 2016 regarding the Subject Property. Further it denies the Applicant's request for a variance from §175-38.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

By: /s/ William J. Lahr
William J. Lahr, Chairman

/s/ Richard K. Gaver
Richard K. Gaver, Vice Chairman

/s/ Mitchell Aglow
Mitchell Aglow, Secretary

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

Application No. Z-11-2016

Applicants: Robert Tyler & Sarah Jane Tomlinson
 138 East Road
 Doylestown, PA 18901

Owners: Same

**Subject
Property:** Tax Parcel No. 9-9-89-4 which is located at the address of the
 Applicants set forth above.

**Requested
Relief:** The Applicants request a special exception pursuant to §175-37.B
 of the Doylestown Township Zoning Ordinance (“Ordinance”) to
 permit the use of a portion of the property as a home-based
 business.

**Hearing
History:** The application was filed in Doylestown Township on October 4,
 2016. The hearing was held on November 21, 2016 at the
 Doylestown Township Building, 425 Wells Road, Doylestown,
 PA 18901.

Appearances: Applicants, Pro Se'

Mailing Date: December 29, 2016

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. It accommodates the Applicants' single-family detached dwelling with residential access walkways, a driveway, additional structures, hardscaping, and landscaping as depicted on Exhibit A-1, a sketch plan of the Subject Property prepared by the Applicants.

4. Sarah Jane Tomlinson, one of the Applicants/Owners, is the elected Tax Collector for Doylestown Township. She proposes the construction of a 14' x 34'¹ "Amish built" detached structure, located as depicted on Exhibit A-1, with a covered front porch that will be 6' in depth x 14' wide. It is proposed to contain a second story loft which will be used only as storage space for the first floor.

5. The proposed use of the detached structure will be as the Doylestown Township Tax Collector's office. It will be served by a parking area which accesses the structure by a walkway as depicted on Exhibit A-1. The parking area will accommodate 3 off-street parking spaces for the Tax Collector use.

6. The Applicants request a special exception pursuant to Ordinance §175-37.B to permit the Tax Collector office use as a home-based business.

7. A home-based business is defined at §175-16.H-1. The competent evidence presented by the Applicants establishes that the proposed Tax Collector use is a business or commercial activity that will be conducted as an accessory use secondary to the residential use of the dwelling. It will involve some customer or client traffic as contemplated by that Ordinance section.

8. The Applicants credibly established the following in compliance with the criteria necessary to obtain a special exception set forth in §175-16.H-1:

- a. The Tax Collector's office is accessory to a residence and will be carried on wholly indoors within a structure accessory to the dwelling. It is clearly incidental and subordinate to its use for residential purposes by its occupants.

¹ The Board notes that the proposed structure is incorrectly depicted on Exhibit A-1 as being 14' x 36'.

- b. The proposed Tax Collector's use is compatible with the residential use of the property and surrounding residential uses and meets the minimum and maximum area, height and dimensional requirements for the R-1 Zoning District.
- c. The proposed use is accessory to the single-family detached dwelling use.
- d. There will be no show windows, display or advertising visible outside the premises, except for a permitted sign.
- e. There will be no exterior storage of material.
- f. There will be no parking of commercial vehicles in connection with the Tax Collector's office use.
- g. The appearance of the residential structure on the Subject Property will not be altered nor does the appearance of the proposed detached building differ from the residential character of the neighborhood.
- h. The sign for the proposed use will not exceed 2 square feet nor will it be erected within 10 feet of the fronting street of the Subject Property.
- i. There will be no articles sold or offered for sale in connection with the proposed use.
- j. There will be no stockpiling, storage or inventory of products of a substantial nature in connection with the proposed use.
- k. Deliveries for the proposed use will be accomplished by typical residential delivery vehicles.
- l. The proposed use will employ Mrs. Tomlinson and one additional unrelated employee.
- m. The floor area devoted to the Tax Collector's use will be 14' x 34' (476 square feet). The loft area above the first floor shall not be used in connection with the Tax Collector's office except for storage of materials. The covered front porch (6' x 14' in size) is proposed only to provide protection from the elements for users of the Tax Collector's office.
- n. No prohibited equipment or processes will be employed on the Subject Property.
- o. No manufacturing, repairing, or other mechanical work will occur in connection with the proposed use.

- p. The proposed use will not generate any solid waste or sewage discharge which is not normally associated with residential uses in the neighborhood.
 - q. Three off-street parking spaces will be provided in the parking area depicted on Exhibit A-1.
 - r. The proposed use will be the only home-based business on the Subject Property.
 - s. The hours of operation for the proposed use will be limited to Monday through Saturday between the hours of 8:00 AM and 9:00 PM.
 - t. The parking spaces required by the home-based business are located to the side or rear of the principal residence and are appropriately buffered.
 - u. The proposed use does not involve any illegal activity.
9. Doylestown Township took no position with regard to this application.

CONCLUSIONS OF LAW

1. The Subject Property has been developed and used as is permitted by right in the R-1 Zoning District.

2. The Applicants have competently established the need for the construction of a 476 square foot detached structure with a 84 square foot covered front porch in order to house an office for use by Mrs. Tomlinson as the Doylestown Township Tax Collector.

3. The proposed Tax Collector's office use meets the definition of a home-based business contained at Ordinance §175-16.H-1.

4. The credible evidence establishes compliance with all of the criteria necessary in that Ordinance section to permit the grant of a special exception.

5. In making its decision, the Board considered all of the additional factors required for the grant of a special exception set forth at Ordinance §175-138.

6. The Board has determined that the grant of a special exception 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, all as required by §175-138.C.

7. The competent evidence presented leads the Board to conclude that, if the special exception is granted, there will be no negative impacts upon surrounding properties or uses.

8. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to grant relief to the Applicants and the Subject Property as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS a special exception pursuant to §175-37.B of the Doylestown Township Zoning Ordinance in order to permit the use of a portion of the property as a home-based business. The relief herein granted is subject to compliance with all other applicable governmental ordinances and regulations.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

By: /s/ William J. Lahr
William J. Lahr, Chairman

/s/ Richard K. Gaver
Richard K. Gaver, Vice Chairman

/s/ Richard K. Gaver
Mitchell Aglow, 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.