

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

Docket No.: Z-11-23

Applicants: Brett & Ashley Amberson
14 Deer Path Road
Doylestown, PA 18901

Owners: Same.

Subject Property: Tax Parcel No. 09-024-013, which is located at the address of the Applicants set forth above.

Requested Relief: Applicants seek to construct a one-story addition to the existing single-family dwelling to accommodate an accessory family apartment. Applicants seek a special exception pursuant to §175-37 B H-12 of the Doylestown Township Zoning Ordinance (“Ordinance”) to permit the accessory family apartment, and a variance from §175-38 & §175-39 of the Ordinance to exceed the allowable impervious surface coverage on site.

Hearing History: The application was filed in Doylestown Township on August 11, 2023. The hearing was held on September 28, 2023 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicants, *Pro Se*

Mailing Date: November 10, 2023

DECISION

FINDINGS OF FACT:

1. The Zoning Hearing Board of Doylestown Township (“Board”) 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 45,307 square feet (gross), and 41,057 square feet (net). The property accommodates the Applicants’ two-story single-family residential dwelling with residential amenities, including driveway, walkways, existing patio, in-ground swimming pool, and tennis court.

4. Total impervious surface coverage on-site is 31.9%. The proposed impervious surface coverage is 32.6%.

5. §175-38 permits an impervious surface coverage ratio of 20%.

6. Applicant is proposing a one-story addition, with a footprint of 792 square feet, but the addition is being placed, in part, over existing impervious driveway area.

7. The proposed one-story addition to the existing single-family dwelling is to accommodate an accessory family apartment. Applicants seek a special exception pursuant to §175-37 B H-12 of the Doylestown Township Zoning Ordinance to permit the Accessory Family Apartment, and a variance from §175-38 & §175-39 of the Ordinance to exceed the allowable impervious surface coverage on site.

8. §175-37 B H-12 provides that the accessory family apartment is permitted within the R-1 Residential Zoning District by special exception.

9. A special exception is defined under the Doylestown Township Zoning Ordinance as, “A permission or approval granted to use land for a purpose other than those specified as uses permitted outright within a zoning district, granted by the Township Zoning Hearing Board in accordance with the standards contained in this chapter.” See, Ordinance §175-9.

10. §912.1 of the Municipalities Planning Code (“MPC”) provides for the Zoning Hearing Board to hear requests for special exceptions “to be granted or denied by the board pursuant to express standards and criteria ... [permitting] the board [to] attach such reasonable conditions and safeguards... as it may deem necessary ...” See, §912.1 of the MPC.

11. §175-137 and §175-138 similarly provide standards and criteria for the granting of special exceptions.

12. §175-37 B H-12 provides that the accessory family apartment is permitted by special exception.

13. The provisions of the Ordinance defining an accessory family apartment are found at §175-16.H(12), and read as follows:

H-12. Accessory family apartment. One accessory dwelling unit to a single-family detached dwelling shall be permitted as a residence by family members or a family caregiver, 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 accessory dwelling unit is to be constructed or to be used.

[Added 5-4-1993 by Ord. No. 224; amended 2-16-2021 by Ord. No. 401]

- (a) The accessory family apartment shall occupy no more than 25% of the total usable floor area of the principal residence, not including any garage.
- (b) Accessory family apartments shall be part of the principal residence or may be contained in the existing accessory structure such as a garage.
- (c) The required off-street parking for the principal dwelling plus one additional off-street parking space for the accessory family apartment shall be provided.
- (d) 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. Manufactured homes, industrialized housing, recreational vehicles, travel trailers, and any other wheeled or transportable structure shall not be used as an accessory family apartment.
- (e) No more than one accessory family apartment shall be permitted per single-family detached dwelling.
- (f) A maximum of two occupants are permitted in such units. Accessory family apartment shall be occupied by family members or a family caregiver.
- (g) Each accessory family apartment 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 periodically by the Board of Supervisors by resolution. Registration of an accessory family apartment shall expire upon conveyance of the property, at which time the new property owner may reregister said use if warranted.

- (h) 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 accessory family apartment as defined in this subsection.
- (i) The record owner of the property shall grant a deed restriction limiting such use in accordance with the foregoing provisions in favor of the Township, which agreement shall contain the following provisions:

- [1] A description of the dimensions and location of accessory use.

- [2] Being in a recordable document acceptable to the Township for filing with the Bucks County Recorder of Deeds Office. All costs for the preparation and recording of the foregoing document are the responsibility of the applicant for the accessory use.

- [3] The rental of an accessory family apartment shall not be permitted, nor shall it be used in any way as an income property.

14. Applicant offered testimony satisfying each of the specific and general criteria for the accessory family apartment.

15. No one spoke in opposition to the application.

16. 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, but for an existing excess impervious surface coverage.
2. §175-37 provides that Use H12 accessory family apartment is permitted within the R-1 Zoning District by special exception. MPC §912.1 and Ordinance §175-137 and §175-138 provide the specific and general criteria for the special exception.
3. §175-16.H(12) provides the specific criteria for the accessory family apartment use.
4. The Board grants the special exception to permit the accessory family apartment.
5. A use permitted by special exception is presumptively consistent with the public health, safety and welfare; the denial of a special exception can be based only on proof that the use would create an adverse effect on the public welfare in a way not normally associated with proposed use. *Kern v. Zoning Hearing Board of Tredyffrin Township*, 68 Pa. Cmmw. 396, 449 A.2d 781 (1982). Here, the objecting witnesses failed to present proof that the proposed use would present a substantial threat of harm to the health, safety and welfare of the community. *Abbey v. Zoning Hearing Board of the Borough of East Stroudsburg*, 126 Pa. Commw. 235, 559 A.2d 107 (PA. Cmwltth. 1989).
6. Applicants require a variance to exceed the impervious surface coverage permitted.
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.
8. The evidence establishes that the relief sought by the Applicants is the minimum variance necessary.
9. The variance sought will not alter the essential character of the neighborhood or district in which the Subject Property is located.
10. The Pennsylvania Supreme Court has articulated a relaxed variance standard for dimensional variances. See, *Hertzberg v. Zoning Board of Adjustment of the City of Pittsburgh*, 554 Pa. 249, 721 A.2d. 43 (1998).
11. The Board concludes that the Applicants have met the relaxed standard for a variance to permit the increase in impervious surface coverage.
12. 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 special exception pursuant to §175-37 B H-12 and variances from §175-38 & §175-39 of the Doylestown Township Zoning Ordinance to facilitate Applicants' construction of a one-story addition to the existing single-family dwelling to accommodate an accessory family apartment. The special exception, pursuant to §175-37 B H-12 of the Ordinance, is to permit the accessory family apartment. The variances from §175-38 & §175-39 of the Ordinance are to exceed the allowable impervious surface coverage on-site (not to exceed 32.6%).

All relief is subject to the following conditions:

1. Applicants must construct the addition generally consistent with the Plans presented during the hearing, specifically Plans prepared by Here's the Plan, LLC, bearing no specific date, along with photographs and elevations.
2. Applicants shall apply for all required permits, including building permits and compliance with all other applicable governmental ordinances and regulations.

**ZONING HEARING BOARD
OF DOYLESTOWN TOWNSHIP**

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

/s/ Mitchell Aglow
Mitchell Aglow, Vice Chairman

/s/ Samuel Costanzo
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