

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

**Docket No.:** Z-17-23

**Applicant:** Kevin Lavery  
30 Anvil Lane  
Doylestown, PA 18901

**Owner:** Andrew Darcy  
30 Anvil Lane  
Doylestown, PA 18901

**Subject  
Property:** Tax Parcel No. 09-042-085, which is located at the address of the Applicant set forth above.

**Requested  
Relief:** Applicant seeks to construct an addition to the existing garage, then use the second floor of the garage as an accessory family apartment. Applicant seeks a special exception under §175-37.B (H-12) of the Doylestown Township Zoning Ordinance (“Ordinance”) to permit the accessory family apartment (in-law suite), a variance from §175-16 H-12(a) to permit the in-law suite to be in excess of 25% of the useable floor area in the principal dwelling, and a variance from §175-16 H-12(b) to permit the in-law suite to locate within the newly constructed addition to the existing garage.

**Hearing  
History:** The application was filed in Doylestown Township on September 26, 2023. The hearing was held on November 20, 2023 at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

**Appearances:** Applicant, *Pro Se*

**Mailing Date:** January 4, 2024

## **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. Andrew Darcy is the Owner of the Subject Property, and therefore possessed 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 46,604 square feet. The property accommodates the Applicant's single-family dwelling with usual and customary improvements.

4. Applicant seeks to construct an addition to the existing garage, then use the second floor of the garage as an accessory family apartment. Applicant seeks a special exception under §175-37.B (H-12) of the Doylestown Township Zoning Ordinance ("Ordinance") to permit the accessory family apartment (in-law suite), a variance from §175-16 H-12(a) to permit the in-law suite to be in excess of 25% of the useable floor area in the principal dwelling, and a variance from §175-16 H-12(b) to permit the in-law suite to locate within the newly constructed addition to the existing garage.

5. Applicant is the father-in-law of Owner, who resides at the property and spoke on behalf of and with permission from Owner.

6. 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.

7. §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.

8. §175-137 and §175-138 similarly provide standards and criteria for the granting of special exceptions.

9. §175-37 B H-12 provides that the accessory family apartment is permitted by special exception.

10. 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.

11. Applicant offered testimony satisfying each of the specific and general criteria for the accessory family apartment, except §175-16.H(12)(a) and §175-16.H(12)(b).

12. The Zoning Hearing Board finds that the irregularly shaped lot and the location of the dwelling on the irregularly shaped lot drives the need for the dimensional variances.

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. §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 authority 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 considers the provisions of §175-16.H(12)(a) and §175-16.H(12)(b) to be a dimensional variance as opposed to a use variance.

5. 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).

6. The Board concludes that the Applicants have met the relaxed standard for a variance to permit construction of the addition to the accessory structure to house the garage and accessory family apartment.

7. The Applicant has presented evidence of sufficient factors to warrant the grant of the dimensional variance requested under the relaxed variance standard.

8. 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.

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

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

11. The Board concludes that there are unique physical characteristics involved with the Subject Property that cause an unnecessary hardship which is not self-created by the Applicant and prohibits use of the Subject Property in strict compliance with the provisions of the Zoning Ordinance.

12. The grant of the requested variances satisfies Appellant's burden to meet the objective criteria set forth in the Ordinance for a special exception. New Bethlehem Borough Council v. McVay, 78 Pa. Commw. 167, 467 A.2d 395 (Pa. Cmwlth. 1983). 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. Cmwlth. 1989).

13. 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 following relief from the Doylestown Township Zoning Ordinance to permit Applicant to construct an addition to the existing garage, then use the second floor of the garage as an accessory family apartment:

1. A special exception under §175-37.B (H-12) to permit the accessory family apartment (in-law suite);
2. A variance from §175-16 H-12(a) to permit the in-law suite to be in excess of 25% of the useable floor area in the principal dwelling; and,
3. A variance from §175-16 H-12(b) to permit the in-law suite to locate within the newly constructed addition to the existing garage.

The relief herein granted is subject to the following conditions:

1. The in-law suite shall comply with §175-16 H-12 of the Ordinance.
2. Construction of the accessory structure shall be consistent with testimony provided by Applicant during the hearings held and further subject to the plans provided.
3. Applicant is to provide a post-construction “As-Built” Plan to confirm for Doylestown Township that the project was developed without need for additional zoning relief.
4. Applicant must comply with the Bucks County Water and Sewer Authority and Bucks County Board of Health regulations.
5. Whether the Applicant completes the project in phases or all at once, the Applicant must have a stormwater management plan prepared, by a licensed professional, to be reviewed and approved by the Township Engineer.
6. Applicant must comply with the building permit plan process, including preparing an erosion and sedimentation control plan to the satisfaction of the Township professionals and staff.
7. Applicant shall grant a deed restriction in accordance with §175-16(H)(12)(i).
8. Applicant must comply with all other applicable rules, regulations and governmental ordinances.

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### **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