

ZHB #3-2010

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

Applicant: Michael C. Flanigan
31 Militia Hill Road
Warrington, PA.18976

Owner of Premises: Michael C. and Kimberly D. Flanigan
31 Militia Hill Road
Warrington, PA. 18976

Subject Property: Tax Parcel #9-42-42, which is located at the address of the Applicant set forth above.

Prayer of Application: The Applicant requests a special exception, pursuant to §175-37.B of the Doylestown Township Zoning Ordinance (“Ordinance”), to order to allow the use of a portion of the property as an in-law suite. Additionally, the Applicant requests a variance from §175-16.H-12.c so as to permit its use within a new separate structure on the subject property.

Hearing History: The application was filed in Doylestown Township on February 9, 2010. The initial hearing was scheduled for March 25, 2010 but continued, at the request of the Applicants, until April 19, 2010 when it occurred at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant by: Eric R. Tobin, Esquire
Eastburn and Gray, P.C.
60 Court Street
Doylestown, PA. 18901

Robert G. Shain
89 Militia Hill Road
Warrington, PA. 18976

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 of this board.
3. The subject property is located in the R-1, Residential District of Doylestown Township. It is approximately 2.998 acres in size and is improved with the Applicant's single family detached dwelling; an in-ground swimming pool; and appurtenant decks and walk ways. Its driveway also accommodates a large asphalt parking area to the rear of the structure.
4. According to the creditable testimony of the Applicant, there is no garage on the property and there was none at the time that it was purchased approximately a 1 ½ ago.
5. The evidence presented by the Applicant indicates that, unfortunately, Mrs. Flanigan's 82 year old father was seriously injured in an automobile accident approximately 12 years ago. His physical condition is deteriorating and he suffers from the late stages of Alzheimer's disease. His wife, Mrs. Flanigan's mother, who is 80, has become incapable of providing the necessary around the clock care that her husband requires.
6. Mr. & Mrs. Flanigan have 4 children and her parents presently live approximately 30 minutes away, making it difficult for the Flanigan family to provide necessary care to their elderly relative.
7. Accordingly, the Applicant determined to provide space on the subject property as living quarters for these relatives. Unfortunately, the existing structure is not handicapped accessible and, since it has no garage, the Applicant formulated his proposal to construct a detached structure which would serve as an in-law suite for his wife's parents, to be converted to a detached garage when no longer needed for that purpose.
8. An in-law suite is permitted, by special exception, in the R-1 Zoning District pursuant to Ordinance §175-37.B

9. In order to qualify for a special exception, the Applicants must exhibit compliance with nine (9) enumerated criteria for an in-law suite use, set forth at §175-16.H-12.

10. The Applicant's creditable evidence establishes compliance with 8 of the 9 criteria as set forth hereafter;

(a) The floor area proposed for the in-law suite is 962 square feet. The total useable floor area of the principal residence is approximately 5,000 square feet. Accordingly, the in-law suite will occupy less than the permitted 25% of that floor area;

(b) The suite will contain separate cooking, sleeping, living and bathroom facilities.

(c) The Applicant seeks a variance from this provision as discussed below;

(d) The Applicant will provide one additional off street parking space in order to meet the parking requirements;

(e) This suite shall only be occupied by Mrs. Flanigan's parents;

(f) The elevations and floor plans presented by the Applicant (Exhibit A-5) indicate that the structure proposed to be built will be designed to appear to be a detached garage for accessory use in connection with the residence. This structure is located at conforming setback distance from the side property line and at a similar setback distance to a detached garage on the contiguous neighbor's property;

(g) This is the only in-law suite proposed to exist on the subject property;

(h) The Applicant agrees to the registration provisions of this section; and

(i) The Applicant presented the testimony of Stephen Yates, an experienced professional in sewage planning. Yates indicated that expansion of the existing sewage treatment facility on the subject property will be very costly and difficult. The Pennsylvania Department of Environmental Protection permits, the utilization of holding tanks on properties where sewage flows are expected to be as low as expected in this Application and when sewage treatment and disposal will only be needed on a temporary basis. The Bucks County Board of Health and the Township have approved this method of sewage disposal.

11. The structure proposed to be built will be located over the existing asphalt parking area to the rear of the structure.

12. §175-16.H-12.c states, in relevant part, as follows

“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.”

13. The Applicant has submitted a declaration of restrictions and covenants (Exhibit A-4) which, in substance, requires that the Applicants convert the in-law suite use to a detached garage use upon the vacation of the building by Mrs. Flanigan’s father and mother and/or the sale of the property. Applicant’s counsel, Eric R. Tobin, Esquire, represented to the Board that the form of the declaration had been submitted to, and approved by, the Doylestown Township solicitor.

14. The evidence indicates that were the structure proposed as a detached garage, it would be permitted by right.

15. Party status was granted to Robert G. Shain, a residential neighbor, who had no questions or concerns after the presentation of the Applicant’s evidence.

16. Doylestown Township took no position with regard to this application.

CONCLUSIONS OF LAW:

1. An in-law suite is permitted by special exception in the zoning district in which the subject property is located pursuant to Ordinance §175-37.B.

2. The Applicant has indicated compliance with all but one of the enumerated criteria necessary to justify special exception for an in-law suite use contained at §175-16.H-12.

3. As the property is not served by a garage, the construction of a detached garage structure at the location and of the size proposed would be permitted by right.

4. The health situation of Mrs. Flanigan’s elderly parents justifies the need for an in-law suite on the subject property, a use which is encouraged by the Ordinance and, generally, favored by the Board.

5. The Applicant’s proposal to construct a structure which, by all appearances, is a detached garage, and to use it, temporarily, as an in-law suite, is entirely logical and necessary.

6. The declaration of restrictions and covenant indicates the Applicant’s intentions to avoid the use of the structure as a second residential unit on the property.

7. The construction of the structure will have no negative impact upon surrounding properties or uses and will, in fact, enhance the appearance and value of this subject property.

8. The conditions and requirements of the declaration of restrictions and covenants, attached to this Decision as Exhibit "A", indicate the Applicant's desire to minimize the variance necessary and to comply with the spirit of the Zoning Ordinance.

9. Accordingly, the Board determined that the Applicant had met its burden to establish compliance with the requirements of the Zoning Ordinance to justify a special exception for the proposed in-law suite use, and that strict compliance with §175-16.H-12.c operates as a hardship to the Applicant's family specifically, and to the property generally, by precluding the construction of an otherwise permitted detached garage structure.

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

WHEREFORE, the Zoning Hearing Board of Doylestown Township GRANTS the Applicant's request for a special exception to construct a 962 square foot in-law suite in a detached structure designed to be easily adapted to a garage and storage use. Additionally, it grants a variance from §175-16.H-12.c of the Ordinance in order to allow the in-law suite use to be conducted within a new separate structure on the property.

The grant of relief herein contained is subject to compliance with all other applicable governmental Ordinances and regulations, and the recording of, the attached declaration of restrictions and covenants.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

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

William J. Lahr
/s/William J. Lahr

William J. Hodgkiss
/s/William J. Hodgkiss

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.

Prepared by and return to:
Eric R. Tobin, Esquire
Eastburn & Gray, P.C.
60 East Court Street
Doylestown, PA 18901

TMP: 9-42-42

DECLARATION OF RESTRICTIONS AND COVENANTS

DECLARANTS: MICHAEL C. FLANIGAN AND KIMBERLY D. FLANIGAN

DECLARATION OF RESTRICTIONS AND COVENANTS

This Declaration of Restrictions, Covenants and Easements is made by **Michael C. Flanigan and Kimberly D. Flanigan**, husband and wife (individually and jointly "Declarant") and their heirs and assigns.

BACKGROUND

A. Declarant are the owners in fee of all that certain parcel of land situate at 31 Militia Hill Road in the Township of Doylestown, County of Bucks, Commonwealth of Pennsylvania, one being Bucks County Tax Map Parcel No. 9-42-42 (the "Property"). The Property is more fully described in a Deed recorded in the Office of the Recorder of Deeds of Bucks County, Pennsylvania in Land Record Book 5962, page 500; said Deed being incorporated herein by reference as if set forth in full.

B. On or about _____, 2010, the Zoning Hearing Board of Doylestown Township granted Declarant a variance and a special exception to enable Declarant to construct a new building on the Property to serve as an in-law suite in which the parents of Kimberly D. Flanigan (both parents are hereinafter referred to as the "Parents" and one parent is hereinafter referred to as the or a "Parent") will reside.

C. The in-law suite will have one bathroom and kitchen facilities.

D. Upon the vacation of the in-law suite by the last Parent to reside there, Declarant intends to convert the in-law suite to a two or three car garage with a work area.

E. Sanitary sewage disposal of the in-law suite is intended to be serviced by a holding tank.

F. Declarant desires and by this Declaration hereby states his intent to create the restrictions and covenants hereinafter set forth pertaining to the in-law suite.

DECLARATION

NOW THEREFORE, Declarant does hereby declare, make known, and covenant for himself, his heirs and assigns, that by these presents he does subject the Property to the following covenants and restrictions, which covenants and restrictions shall be and are intended to run with the Property and which shall be and are intended to be binding in perpetuity except as hereinafter provided.

1. The Background set forth above is incorporated herein and made a part of this Declaration as if set forth in its entirety.

2. All bathroom and kitchen facilities in the in-law suite shall be removed and sanitary sewer disposal service disconnected and discontinued from the in-law suit upon the first