

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

Docket No. Z-10-06

Applicant: James M. Kelleher
26 Lenape Lane
Doylestown, PA 18901

Owner of Premises: Same as above

Subject Property: Tax Parcel #9-26-55, which is located at the address of the Applicant set forth above.

Prayer of Relief The Applicant desires the construction of an in-law suite on the subject property. Originally, the Applicant requested a special exception pursuant to §175-37.b of the Doylestown Township Zoning Ordinance (“Ordinance”), in order to permit it. At the first hearing held, the Applicant amended the relief sought to include a variance from §175-16.h-12.a in order to allow the in-law suite to occupy more than twenty-five (25%) of the total usable floor area of the principal residence, not including the garage.

Hearing History: The application was filed in Doylestown Township on May 13, 2010. The initial hearing was scheduled for June 24, 2010 but continued in order to allow the Applicant the opportunity to seek additional necessary relief. The second hearing was held on July 19, 2010. Both hearings were held at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant by: Peter Nelson, Esquire ¹
Grim, Biehn & Thatcher
104 S. 6th Street
P.O. Box 215
Perkasie, PA 18944

Date of Issuance:

¹ Mr. Nelson entered his appearance for the Applicant at the second hearing.

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 Applicant is one of 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. It is 58,114 sq. ft. in size and is developed with the Applicants' single family detached dwelling, attached rear deck, and a pool with accessory coping and patio.
4. The use of the property is permitted in the R-1 District by right, and its development meets all of the requirements of the Zoning Ordinance.
5. Mrs. Kelleher's parents, Joseph and Marjorie Shields, presently occupy one of the bedrooms in the existing 2-story structure. In order to permit independent living for the Shields, the Applicant proposes the construction of an addition that will include an in-law suite for that purpose.
6. Pursuant to Ordinance §175-37.B, an in-law suite is permitted by special exception in the R-1 Zoning District.
7. §175-16.h-12 defines an in-law suite. The stated intent of this section is: "...to allow for related family members to reside on the premises, but to prohibit the creation of for-profit apartments in districts where multi-family housing is otherwise permitted.
8. This Ordinance section enumerates nine (9) conditions which must be met by the Applicant in order to justify the special exception sought for an in-law suite use.
9. The evidence presented by the Applicants satisfies the Board that they have met the conditions enumerated at §175-16.h-12.b-g inclusive.
10. Further, the Applicant agrees to the requirement of registration set forth for an in-law suite use at §175-16.h-12.h.
11. As to §175-16.h-12.i, the Applicant presented a letter from the Bucks County Board of Health indicating the adequacy of the soils on the subject property for suitable waste water facilities. Additionally, the Applicant indicated that the appropriate certification shall be received from the Bucks County Board of Health as a condition of any relief he receives.

12. §175-16.h-12.a is not met by the Applicant and, for that reason, a variance from that provision is sought.

13. The evidence indicates that the total usable floor area of the principal residence, not including the garage, is 3854 sq. ft. The application of the twenty-five (25%) percent limitation on the size of the in-law suite would result in a requirement that the proposed in-law suite be 963 sq. ft.

14. The one-story addition proposed to accommodate the in-law suite contains an area of 1022 sq. ft. of space for that use. This is 59 sq. ft. larger than permitted by the application of §175-16.h-12.a.

15. As part of the addition, the Applicant also proposes the construction of a music room that will be climate controlled in order to store the Applicant's guitars which have significant value. This music room, proposed to be 316 sq. ft. in size, will be accessory to the principal residence, and not the in-law suite.

16. The one-story addition proposed to be constructed also includes a basement under its entire footprint. The Applicant testified that the basement would be open to the existing basement and used only for the purposes of storage for the family's needs. The Applicant further agreed that no space in the basement would be applied to residential use for the in-law suite.

17. Other than the variance sought, the proposed construction will meet all other applicable requirements of the Zoning Ordinance.

18. Doylestown Township took no position with regard to this Application.

CONCLUSIONS OF LAW:

1. The use of a portion of a residential property as an in-law suite for related family members of the owners is encouraged by §175-16.h-12.

2. The Applicant has evidence compliance with eight (8) of the conditions necessary to meet the definition of an in-law suite.

3. The size of the in-law suite, at 1022 sq. ft., is logical and reasonable.

4. The variance of 59 sq. ft. from Ordinance requirements, this Board finds, in these circumstances to be de minimus.

5. If the de minimus variance is granted, then the Applicant has established evidence of compliance with the spirit and intent of the Ordinance with regard to the construction and use of an in-law suite on the subject property.

6. Accordingly, the members of the Doylestown Township Zoning Hearing Board in attendance at this hearing² determined, unanimously, to grant the relief requested by the Applicant subject to conditions as set forth hereafter.

WHEREFORE, on this 31st day of August, the Zoning Hearing Board of Doylestown Township GRANTS a variance from §175-16.h-12.a of the Doylestown Township Zoning Ordinance in order to allow the construction and use of a portion of the subject property as an in-law suite with an area of 1022 sq. ft. as depicted on page 2 of Exhibit A-2, the architectural plans for construction prepared by John W. Hyrsl, Jr., RA, dated June 1, 2010. Further, the Board grants the Applicant's request for a special exception for the use of this portion of the property as an in-law suite pursuant to §175-37.B of the Ordinance subject to compliance with all other applicable governmental Ordinances and regulations, and the following specific conditions: (1) that no portion of the basement addition be devoted to the in-law suite use; (2) that no part of the addition shall ever be used as a rental unit; and (3) that the Applicant will obtain appropriate certification from the Bucks County Board of Health for the adequacy of the proposed waste water facilities on the subject property.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

By: W. Andrew McPherson, lsl
W. Andrew McPherson, Chairman

William J. Lahr, lsl
William J. Lahr

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.

² The Board consists of only two (2) members due to the untimely death of one of its members.