

**BEFORE THE ZONING HEARING BOARD
THORNBURY TOWNSHIP
DELAWARE COUNTY, PENNSYLVANIA**

OPINION OF THE ZONING HEARING BOARD

RE: **APPEAL 11-2017**

Appeal of John Hersker, III for a special exception under Chapter 27, Section 402.e.(3) in order to use an existing home and garage for a single-family dwelling and separate in-law suite with kitchen and bathroom facilities where only one dwelling unit is permitted. The applicants are the equitable owner of a property which is located at 5 Derry Drive, Glen Mills, Pa 19342 in the R-1 Residential Zoning District of Thornbury Township, Delaware County, Pennsylvania.

A hearing was held on October 2, 2017 at 7:00 pm in the Thornbury Township Administration Building. J. Robert Haines, Chairman, Scott Cannon and George Morley were present and participated in this decision.

The following exhibits were admitted into the record.

- T-1 Proof of Posting
- T-2 Proof of Publications
- A-1 Email dated 9/6/2017 from Applicant with Letter attached
- B-1 Opinion and Order Appeal 4-2006 – Granite Custom Builders

FINDINGS OF FACT

1. Applicant, John Hersker, III, is the equitable owner of a parcel of real property located at 5 Derry Drive, Glen Mills, Pa. (hereafter the “Property”).
2. The Property is located in the R-1 Residential Zoning District of Thornbury Township, Delaware County, Pennsylvania.
3. The Property is developed with an existing two-story house 79 feet in length by 36 feet in width with an attached two-car garage.
4. The existing structure is located 61 feet from the front yard boundary line which is non-conforming, otherwise the structure and property is conforming to the Zoning Ordinance.
5. A single-family dwelling is permitted in the R-1 Zoning District of the Township.

6. In 2006, the property was modified and the existing two-car garage and the adjoining rooms were converted into an in-law suite, thereby creating a two-family dwelling.

7. The conversion from a single-family home to a two-family dwelling with an in-law suite was authorized by this Board in the Opinion and Order for Appeal 4-2006.

8. The kitchen facilities were removed from the property when it was marketed for sale in 2016.

9. The Applicant has requested that he be given approval to convert the property back to a two-family dwelling with in-law quarters for his mother.

10. The Applicant testified that his mother is a quadriplegic who requires nursing care.

11. The Applicant testified that the in-law quarters will have its own plumbing, bathroom and kitchen facilities.

12. The Applicant testified that the proposed in-law quarters will exceed 600 square feet in area and will be occupied by the Applicant's mother or an immediate relative.

DISCUSSION

This matter comes before the Zoning Hearing Board as the result of the appeal of John Hersker, III requesting a special exception in order to convert and modify the existing two-car garage and adjacent rooms into an in-law suite at the Property located at 5 Derry Drive, Glen Mills, Pennsylvania. The Applicant applied for a Zoning Permit and was denied by the Township Zoning Officer.

The Zoning Ordinance Section 27- 402 does not permit multi-family dwellings in the R-1 Zoning District of the Township. A single-family dwelling, however, may be converted to multi-family use subject to the requirements of Section 27-2108 of the Zoning Ordinance. The

Applicant is requesting a special exception to permit the conversion of his structure from a single family dwelling to a two-unit dwelling pursuant to the requirements of Section 27-2108.

“An applicant for a special exception has both the persuasion burden and the initial evidence presentation duty to show that the proposal for special exception comprised with the “terms of the Ordinance” which expressly govern such a grant. Bray v. Philadelphia ZBA, 410 A.2d 909 (Pa. Cmwlth.1980). These are the “threshold requirements” for the issuance of special exception.

Once having demonstrated compliance with the specific requirements of the Ordinance, an applicant identifies its proposal as one which the Zoning Ordinance expressly designates to be appropriate in the district and, therefore, is presumptively consistent with the promotion of health, safety and general welfare. Therefore, the burden is placed on objectors to an application for special exception to demonstrate that the proposal would be detrimental to the public health, safety and welfare, and the proposal should be denied on such a basis. Where there are general, non-specific or non-objective requirements contained in the Ordinance with respect to special exceptions, these matters are generally not part of the threshold requirements for which the applicant has the persuasion burden and evidence presentation duty. Bray, supra.”

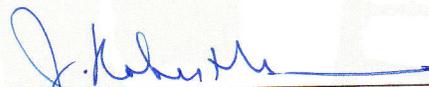
The Applicant has demonstrated that he met the requirements for the grant of a special exception under Zoning Ordinance Section 27-2108. The proposed in-law quarters meets all of the requirements set forth in section 27-2108. Each dwelling unit will contain more than 600 square feet of living space. The proposed suite will contain the necessary plumbing facilities required and will contain a separate kitchen. The proposed conversion will not pose a danger to the health, safety or welfare of the surrounding community. There were no parties objecting to the relief requested.

ORDER

AND NOW, this 24th day of October 2017, Thornbury Township Zoning Hearing Board finds that the request for a special exception is Granted. The Applicant is permitted to modify the existing home and convert the two-car garage and adjoining rooms into a second dwelling to create a two-family dwelling unit subject to the following conditions:

1. The proposed in-law suite be occupied by an immediate relative of the owner;
2. Neither dwelling located at the Property may be rented or leased;
3. That the Applicant installs all necessary plumbing and kitchen facilities;
4. The Applicant obtains all necessary approvals and permits to occupy the property;
and
5. That the Applicant agrees that the Zoning Hearing Board's decision will be recorded in the Delaware County Recorder of Deeds Office and indexed against the Property in a document to be prepared by the Applicant and agreed upon by the Township Solicitor; and
6. The Applicant complies with all of these conditions prior to obtaining a use and occupancy certificate from Thornbury Township.
7. The house is to be converted in substantial conformity to the evidence submitted at the hearing.

BY THE BOARD:



J. Robert Haines, Chairman



Scott Cannon



George Morley