

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

**Application No.** Z-3-2013

**Applicant:** John and Rena Thompson  
705 Almshouse Road  
Doylestown, PA 18901

**Owner:** Same

**Subject Property:** Tax Parcel No. 9-7-117-1, which is located at the address of the Applicants set forth above.

**Requested Relief:** The Applicants desire to subdivide the property into 2 lots and, in order to do so, request the following relief from the Doylestown Township Zoning Ordinance ("Ordinance"):

- (1) A variance from §175-17.G.2 in order to create a flag lot that will be 48,788 square feet in size, instead of the minimum required 80,000 square feet;
- (2) A variance from §175-34 in order to create 2 lots, each of which will contain less lot area than the 2 acres required. Proposed lot 1 will be .64 acres in size, and proposed lot 2 will be 1.12 acres in size;
- (3) A variance from §175-34 in order to permit a lot width for proposed lot 1 of 151.82 feet, instead of the minimum required 200 feet; and
- (4) A variance from §175-33 to permit an impervious surface coverage ratio on proposed lot 2 of 22%, instead of the maximum permitted 15%.

**Hearing History:** The application was filed in Doylestown Township on March 11, 2013. The hearing was held on April 15, 2013 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

**Appearances:** Applicants by: Linda Hopkins, Esq.  
Hopkins & Hopkins  
114 N. Main Street  
Doylestown, PA 18901

**Date of Issuance:** May 13, 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 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-1A, Residential Zoning District of Doylestown Township. It is 2.37 acres in size. Its existing improvements include a single family residence of the Applicants located in the rear portion of the subject property, a detached garage, a storage shed and the original residential structure which has been converted to, and most recently occupied as, an artist studio for the Applicants.

4. The subject property's existing features and conditions are accurately represented in Exhibit B-1.b, in minor subdivision plan prepared by Showalter and Associates, dated 3/7/13 (the "Site Plan").

5. The Site Plan was prepared and explained by Robert Showalter, the Applicants' civil engineer who was qualified to express an opinion as an expert in the field of civil engineering.

6. The Applicants' first witness was Christie Booth, a real estate agent at Prudential Fox & Roach who partnered with Nancy Presti to market the subject property for sale.

7. Booth testified that she marketed the listing from August of 2012 through January 2013 when it was withdrawn from the market. She received no offers for purchase of the subject property. She testified that, anecdotally, the lack of interest was due to a deed restriction on the subject property which will be described hereafter. She testified that there was a lot of interest in the large residence at the rear of the property and opined that the property was not marketable as a residence with an artist studio. She did not indicate the list price of the property while it was being marketed.

8. The subject property is located in the neighborhood of single family homes on lots of varying sizes, some in conformity with Ordinance lot area requirements; some not, as depicted on Exhibit A-8, a tax parcel map. The Applicants now live in Mexico and desire to subdivide the subject property into 2 lots as depicted on the Site Plan. They propose to retain ownership of the existing artist studio and convert it back to a residence, allowing them to market the larger single family home on a new flag lot to be created by the proposed subdivision.

9. The artist studio had been the residence of the Applicants until 1992 when they constructed the larger home on the property.

10. Approval of building and zoning permits for the larger home on the subject property became possible as a result of the Decision of this Zoning Hearing Board dated May 8, 1992 (Exhibit B-6) which permitted the Applicants' request to convert the original home to an artist studio, while allowing them to live, with their now larger family, in the new home to be constructed.

11. In Conclusion of Law #5 of Exhibit B-6, the Zoning Hearing Board expressed concern "...that the creation of a second residential structure on the property will create the potential that at some point in the future the existing residence may be reconverted to residential use, thus doubling the intensity of the use of the property."

12. Accordingly, noting the Applicants' agreement to them, the Board imposed a number of conditions upon the variance relief granted in Exhibit B-6, relevant to this application.

13. Approval condition #2 reads as follows: "The Applicants shall execute and record a deed restriction in a form approved in advance by Doylestown Township providing that only one of the two buildings on the subject premises will be occupied as a residence at any time;"

14. Approval condition #3 reads as follows: "All appliances with the exception of the sink will be removed from the kitchen in the existing residence and overnight occupancy for any purposes of the existing residence shall be terminated upon issuance of an occupancy permit for the new residence to be constructed on the premises;"

15. Lilah Thompson, the Applicants' daughter, testified that her parents did execute and saw to the recording of a restrictive covenant in accordance with this condition.

16. Ordinance §175-34 contains the lot area and dimensional requirements for property in the R-1A District. The minimum lot area required per dwelling unit is 2 acres.

17. The gross lot area of the subject property, according to the Site Plan, is 2.37 acres. The subject property's net buildable site area, after reduction of areas that are resource protected, is 1.82 acres according to the Site Plan. The existing property is described in the Site Plan as nonconforming as to lot area in that it contains 1.98 acres.

18. Mr. Showalter testified that the original residential structure is historic in nature and deserves protection. In Exhibit B-6, the Zoning Hearing Board determined that that structure was 170 years old in 1992. Showalter estimated the expense to raze that structure at \$25,000 to \$30,000, opining that its historic nature should preclude its demolition.



19. That structure, having been constructed in different times, is located close to Almshouse Road at a nonconforming front yard setback distance of 5.4 feet, instead of the 100 feet required by Ordinance. Further, its side yard setback distance is 29.12 feet, instead of the Ordinance required 35 feet.

20. Under current Ordinance regulation, the entire artist studio structure is located within the required front yard setback distance.

21. Showalter also candidly introduced the language of the restrictive covenant which is contained on Exhibit A-4, a deed from and to the Applicants in order to record the restrictive covenant.

22. The covenant language in that deed reads as follows: "UNDER AND SUBJECT to the expressed condition and restriction that only one of the two buildings on the subject premises may be occupied as a residence at any time, which restriction is pursuant to the Doylestown Zoning Hearing Board Decision rendered Mary (sic) 25, 1992 and said restriction shall run with the land and shall be applicable to Grantee and subsequent Grantees."

23. The subdivision seeks the creation of 2 lots. Lot 1 is proposed to contain a gross lot area of .70 acres, is roughly rectangular in shape, and will accommodate the artist studio structure. It would have 153.23 feet of frontage on Almshouse Road. If created, it would therefore be nonconforming to the minimum lot area requirement of 2 acres and the minimum lot width area requirement of 200 feet.

24. Lot #2 is proposed to contain a gross lot area of 1.67 acres with 50.06 feet of frontage on Almshouse Road resulting in a flag lot figuration. If created, lot #2 would be nonconforming to the dimensional requirements for flag lots in that it would be less than the minimum lot area of 80,000 square feet set forth at Ordinance §175-17.G.2.

25. According to the Site Plan, the existing impervious surface coverage ratio on the subject property is 16%, which is nonconforming to the maximum impervious surface coverage ratio of 15% permitted by Ordinance §175-33. If the subdivision is approved, lot 1 would have a conforming coverage ratio of 11% and lot 2 a nonconforming ratio of 22%, according to the Site Plan. However, no additional impervious surface is proposed as part of this application.

26. The creation of proposed lot 2 will frustrate and/or eliminate any possibility of residential additions in the future due to the increase of the impervious surface ratio over Ordinance requirements.

27. The existing house is served by on lot water and sewer and, according to the Bucks County Board of Health, the artist studio can meet their permitting requirements for additional on lot sewage and water service if necessary.

28. The Applicants presented letters from several neighboring residential property owners that expressed either support for or no opposition to the Applicants' variance requests.

## CONCLUSIONS OF LAW<sup>1</sup>

1. The concern of a majority of the Board Members regarding this application is four-fold:

- (1) The requested relief will enable the creation of 2 new nonconforming lots in the Township;
  - (2) The legal hardship, if any exists, is self created by the Applicants.
  - (3) If granted, the relief will violate a recorded restrictive covenant;
- and
- (4) The impervious surface nonconformity for proposed lot 2 will preclude inevitable future expansion of the structures on it.

2. The creation of new nonconforming lots is discouraged by the Ordinance and Pennsylvania Municipalities Planning Code and case law that has developed since their enactment.

3. While the rationale of the Applicants' is compelling, it does not rise to the level of a legal hardship as defined in those statutes and decisions.

4. Further, the Board does not opine on the impact or effect of the requested relief, or lack thereof, upon the recorded perpetual restrictive covenant. In that regard, the Board is not aware of any authority under the Pennsylvania Municipalities Planning Code to terminate a perpetual covenant.

5. In order to grant a variance, Ordinance §175-136.A requires the Board to make five specific findings where relevant in a given case. The Board cannot find that the property bears any unique physical circumstances or conditions required by subsection (1).

6. The property has been developed consistent with Ordinance requirements or pursuant to lawful nonconformities and/or appropriate zoning relief. The Board cannot find that any hardship in this case has not been created by the Applicants. In reading the words of Exhibit B-6, the previous Board Decision, and the restrictive covenant, it can only conclude that the Applicants knowingly and intelligently agreed to a permanent imposition against the creation of a second residential unit on their property.

7. The restrictive covenant that "...runs with the land..." presumes the perpetuity of its terms and precludes the relief which the Applicants now seek.

8. Lastly, the creation of an impervious surface coverage ratio at 22% on proposed lot 2 prohibits the addition of any structure or surface, impervious in nature in the future, without further variance relief.

9. Accordingly, by a majority vote of 2-1, the Board determined to deny the Applicants' requests for relief.

---

<sup>1</sup> All conclusions are those of a Board majority with Vice Chairman William Lahr dissenting.

WHEREFORE, the Zoning Hearing Board of Doylestown Township denies the four requested variances from the Doylestown Township Ordinance.

**ZONING HEARING BOARD OF  
DOYLESTOWN TOWNSHIP**

**By:** /s/ W. Andrew McPherson  
W. Andrew McPherson, Chairman

/s/ 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.