

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

Applicants: Jason and Jamie Cohen
12 Greenway Drive
Doylestown, PA 18901

Owners: Same.

Subject Property: Tax Parcel No. 09-004-083-020, which is located at the address of the Applicants set forth above.

Requested Relief: Applicants seek to place a fence across an existing easement within the rear yard of their residential property. §175-16.H-3(C)(3) of the Doylestown Township Zoning Ordinance (“Ordinance”) prohibits fences within a public easement or a private easement prohibiting placement of a fence. Applicants seek a variance accordingly.

Hearing History: The application was filed in Doylestown Township on September 18, 2020. The hearing was held on October 22, 2020 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicants, Pro Se

Mailing Date: December 4, 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-2B, Residential Zoning District of Doylestown Township. The lot area is 21,500 square feet gross (19,851 square feet net). A stormwater easement runs across the rear aspect of the Subject Property, essentially parallel to the rear lot line. The easement is 20 feet in width and runs across the entirety of the property from side lot line to side lot line. To the rear of the Subject Property is property owned by the Pennsylvania Department of Transportation, used for the PA Route 611 By-Pass.

4. The Cohens seek to fence the entirety of their rear yard, to promote the safe use of their property, given its proximity to the 611 By-Pass. As such, the Cohens seek to place a 54 inch faux wrought iron black aluminum fence along the perimeter of the rear yard. The Cohens have agreed to removable sections across the 20 foot easement. The Cohens have further agreed to leave the fence at 2 inches from grade along the easement area, to promote unimpeded drainage.

5. The property is located within a Homeowners Association. The Doylestown Greene Owners Association did approve the Applicants' request for a 54 inch "Ascot" style, black aluminum fence, subject to authorization by the Doylestown Township Zoning Hearing Board and Doylestown Township with certain stipulations.

6. No one spoke in opposition to the application.

7. Doylestown Township took a position by submitting correspondence dated October 8, 2020, prepared by Stephanie J. Mason, Township Manager. Through that correspondence, the Township indicated that the decision whether to grant or deny was left to the Zoning Hearing Board, but in the event relief was granted, the Township requested conditions including, "making sure that the fence has the removable sections in the easement area so that the flow of stormwater is not impeded in any way...", and "...the fence not be solid in nature such as a stockade fence which would impede any flow of stormwater."

CONCLUSIONS OF LAW:

1. The Subject Property has been developed and used as is permitted by right in the R-2B Zoning District.
2. Applicants propose to install a 54 inch aluminum faux wrought iron fence along the perimeter of the rear yard. A stormwater easement runs across the rear yard.
3. Ordinance §175-16.H-3(C)(3) prohibits fences within a public easement or a private easement prohibiting placement of a fence. Applicants seek a variance accordingly.
4. 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 Applicants agree to certain conditions which minimize any impacts to the Township's maintenance of the stormwater system within the easement area.
5. The evidence establishes that the relief sought by the Applicants is the minimum variance necessary. The Board is mindful that the Applicants have made efforts to mitigate the impact of the request upon the objectives of the Township in maintaining the easement area.
6. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located. Fences are permitted within the rear yards in the R-2B Zoning District and within the Homeownership Association at issue. Applicants are complying with the Homeownership Association rules with regard to the nature of the fence, which serves as an indication that the application is consistent with the character of the neighborhood.
7. The Applicants have presented evidence of sufficient factors to warrant the grant of the dimensional variance requested.
8. Accordingly, the Doylestown Township Zoning Hearing Board determined, by a 2-0-1 vote, to grant the Applicant's request for relief, as is set forth hereafter with conditions.¹

¹ Board Member Samuel Costanzo abstained from participating in the decision of this matter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS a variance from §175-16.H-3(C)(3) of the Doylestown Township Zoning Ordinance to permit Applicants to construct a fence within the rear yard, including crossing an existing easement, subject to the following conditions:

1. The fence must contain removable sections where the fence crosses the easement area to facilitate removal in the event the easement area needs to be accessed.
2. The fence must be generally consistent with the Applicants' testimony, and not constructed of a solid (board on board type) material.
3. Applicants are required to maintain, replace, and repair the fence as needed.
4. Applicants must obtain all appropriate permits prior to construction of the fence. This condition includes applying for a fence permit with Doylestown Township.
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

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: Raul and Tonya Casas
2135 Turk Road
Doylestown, PA 18901

Owners: Same.

Subject Property: Tax Parcel No. 09-023-022, which is located at the address of the Applicants set forth above.

Requested Relief: Applicants seek to renovate an existing 585 s.f. detached garage into a 632 s.f. attached garage. The garage addition will be attached to the dwelling and located on the existing impervious surface currently used as the driveway. Additionally, the Applicants seek to increase the side of an existing 299 s.f. deck by 51 s.f. §175-38 of the Doylestown Township Zoning Ordinance ("Ordinance") permits a maximum of 20% impervious surface ratio. Applicants seek a determination that an existing, and post construction, impervious surface ratio of 23% represents a lawful preexisting nonconforming condition, or request a variance from §175-38 to allow impervious surface of 23%. §175-39 of the Ordinance requires a 25 foot side yard setback for each side yard. Applicants seek relief to allow an existing 15 foot side yard to remain at 15 feet, and to allow a 21 foot side yard to reduce to 18 feet.

Hearing History: The application was filed in Doylestown Township on October 1, 2020. The hearing was held on October 22, 2020 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicants by: Kellie McGowan, Esq.
Obermayer, Rebmann, Maxwell,
& Hippel LLP
10 S. Clinton Street
Doylestown, PA 18901

Mailing Date: December 4, 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 23,595 square feet. The lot width is 121 feet. The side yard (to the deck side) is 21 feet. The side yard to the detached garage side is 15 feet. The impervious surface ratio is 23%. The property accommodates the Applicants' single-family dwelling, detached garage, and usual residential amenities, including driveway, walkways, and a concrete deck.

4. Applicants seek to renovate an existing 585 s.f. detached garage into a 632 s.f. attached garage located on the side of the house. The garage addition will be attached to the dwelling and located on the existing impervious surface currently used as the driveway. Additionally, the Applicants seek to increase the side of the existing 299 s.f. deck by 51 s.f. §173-38 of the Doylestown Township Zoning Ordinance permits a maximum of 20% impervious surface ratio. Applicants seek a determination that the impervious surface ratio of 23% represents a lawful preexisting nonconforming condition, or request a variance from §175-38 to allow impervious surface of 23%. §175-39 of the Ordinance requires a 25 foot side yard setback for each side yard. Applicants seek relief to allow an existing 15 foot side yard to remain at 15 feet, and to allow a 21 foot side yard to reduce to 18 feet.

5. Applicant Tonya Casas, Rachel Butch, PE, Showalter & Associates, and Ellen Concannon Happ, AIA, testified in support of the application.

6. Ms. Casas testified to the desire to make improvements to the existing single-family dwelling by reallocating space within the existing dwelling and adding additional space by removing the two car detached garage and attaching a garage to the single-family dwelling. The Casas family requires additional office space, storage space, and living space. Ms. Casas testified to the support offered by her neighbors for the proposed project (Exhibit A-6, Neighbor Support Letters).

7. Ms. Casas testified that the Casas family has owned the property for 15 years. The detached garage was an existing condition. Further, the Casas' have not added any impervious surface to the property since purchasing.

8. Rachel Butch, PE, Showalter & Associates, testified as an expert witness in support of the application. Ms. Butch prepared the zoning permit plan submitted as Exhibit A-4 with the application. The property was surveyed by Showalter & Associates.

9. Ms. Butch testified that the 23% impervious ratio is an existing condition. The proposed construction will not add any additional impervious surface, leaving the post-construction impervious surface at 23%. The improvements are to be made without adding impervious surface through Applicants' removal of certain impervious surface in the driveway, within the existing garage, and the vestibule area. Ms. Butch further testified that the improvements will not change drainage or grading on the property.

10. Ellen Concannon Happ, AIA, testified as an expert in architecture, in support of the application. Ms. Happ described the existing building as a split level. She further described the improvements being made, including a new deck from the kitchen toward the side lot line, adding a front porch, and creating a two car attached garage. Further improvements include a new master bedroom and bathroom over the garage. Ms. Happ prepared architectural floor plans and elevation renderings, which were marked and admitted as Exhibit A-4.

11. Ms. Happ described the deck as 11' wide x 15' front to back. The width of 11 feet is required for functionality. The deck will be 3 steps above grade. The deck has been designed to have minimum impact on adjacent properties.

12. Exhibits A-4 and A-5 are consistent with the testimony of the Applicant and the experts.

13. No one spoke in opposition to the application.

14. 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. The property carries certain nonconformities which preexist the Applicants' ownership. The lot is undersized at 23,595 square feet, where 40,000 square feet is required by §175-39 of the Ordinance. Further, the lot width is 121 feet, where 150 square feet is required by §175-39 of the Ordinance. Both of these conditions are legally preexisting nonconformities.

3. The existing impervious surface is 23%, where §175-38 of the Ordinance allows a maximum of 20%. The side yard adjacent to the deck is 21 feet, where §175-39 of the Ordinance requires 25 feet. The other side has a 15 foot side yard to an existing detached garage.

4. The impervious surface and side yard nonconformities are not preexisting legal nonconformities. Applicants request a variance to permit the post-construction 23% impervious surface coverage, the 15 foot side yard for the attached garage, and an 18 foot side yard for the deck constructed toward the other side lot line.

5. The Applicants have presented evidence of sufficient factors to warrant the grant of the dimensional variances requested. The Board concludes that the size of the lot, being undersized and narrow as compared to Ordinance requirements, drives the need for both the impervious surface and the side yard variances.

6. The evidence establishes that the relief sought by the Applicants is the minimum variance necessary. Applicants are essentially replacing existing nonconformities with post-construction nonconformities of the same nature (23% impervious and 15 foot side yard). The exception is the proposed deck to the other side yard where Applicants are increasing the nonconformity by 3 feet. The Board concludes that the proposed deck is a reasonable amenity and that the width of the deck at 11 feet is necessary for functionality.

7. 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. Where Applicants have extended the request for relief (the side yard with the deck) Applicants have agreed to certain conditions to mitigate the impact on the adjacent property owner.

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

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

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby GRANTS the requested relief from the Doylestown Township Zoning Ordinance to permit the Applicants to renovate the existing 585 square foot detached garage into a 632 square foot attached garage located to the side of the house and increase the size of the existing 299 square foot deck by 51 square feet, as follows:

1. a variance from §175-38 to allow impervious surface coverage of 23%, where a maximum of 20% is permitted; and,
2. a variance from §175-39 to permit a side yard of 15 feet, as measured from the side lot line to the closest point on the proposed attached garage and 18 feet as measured from the other side lot line to the extension of the existing deck, where 25 feet is required for each side yard.

The relief herein granted is subject to the following conditions:

1. Construction of the proposed project must be generally consistent with the plans submitted with the application (zoning plan, dated September 30, 2020, prepared by RL Showalter & Associates, Inc. and floor plan and elevation renderings, dated July 7, 2020, prepared by Ellen Concannon Happ, AIA).
2. Applicants must apply for and obtain all permits prior to construction, use and occupancy.
3. Applicants shall add additional plantings of arborvitae or similar screen type plant material on the berm within the side yard adjacent to the proposed deck extension, subject to approval by Doylestown Township.
4. 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.

HRMM&L

**HAMBURG, RUBIN, MULLIN,
MAXWELL & LUPIN, PC**
ATTORNEYS AT LAW

30441-001

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November 24, 2020

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OF COUNSEL:
John C. Rafferty, Jr.

Via First-Class Mail
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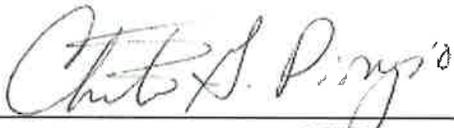
**Re: Doylestown Township Zoning Hearing Board
Application of Gary and Sandra Bergstresser (Z-12-2020)**

Dear Kellie:

Enclosed you will find the written Decision of the Doylestown Township Zoning Hearing Board on your above referenced application.

Very truly yours,

HAMBURG, RUBIN, MULLIN,
MAXWELL & LUPIN

By: 
CHRISTEN G. PIONZIO

CGP/dcbk
Enclosure
CC: Tom Panzer, Esquire (w/enc.) – via email

LANSDALE
ACTS Center — Blue Bell
375 Morris Road
Post Office Box 1479
Lansdale, PA 19446-0773
Phone 215.661.0400
Fax 215.661.0315

**LIMERICK
HARRISBURG**

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

Application No. Z-12-2020

Applicant: Gary and Sandra Bergstresser
537 Sandy Ridge Road
Doylestown, PA 18901

Owners: Gary and Sandra Bergstresser
537 Sandy Ridge Road
Doylestown, PA 18901

Property: Tax Parcel No. 09-031-069 which is located at the address of the Applicant set forth above (the "Property").

Requested Relief: The Applicant requests a special exception pursuant to Section 175-37(B)(H-12) of the Doylestown Township Zoning Ordinance ("Ordinance"), a variance from Section 175-16(H-12)(A) to permit an in-law suite to occupy 40% instead of 25% of the total usable floor area of the principal residence, and from Section 175-16(H-12)(C) to permit the in-law suite to be located within a replacement detached garage as opposed to an existing detached garage.

Hearing History: The application was filed in Doylestown Township on September 24, 2020. The hearing was held on October 22, 2020 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Kellie McGowan, Esquire

Mailing Date: November 24, 2020

Exhibits:

ZHB-1	Application received on or about September 24, 2020, with attachments, including owners list for notification and a Deed dated June 26, 2003;
ZHB-2	All legal notices and Proof of Publication;
ZHB-3	The Zoning Ordinance;
A-1	Aerial view of the Property;
A-2	Photos of existing structures on Property;
A-3	Existing Condition and Site Plan showing proposed garage and in-law suite;
A-4	Elevations of proposed structure.

Testimony Provided By: Gary Bergstresser, Owner/Applicant;
Ellen Happ, Architect, Expert in the field of architecture;
Gregg Schuster, 534 West Sandy Ridge Road

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 Property and therefore possessed the requisite standing to make application to this Board.
3. The Property is located in the R1, Residential Zoning District of Doylestown Township. It accommodates the Applicant's single-family detached dwelling, and a 1-story, 2-car detached garage.
4. The Property is approximately 1.76 acres in size.
5. The Property has been in the Bergstresser family since it was built in 1938. Mr. and Mrs. Bergstresser currently reside in the house.
6. The Applicant proposes to raze the existing detached garage and construct in its stead a 3-car detached garage with an in-law suite on the second floor. It is proposed that the Applicant will move into the in-law suite and that their "middle" son will move in and occupy the existing dwelling.
7. The adjacent property on the side where the proposed garage is located is owned and occupied by the Applicant's "younger" son.
8. The existing detached garage is in disrepair to the point that it cannot be renovated to be utilized for an in-law suite. The height of the garage does not permit the storage of vehicles.
9. Photographs submitted at the Hearing show adequate driveway space for numerous cars such that the requirement for 3 off-street parking spaces can be provided via the new garage or the driveway.
10. The location of the new garage will be located just behind the location of the existing garage.
11. The Applicant acknowledged that it must comply with the requirements of the Zoning Ordinance relative to the placement of an accessory structure, including, but not limited to, a 10 ft. setback from the proposed driveway extension to the side Property line.

12. No changes are proposed to the existing dwelling and the garage will be constructed to match the existing house.
13. No commercial use of the proposed garage is proposed.
14. Only 1 in-law suite is proposed on the Property.
15. The Applicant will register the in-law suite with the Township Zoning Officer.
16. The Applicant shall connect to public sewer and the existing well will be modified to accommodate both the existing house and the proposed garage/in-law suite.
17. 3 gable windows are proposed above the 3 garage doors facing the street.
18. The first floor will contain 3 garage bays plus a staircase to the second floor. A side entrance with porch is proposed with an elevator to the second floor. There is ancillary storage and space for a well tank and furnace.
19. On the second floor of the proposed garage is the in-law suite which includes a kitchen and living room area, 2 bedrooms which share a bathroom, a powder room and a washer and dryer area. Also proposed is a deck to the rear, access to which is proposed at 2 locations from the in-law suite as well as an exterior staircase.
20. Ms. Happ testified that the total square footage of the proposed in-law suite measures 1,091 sq. ft. She opined that it is modestly sized to accommodate an in-law suite that suits the Applicant.
21. The existing dwelling measures 2,726 sq. ft., 25% of which would yield an in-law suite of 700 sq. ft. Ms. Happ testified that that is too small to accommodate a reasonable in-law suite.
22. Ms. Happ testified that what she designed is consistent with other in-law suites she has designed and is not excessive.
23. Ms. Happ testified that what is proposed is appropriate relative to scale and is in keeping with the character of the Property and the surrounding properties.
24. Ms. Happ testified that the proposed garage and in-law suite will not have an adverse impact on the Property or those surrounding it and that a minor modification is necessary to afford reasonable use of the Property.
25. The Applicant testified that the neighbors on the other side of the Property have no objection to the application.
26. The Applicant agreed to a number of conditions recited on the record.
27. Doylestown Township took no position with regard to this application.

28. Mr. Schuster, who resides across the street from the Property, testified and requested a condition that only family members utilize the in-law suite.

CONCLUSIONS OF LAW

1. The Property has been developed as a single-family residence, the use of which is permitted in the R1 Zoning District in which it is located.

2. The construction of an accessory structure with an in-law suite is permitted by special exception in the R1 Zoning District.

3. The Board found the testimony of Ms. Happ and Mr. Bergstresser credible. Utilizing the existing garage for an in-law suite is not possible.

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

5. The evidence establishes that the relief sought by the Applicant is the minimum relief necessary.

6. The variances sought will not alter the essential character of the neighborhood or district in which the Property is located.

7. The Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variances requested.

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

(This space intentionally left blank.)

ORDER

Upon consideration and after a hearing, the Zoning Hearing Board of Doylestown Township hereby **GRANTS** a special exception pursuant to Section 175-37(B)(H-12) of the Doylestown Township Zoning Ordinance, a variance from Section 175-16(H-12)(A) to permit an in-law suite to occupy 40% instead of 25% of the total usable floor area of the principal residence, and from Section 175-16(H-12)(C) to permit the in-law suite to be located within a replacement detached garage as opposed to an existing detached garage. The relief herein granted is subject to the following conditions which were agreed to by the Applicant on the record:

1. That the Applicant shall draft and record a deed restriction to be reviewed and approved by the Township Solicitor which requires that use of the proposed garage and in-law suite will be in conformance with the Zoning Ordinance requirements, but for the relief granted herein.
2. That connection to public sewer for both the existing house and the proposed garage and in-law suite be made.
3. That the proposed garage and in-law suite will be constructed in substantial conformance with the testimony and exhibits presented at the Hearing.
4. That the proposed deck will remain open with no permanent cover.
5. That the proposed driveway expansion to accommodate the garage be set 10 ft. from the side Property line.
6. In all other respects, Applicant will comply with all provisions of the statutes, laws, regulations, rules, codes and ordinances of the United States, Commonwealth of Pennsylvania, Doylestown Township and any other municipal entity having jurisdiction over this matter.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

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

/s/ Mitchell Aglow
Mitchell Aglow, Vice-Chairman

/s/ Sam Costanzo
Sam 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.