

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

**Applicants:** Robert and Karen McPherson  
78 Bittersweet Drive  
Doylestown, PA 18901

**Owners:** Same.

**Subject Property:** Tax Parcel No. 09-043-009, which is located at the address of the Applicants set forth above.

**Requested Relief:** Applicants seek to reconstruct and relocate a fence which will encroach into a stormwater easement and a residential buffer zone. Applicants seek variances from the Doylestown Township Zoning Ordinance ("Ordinance") §175-21.B and §175-16 H-3(c)(3) to allow the fence within the easement area and the residential buffer.

**Hearing History:** The application was filed in Doylestown Township on July 30, 2020. The first hearing was held on August 27, 2020. The matter was continued to September 21, 2020, again continued to October 19, 2020, when the matter was concluded. The hearings were held at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.<sup>1</sup>

**Appearances:** Applicants, Pro Se

Doylestown Township by: Bryce McGuigan, Esq.  
Begley, Carlin & Mandio  
680 Middletown Boulevard,  
Langhorne PA 19047

**Mailing Date:** December 3, 2020

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<sup>1</sup> Applicants signed waivers from MPC timeframes for hearing dates held.

## 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 hearings 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. The lot area is approximately .57 acres (roughly 207 feet deep by 115 feet wide). The property accommodates the Applicants' single-family dwelling with customary residential amenities, including driveway, patio, deck, in-ground pool with existing concrete decking, and a shed.
4. To the rear of the Applicants' property running across the width of the rear lot is a 30 foot wide buffer yard extending from the rear lot line toward the dwelling, followed by a 20 foot drainage easement (in closer proximity to the pool and dwelling and away from the rear lot line).
5. An aluminum fence was installed along the property lines to secure the rear yard, including the existing in-ground pool. The existing aluminum fence, which has recently been replaced, extends across the drainage easement and buffer yard.
6. An existing shed is within the 20 foot drainage easement area. The existing concrete pool decking encroaches into the 20 foot drainage easement by 1.2 feet.
7. Applicants have lived in the home for approximately 16 years. The pool and the fence existed when the Applicants moved into the home. The existing fence was recently damaged in a storm. The Applicants sought to replace the fence, but in a different location. The easement area created a challenge or impediment to the Applicants' fence plans.
8. To the rear of the Subject Property is the Campbell's Insurance Agency, a non-residential use.
9. At the time of the initial hearing, the Applicants offered testimony, an annotated Google Earth image, as well as an annotated excerpt from a tax map. The annotations were not completed by a real estate surveying or engineering professional.
10. Applicants explained that the drainage easement essentially cuts the depth of the rear yard in half. As a result, the usable space behind the pool, towards the rear lot line is not easily accessed and/or used without a perimeter fence. Applicants do have pet dogs and seek to utilize the entirety of the rear yard to allow the dogs appropriate exercise. Pool fencing requirements complicate the segregation of activities

within the rear yard, while providing for safety and compliance with the various ordinances and regulations.

11. Applicants are unaware of any instance in the past where the Township required access to the stormwater easement to the rear of Applicants' property.

12. In an effort to balance the interest of the Property Owners with the interest of the Township in gaining access to the easement for maintenance, and to prevent obstruction of the easement, the Applicants have proposed "break away" sections of the perimeter fencing where the perimeter fence crosses the 20 foot drainage easement.

13. Applicants have explained that the resulting fenced rear yard of the lot will generally be in character with the other fenced yards within the neighborhood.

14. Applicants presented a petition by adjacent property owners offering no objection to the requested variance to allow the back yard perimeter fencing.

15. The matter was continued following Applicants' testimony, to permit Applicants the opportunity to obtain a professionally surveyed plan with competent and accurate dimensions to either clarify or corroborate the annotated aerial image and partial tax map. On October 19, 2020, Applicants did return with the surveyed plan which offered clarification to the Township and the Zoning Hearing Board, regarding existing dimensions and existing encroachments into the drainage easement. The encroachments include the existing shed and concrete decking for the existing in-ground swimming pool.

16. No one spoke in opposition to the application.

17. Doylestown Township took an active role in demanding adequate proof and recommending appropriate conditions in the event relief was granted.

## **CONCLUSIONS OF LAW:**

1. The Subject Property has been used consistent with the requirements of the Ordinance (single-family residential dwelling).

2. Over time, the existing 20 foot drainage easement to the rear of the Subject Property has been encroached upon by virtue of previous homeowners placement of a shed and concrete pool decking. The present Applicants have encroached into the drainage easement by erecting a perimeter fence.

3. Applicants request variances from §175-21.B of the Doylestown Township Zoning Ordinance which prohibits structures within the 30 foot buffer area and requires a dense screen planting of trees, shrubs or other plant barrier within that buffer yard between a residential use and a nonresidential use.

4. Applicants also requested a variance from §175-16 H-3(c)(3) which prohibits fences within a public easement or a private easement where an agreement prohibits same. A 20 foot public drainage easement runs across the rear of the Subject Property. The 30 foot buffer yard runs from the rear lot line toward the swimming pool and dwelling. The drainage easement extends 20 feet beyond the buffer yard toward the existing pool and dwelling.

5. The fence across the 20 foot drainage easement, the shed encroaching into the drainage easement, and the existing concrete pad encroaching 1.2 feet into the drainage easement all violate the Doylestown Township Zoning Ordinance.

6. Applicants request a variance accordingly.

7. Applicants request a variance to permit the *de minimis* encroachment by the pool decking, and to allow the fencing to cross the easement access areas along the side lot lines of the Subject Property. Applicants have not requested the relief for the shed.

8. The Zoning Hearing Board does not grant a variance for the shed encroaching into the easement area.

9. The Zoning Hearing Board considers the 1.2 encroachment of the pool decking into the drainage easement as *de minimis*, and grants relief for the existing encroachment.

10. The Zoning Hearing Board assesses the Applicants' request for fencing to cross the drainage easement in order to fence the perimeter of the rear yard.

11. Applicants have presented evidence of sufficient factors to warrant the grant of the dimensional variance requested. Applicants have testified to the hardship borne upon them by the 30 foot buffer yard and the additional 20 foot drainage easement considerably reducing access to and enjoyment of the rear yard, beyond the swimming pool which is most immediate to the single-family dwelling.

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

13. The evidence establishes that the relief sought by the Applicants is the minimum variance necessary. In so concluding, the Zoning Hearing Board considers the Applicants' offer to balance the interest of the Township in accessing the easement by suggesting "breakaway" fencing in the easement area, in order to allow for access thereto.

14. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located.

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

**ORDER**

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS a variance from §175-21.B and §175-16 H-3(c)(3) of the Doylestown Township Zoning Ordinance to permit Applicants to maintain an existing fence within the stormwater easement and residential buffer zone, and to permit the existing *de minimis* encroachment into the stormwater easement by 1.2 feet of existing pool decking, subject to the following conditions:

1. Within 60 days of the date of this written decision, Applicants will install breakaway/removable fencing on both sides of the 20 foot drainage easement. The Applicants will be responsible for any repair and replacement costs should the fence be damaged in the process of the Township and/or Township representatives accessing the drainage easement.
2. Within 60 days of the date of this written decision, Applicants will move the shed that is presently within the easement to a zoning compliant location outside of the 20 foot drainage easement.
3. Applicants will maintain the plantings and landscaping presently existing within the 30 foot rear buffer yard. To the extent that any plantings may die within the 12 months following this written decision, Applicants will replant with plantings in kind.
4. Applicants will not regrade or otherwise construct or build within the 20 foot drainage easement, except as authorized within the above referenced decision and conditions.
5. 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/ Mitchell Aglow  
Mitchell Aglow, Vice Chairman

/s/ Samuel Costanzo  
Samuel Costanzo, 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.

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

**Applicants:** Kevin and Noele Myers  
47 Pine Valley Road  
Doylestown, PA 18901

**Owners:** Same.

**Subject  
Property:** Tax Parcel No. 09-031-064, which is located at the address of the Applicants set forth above.

**Requested  
Relief:** Applicants seek to construct an addition to the existing single-family dwelling and add an in-law suite to the existing single-family use. Applicants seek a special exception under §175-37.B H-12 of the Doylestown Township Zoning Ordinance ("Ordinance") to permit the in-law suite, and a variance from §175-16.H-12.a of the Ordinance to allow greater than 25% of the usable floor area of the principal residence to be used for the in-law suite.

**Hearing  
History:** The application was filed in Doylestown Township on September 2, 2020. The hearing was held on October 19, 2020 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

**Appearances:** Applicants, Pro Se

**Mailing Date:** December 3, 2020

## 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. The lot area is 43,841 square feet. The buildings and lot comply with all dimensional requirements of the zoning district. The property accommodates Applicants' present single-family use.
4. Applicants seek to construct an addition to the existing single-family dwelling and add an in-law suite to the existing single-family use. Applicants seek a special exception under §175-37.B H-12 of the Doylestown Township Zoning Ordinance ("Ordinance") to permit the in-law suite, and a variance from §175-16.H-12.a of the Ordinance to allow greater than 25% of the usable floor area of the principal residence to be used for the in-law suite.
5. The in-law suite is proposed for use by Applicants' parents.
6. Applicants testified to the specific conditions listed in §175-16.H-12. Applicants indicated the ability to comply with each of those provisions, except for the requirement that the in-law suite occupy no more than 25% of the total usable floor area of the principal residence.
7. Applicants described the project as using the two car attached garage, plus an additional 282 square feet to increase the area for the in-law suite to 2,604 square feet. The resulting in-law suite represents 37.5% of the usable floor area within the existing dwelling. Applicants explained that the need for the additional space, in terms of percentage, is driven by the modest size of the existing dwelling (2,099 square feet) exclusive of garage.
8. Applicants discussed the potential for adding a detached garage to the Subject Property at a later date, but the detached garage was not yet proposed and would require no dimensional relief.
9. Nearby property owner James Glitz, 59 Pine Valley Road, testified to his concern regarding the parking requirement. Mr. Glitz expressed concern whether three vehicles could be parked on the Subject Property, without using the street, and provide for the vehicles to exit the property without backing on to the street. Considerable discussion ensued, with the Applicants addressing the questions.
10. 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.
2. An in-law suite is allowed within the R-1, Residential Zoning District of Doylestown Township by special exception, as provided for in §175-32.B.
3. The provisions of the Ordinance defining an in-law suite are found at §175-16.H(12), and read as follows:

H-12. In-law suites. One in-law suite to a single-family detached dwelling shall be permitted, 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 in-law suite is to be constructed or to be used. The intent of these provisions is to allow for related family members to reside on the premises, but to prohibit the creation of for-profit apartments in districts where multifamily housing is otherwise permitted. The conditions are as follows:

[Added 5-4-1993 by Ord. No. 224]

- (a) The in-law suite shall occupy no more than 25% of the total usable floor area of the principal residence, not including any garage.
- (b) In-law suites may contain separate cooking, sleeping, living and bathroom facilities.
- (c) In-law suites shall be part of the principal residence or may be contained in the existing accessory structure such as a garage. No new separate structures on the same lot with the principal residence shall be permitted to be constructed for this use. In-law suites shall not be located in cellar areas (an area having 1/2 or more of its floor to ceiling height below the average level of the adjoining ground).
- (d) The required off-street parking for the principal dwelling plus one additional off street parking space for the in-law suite shall be provided.
- (e) In-law suites shall be occupied only by related family members such as elderly parents or dependent adult children.

- (f) 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.
- (g) No more than one in-law suite shall be permitted per single-family detached dwelling.
- (h) Each in-law suite 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 annually by the Board of Supervisors by resolution.<sup>[12]</sup>  
[12]Editor's Note: See Ch. A180, Fees.
- (i) 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 in-law suite as defined in this subsection.

4. Applicants' testimony illustrates that Applicants comply with each of the special conditions of §175-16.H(12), except for item (a) "The in-law suite shall occupy no more than 25% of the total usable floor area of the principal residence, not including any garage".

5. Applicants have adequately explained the inability to comply.

6. The competent evidence presented leads the Board to conclude that, if the variance relief is granted, there will be no negative impacts upon surrounding properties or uses. The Board observes that the property is otherwise dimensionally compliant. Further, Applicants are not making any changes to the exterior of the building which would change the appearance from that of a single family residential dwelling.

7. The evidence establishes that the relief sought by the Applicants is the minimum variance necessary. In this regard, the Board accepts Applicants' basis for relief, to wit, the variance is driven by the modest size of the existing home.

8. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located.

9. The Applicants have presented evidence of sufficient factors to warrant the grant of the dimensional variance requested.

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

**ORDER**

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS Applicants' request for relief as follows: (1) a special exception under §175-37.B H-12 of the Doylestown Township Zoning Ordinance to permit an in-law suite on the Subject Property; and (2) a variance from §175-16.H-12.a of Ordinance to allow greater than 25% of the usable floor area of the principal residence to be used for the in-law suite.

The relief herein granted is subject to the following conditions:

1. Prior to obtaining a building permit, Applicants must demonstrate adequate off-street parking for three vehicles in compliance with the Doylestown Township Zoning Ordinance.
2. Applicants must in all other respects apply for and obtain appropriate permits prior to the construction of the addition and use and occupancy of the in-law suite.
3. 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/ Mitchell Aglow  
Mitchell Aglow, Vice Chairman

/s/ Samuel Costanzo  
Samuel Costanzo, 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.