

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

Application No. Z-13-2016

Applicants: Michael V. Tulio & Ruth Marie Pavlica
8 Greenway Drive
Doylestown, PA 18901

Owners: Same.

Subject Property: Tax Parcel No. 9-4-83-22 which is located at the address of the Applicants set forth above.

Requested Relief: The Applicants propose the construction of a bocce ball court on the Subject Property and request an interpretation that the surface of the court is pervious and not to be included as impervious surface coverage. In the alternative, the Applicants request a variance from §175-54 of the Doylestown Township Zoning Ordinance (“Ordinance”) to exceed the maximum permitted impervious surface coverage ratio on the Subject Property. Further, the Applicants request the following variances:

1. from §175-16.H.3.c.3, to permit a fence and retaining wall to be located within existing easements on the property; and
2. from §175-16.H.3.f, to permit a portion of the proposed court to be located at a side yard setback distance of less than the required 15 feet.

Hearing History: The application was filed in Doylestown Township on November 14, 2016. Hearings were held on December 19, 2016 and February 23, 2017 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicants by: Kimberly A. Freimuth, Esq.
Fox Rothschild LLP
2700 Kelly Road, Suite 300
Warrington, PA 18976

Mailing Date: March 31, 2017

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-2b, Residential Zoning District of Doylestown Township. It is .61 acres in size and accommodates the Applicants' single-family detached home with residential improvements as depicted (both existing and proposed) on Exhibit A-5, a Zoning Plan prepared by Van Cleef Engineering Associates, dated November 9, 2016, last revised December 19, 2016.
4. The Subject Property is lot 22 of a 24 lot single-family residential development, known as Doylestown Greene, as depicted in Exhibit A-4, the "Record Plan of Subdivision" prepared by Van Cleef Engineering Associates, dated April 15, 2004, last revised May 26, 2013.
5. Doylestown Greene is presently under development. The residence on the Subject Property was the model home for the development.
6. The Applicants' engineering testimony was given by Samuel D. Costanzo, P.E., P.P., a registered Pennsylvania Engineer who was qualified to testify as an expert in civil engineering before the Board.
7. Costanzo established that, in preparation for this Zoning Hearing Board application, he determined that the As-Built Plan depicts the location of an existing retaining wall and a portion of an existing brick residential walkway within a 10 foot wide stormwater sewer easement on the property's south side. Further, a portion of the proposed fence is within a similar 10 foot wide stormwater sewer easement on its north side.
8. Costanzo credibly established that the improvements located within the area of the storm sewer easement were constructed by the builder without appropriate approval or permitting.
9. Costanzo established that the retaining wall is necessary to support the existing improvements and Exhibit A-5 depicts that the location of the brick sidewalk and fencing within the storm sewer easement areas are necessary.
10. Ordinance §175-16.H-3.c.3 prohibits the location of fences and walls within a public easement.

11. The Board finds that compliance with this Ordinance section would necessitate the removal of a necessary retaining wall and a portion of fencing at significant expense.

12. The Applicants agreed that, as a condition of approval of the variance request from this Ordinance section, the Owners of the Subject Property would be obligated to remove any portion of the fence or retaining wall if necessary for maintenance or repairs of the storm sewer systems that exist within the easement areas.

13. This application proposes the construction of a bocce ball court on the Subject Property. The Applicants have requested an interpretation from the Zoning Hearing Board that the surface of the bocce ball court not be considered as impervious surface.

14. Costanzo opined that the surface of the bocce ball court has been designed to consist of two components, an artificial grass component and a pervious concrete/stone bed component. He suggested that the construction design of these components would replicate the natural drainage infiltration of natural soils. The pervious concrete/stone bed component is to be constructed underground.

15. Based on these facts, Costanzo suggested that the Board determine that the surface area of the proposed bocce ball court be considered pervious and therefore not included within the impervious surface coverage ratio for the Subject Property.

16. Impervious surface is defined at Ordinance §175-9 as: “Any surface which does not absorb rain; all buildings, parking areas, driveways, roads, sidewalks, and any areas in concrete, asphalt, packed stone or other equivalent surfaces.”

17. Exhibit B-5 is a memorandum from Judith Stern Goldstein, the planning consultant to Doylestown Township. The Board determined to give some weight to this exhibit and agrees with its finding that the proposed concrete/stone bed component of the design consists of concrete and/or packed stone or other equivalent surfaces and must therefore be considered as impervious.

18. Alternatively, this application seeks a variance from §175-74 as to the maximum permitted impervious surface coverage ratio for the Subject Property.

19. Although the maximum permitted impervious surface coverage ratio in the R-2b Zoning District could be as high as 35%, the evidence establishes that the Subject Property bears its own on-lot maximum impervious coverage ratio under the terms of the Development Agreement for Doylestown Greene.

20. The maximum permitted impervious surface coverage ratio applicable to the Subject Property is 21.3%, representing an area of 5,634 square feet.

21. The application proposes the construction of a bocce ball court, surrounding railroad ties, and pads for both a grill and generator, that would result in an impervious coverage consisting of 6,196 square feet, or 23.5%.

22. The bocce ball court proposed meets the definition of a “sports court” at §175-16.H-3.3.f. Sports courts are permitted by right in residential districts of Doylestown Township. However, this zoning section also provides a special setback distance for sports courts of 15 feet from any side or rear property line.

23. Costanzo testified that a conforming location for the proposed court at the rear of the property would entail the installation of additional impervious features, such as retaining walls, to accommodate the slope there.

24. Accordingly, the application also seeks a variance from this special setback distance by proposing its location, at its closest point, only 4.61 feet from the northern side property line.

25. The property to the north is lot 21 as depicted on Exhibit A-4. It is an approved building lot for a single-family residence but presently undeveloped.

26. The Board finds that, although presently undeveloped, this lot will accommodate a single-family residence in close proximity to the Subject Property. It further finds that the legislative intent of the special side yard setback distance imposed by Ordinance §175-16.H.3.f is sound as it requires an area between an active sports court and a property line to limit disturbance of neighboring property owners.

27. However, it determined that the sports court was a reasonable and permitted residential accessory structure and that, therefore, it could be constructed on the Subject Property if in compliance with applicable setback requirements, including the special setback distance of 15 feet from a side property line.

28. Therefore, the Board approved of the amount of impervious surface necessary to construct the bocce ball court, as presented in the first hearing.

29. After the close of the record, the Board discussed the testimony and evidence it had received and determined to deny the request of the Applicants to interpret the surface of the bocce ball court to be pervious.

30. It further determined that the fence and retaining walls located or to be located within the existing easement on the property are currently necessary and their removal would negatively impact the property at great expense to the property Owners.

31. Lastly, the Board determined to permit the amount of impervious surface coverage requested to accommodate the bocce ball court.

32. At the conclusion of the hearing held on December 19, 2016, the Board publicly voted to adopt a motion to deny the interpretation requested, grant the variance to permit the location of retaining walls and fences within storm sewer easements and to grant the impervious surface coverage ratio variance requested but to deny the variance requested from §175-16.H.3.F to permit the location of the bocce court at less than a 15 foot side yard setback distance.

33. On January 20, 2017, Applicants' counsel sent a letter to the Zoning Hearing Board Solicitor which accurately summarized the results of the December 19, 2016 hearing. This letter requested that the hearing be reopened as the Applicants now desired to locate the bocce ball court in the rear yard of the Subject Property and in compliance without applicable setback requirements, however, as set forth in that letter, retaining walls will be necessary to support the court and therefore, the proposed impervious surface coverage ratio would increase from 23.5%, to 24%.

34. The Board determined to grant the Applicants' request to reopen the hearing to consider the revised plan subject to the Applicants' waiver of the requirement that the Zoning Hearing Board issue a written decision within 45 days of the date of the close of the record.

35. The second hearing was held on February 23, 2017. At this hearing, the letter of January 20, 2017, referred to above, was received into evidence as Exhibit B-6.

36. At this hearing the Applicants presented Exhibit A-7, a revised zoning plan prepared by Van Cleef Engineering Associates, dated November 9, 2016, last revised January 13, 2017. This revised plan shows the relocated bocce ball court with additional impervious surface to include necessary retaining walls, stepping stone access, and a base foundation for lighting which will be installed consistent with the requirements of Ordinance §175-20.

37. According to Exhibit A-8, a January 13, 2017 letter from Costanzo, the additional area of the increased impervious surface sought is 697 square feet. This exhibit established that the stormwater management facility designed for the Subject Property was sufficient to accommodate all of the additional proposed impervious surface.

38. Costanzo established, in this hearing, that the additional impervious was necessary due to the significant slope of the property in the proposed location of the bocce court and to enable access to it and to accommodate Ordinance conforming lighting.

39. Doylestown Township took no position with regard to this application.

CONCLUSIONS OF LAW

1. The use of the Subject Property as a single-family residence is permitted by right in the R-2b Zoning District.

2. A portion of the retaining wall, sidewalk, and fencing was installed by the builder in violation of Ordinance §175-16.H.3.c.3 due to the location of these features within existing storm sewer easements areas on the Subject Property.

3. Elimination of these nonconforming features now, would negatively impact the structures that currently exist on the property and access to the rear yard.

4. Accordingly, the Board determined that the location of the retaining walls, sidewalk and fencing within the storm sewer easement areas are necessary to maintain the existing condition of the Subject Property.

5. To require Ordinance conformance, at this time, would require the destruction of these nonconforming features at great expense and requirement for additional construction on the property to maintain the structures on it.

6. The evidence establishes, the Board concludes, that the existence of these features within the storm sewer easement areas will not negatively impact the function of those systems, however, their removal may be necessitated in order to maintain the storm sewer system on the Subject Property in the future. In this regard, the Board is mindful of the Applicants' offer to agree to a condition of approval of the relief requested that the property Owners shall be required to remove any portion of the fence, retaining wall or sidewalk existing within the storm sewer easements if necessary their maintenance or repair.

7. The Board concludes that the competent and credible evidence establishes that the surface of the bocce ball court is impervious as defined by the Ordinance.

8. The credible engineering testimony also establishes the necessity for an increase in impervious surface coverage on the property, to 24%, to enable the proper support of the Ordinance conforming location of the proposed bocce ball court in a sloped area and to provide access to it and appropriate lighting.

9. The Board concludes that no evidence was presented that would justify the location of the sports court within the special 15 foot setback distance required by Ordinance §175-16.H.3.f and that, therefore, that variance requested must be denied.

10. The competent evidence presented leads the Board to conclude that the relief herein granted will result in no negative impacts upon surrounding properties or uses.

11. The evidence establishes that the relief herein granted to the Subject Property is the minimum variance necessary.

12. The variances granted will not alter the essential character of the neighborhood or district in which the Subject Property is located.

13. The Applicants have presented evidence of sufficient factors to warrant the grant of the dimensional variance granted.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby DENIES the Applicants' request for an interpretation that the surface of the proposed bocce ball be considered pervious and determines that surface is impervious as defined in the Ordinance. Further, the Board GRANTS the variance requested from §175-16.H.3.c.3 of the Doylestown Township Zoning Ordinance to permit the location of a portion of the retaining wall, sidewalks and fencing within existing storm sewer easements on the Subject Property. The Board also GRANTS a variance from §175-74 to permit an impervious surface coverage ratio of 24% on the Subject Property in order to construct the improvements proposed on Exhibit A-7. Lastly, the Board DENIES the Applicants' request for a variance from §175-16.H.3.f to permit a portion of the proposed court to be located within the special setback distance of 15 feet required thereby.

The relief herein granted is subject to compliance with all other applicable governmental ordinances and regulations, and the specific condition that the property Owners shall be obligated to remove any portion of the retaining wall, sidewalks or fencing within the easement areas if maintenance or repairs of the storm sewer system requires it.

**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

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.