

DATE OF DECISION: FEB. 12, 2015

DATE OF MAILING: FEB 12, 2015

**BEFORE THE NEW BRITAIN TOWNSHIP  
ZONING HEARING BOARD**

**RE: APPLICATION OF DEBOARH AND JAMES GALLAGHER FOR A VARIANCE  
FOR THE PROPERTY LOCATED AT 389 NEW GALENA ROAD, NEW BRITAIN  
TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA, FURTHER IDENTIFIED  
AS TAX MAP PARCEL NO. 26-1-116**

**FINDINGS OF FACT**

1. On Thursday, January 15, 2015 at 7:00 p.m. at the New Britain Township Building, 207 Park Avenue, Chalfont, New Britain Township, the New Britain Township Zoning Hearing Board ("Board") held a duly noticed hearing on the application of Deborah and James Gallagher (the "Applicants").

2. The Applicants are the record owners of the property located at 389 New Galena Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-1-116 (the "Property").

3. Notice of the January 15, 2015 hearing was published in advance of the hearing in the Thursday, January 1, 2015 and Thursday, January 8, 2015 editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township.

4. Notice of the hearing was sent by first class mail on January 5, 2015 by Devan Ambron ("Ambron"), the New Britain Township Zoning Officer to (a) all record owners of properties within New Britain Township surrounding the Property; and (b) to the adjoining municipality for any surrounding properties that are located in that municipality.

5. Ambron posted notice of the hearing on the Property on January 5, 2015 at 8:30 a.m.

6. The Property is located in the SR-2, Suburban Residential, zoning district under the New Britain Township Zoning Ordinance (the "Zoning Ordinance").

7. The Applicants seek a variance from Zoning Ordinance §27-802(b) to permit a front yard setback of 23.04 feet where a minimum of 50 feet is required in connection with an addition to an existing single-family detached residential dwelling.

8. Introduced as exhibits at the zoning hearing are the documents identified on Schedule A attached to this decision. Schedule A is incorporated by reference as though fully set forth herein at length.

9. The following individuals testified in support of the application at the hearing: James Gallagher ("Gallagher"), co-Applicant; and Robert Showalter ("Showalter"), registered professional engineer.

10. No other persons requested party status to the application nor appeared at the hearing to comment on the application.

11. According to the deed for the Property and a portion of the tax map submitted with the application, the Property is approximately 9.977 acres.

12. The Property is shaped like a rectangle, with frontage along both New Galena Road and Walter Road, making it a corner lot. The Property's New Galena Road frontage is 1,179.25 feet. The Property's Walter Road frontage is 416.4 feet. *See Exhibit B-1.*

13. The Property is improved with a single-family detached dwelling (use B1) and an accessory storage shed (use H2). The Applicants reside in the dwelling. Uses B1 and H2 are permitted by right in the SR-2 zoning district. *See Zoning Ordinance §27-801(a).*

14. The dwelling and storage shed are located in a 3 acres area of the Property located along the eastern border. Gallagher stated, and the Board finds, that many mature trees surround the dwelling and storage shed. *See Exhibit B-1, Zoning Plan.*

15. The Applicants stated, and the Board finds, that the Property's remaining 6.9 acres are devoted to agricultural activities, including a Crop Farming use (use A2) and a seasonal accessory Agricultural Retail use (use A3) in the form of a pick-your-own pumpkin patch use, which was authorized by a decision of the Board dated May 17, 2012.

16. Gallagher and Showalter stated, and the Board finds, that residential dwelling was constructed sometime in the 1940s. The existing dwelling is approximately 2,741 square feet. *See Exhibit B-1, Zoning Plan.*

17. Gallagher and Showalter stated, and the Board finds, that the dwelling is oriented toward New Galena Road. The dwelling's front wall is at an angle to New Galena Road. *See Exhibit B-1, Zoning Plan.*

18. Gallagher and Showalter stated, and the Board finds, that a portion of the dwelling is located across the minimum front yard setback line of 50 feet. As a result of the dwelling's angle, at its closest point, the dwelling has a front yard setback of 38.06 feet. The Board finds that this is an existing non-conforming dimension. *See Exhibit B-1, Zoning Plan.*

19. The Applicants propose a 1,267 square feet addition along the dwelling's existing eastern wall. Gallagher stated, and the Board finds, that the proposed addition would consist of a 2 car garage with storage space above. *See Exhibit B-1, Zoning Plan.*

20. The proposed addition would follow the same angle of the existing dwelling. At its closest point the proposed addition would be set back 23.04 feet from the ultimate right-of-way of New Galena Road. *See Exhibit B-1, Zoning Plan.*

21. Gallagher and Showalter stated, and the Board finds, that proposed addition will connect to the end of the existing driveway on to New Galena Road. *See Exhibit B-1, Zoning Plan.*

22. Gallagher and Showalter stated, and the Board finds, that four (4) mature trees on the Property need to be removed to accommodate the proposed addition. Gallagher and

Showalter stated that moving the proposed addition further away from New Galena Road to increase the front yard setback dimension would have the adverse effect of requiring the removal additional mature trees.

23. Gallagher and Showalter stated, and the Board finds, that the proposed addition could potentially be installed on the dwelling's opposite side in compliance with the minimum front yard setback. *See Exhibit B-1, Zoning Plan.*

24. However, Gallagher and Showalter stated, and the Board finds, that the existing steep slopes in that area present hazardous conditions, that it would require the removal of more fill and more infrastructure to support the addition.

25. Gallagher stated, and the Board finds, that the house is "cramped," as it has no basement. Gallagher stated the dwelling's interior walls are constructed of cinderblock.

26. Regarding stormwater management, Showalter stated that Applicants propose an infiltration bed to the rear of the dwelling to capture the increased runoff. *See Exhibit B-1, Zoning Plan.*

27. Gallagher and Showalter stated that although the Zoning Plan also shows a future rear addition and future driveway expansion, those improvements will not be installed at the time the garage addition is built.

28. Showalter stated, and the Board finds, that those future improvements, neither of which impact the relief requested from the Zoning Ordinance for the garage addition, are shown for the purposes of designing the stormwater management facility.

29. Gallagher and Showalter acknowledged and agreed, and the Board finds, that the stormwater facility must meet the New Britain Township Stormwater Management ordinance, and must be approved by the Township's engineer. *See Exhibit B-9.*

30. Gallagher stated, and the Board finds, that the Property is bordered to the east and south by lots improved with residential dwellings and agricultural activities. The parcels across New Galena Road and Walter Road are also improved with residences.

31. Gallagher stated, and the Board finds, that the many remaining mature trees surrounding the dwelling will reduce the visibility of the proposed addition from nearby properties.

32. The Property contains unique physical characteristics, such as an existing non-conforming dwelling and mature trees, that support relief for the proposed dwelling addition to be located with a front yard setback of 23.04 feet, where a minimum 50 feet is ordinarily required.

33. The dimensional front yard setback limitation found at Zoning Ordinance §27-802(b) imposes a hardship on the Property and the Applicants in that this provision prevents a reasonably sized dwelling addition on a Property with an existing non-conforming detached single-family residential dwelling.

34. Subject to the conditions imposed herein, the proposed dwelling addition, its size and location, is harmonious with the Property's size and consistent with uses of other properties in the surrounding neighborhood.

### CONCLUSIONS OF LAW

1. Required public notice of the hearing was made by sufficient publication, posting and mailing to affected property owners.

2. In order to show entitlement to a use variance, an applicant must demonstrate all the following elements:

- a. an unnecessary hardship stemming from unique physical characteristics or conditions will result if the variance is denied;
- b. because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and a variance is necessary to enable the reasonable use of the property;
- c. the hardship has not been created by the applicant;
- d. granting the variance will not alter the essential character of the neighborhood nor be detrimental to the public welfare; and
- e. the variance sought is the minimum that will afford relief.

3. The Board finds that the front yard setback variance requested is a dimensional variance. A dimensional variance arises in situations where the Zoning Ordinance permits or requires a certain dimension and that requirement or allowance is sought to be varied by degree. *See Contantino v. ZHB of Forest Hills Borough*, 636 A.2d 1266 (Pa. Commw. 1994).

4. Ordinarily, an applicant can demonstrate "unnecessary hardship" for a dimensional or use variance by showing that a property's physical characteristics are such that the property cannot be used for any permitted purpose, or can only conform to a permitted purpose at prohibitive expense; or that the property has either no value or only distress value for any permitted purpose.

5. However, under Pennsylvania law, a dimensional variance is subject to a lesser standard of proof to establish unnecessary hardship than a use variance. *See Hertzberg v. Zoning Board of Adjustment of City of Pittsburgh*, 721 A.2d 43 (Pa. 1998) (when seeking a dimensional variance within a permitted use, the owner is asking only for a *reasonable adjustment* of the zoning regulations. The grant of a dimensional variance is of lesser moment than the grant of a use variance, since the latter involves a proposal to use the property in a manner that is wholly outside the zoning regulation).

6. When deciding whether a hardship has been established in dimensional variance cases, the *Hertzberg* rationale authorizes the Board to consider multiple factors, including the characteristics of the surrounding neighborhood. See *Hertzberg, supra*, at 47.

7. The Board concludes that the Property's size and slopes, the fact that it is a corner lot, and the non-conforming nature of the existing improvements establish a hardship under the *Hertzberg* standard.

8. Due to the mature trees, views of the addition will be somewhat shielded from New Galena Road and from neighboring properties.

9. The dwelling addition could be constructed in compliance with the front yard setback regulations if moved further back or relocated to the opposite side of the house. However, the Board concludes that installing the addition these areas would have the detrimental effect of either requiring the removal of more mature trees, or the disturbance of steep slopes.

10. The Board concludes that by following the dwelling's existing orientation, being angled toward New Galena Road, the proposed addition will only have a front yard setback of 23.04 feet at its closest point. All other portions of the addition will be further away from New Galena Road.

11. Provided the Applicants comply with the reasonable conditions attached to the relief granted herein, the Applicants have met the Zoning Ordinance and Pennsylvania law requirements for the variance, including hardship, for an addition with a front yard to an existing single-family detached residential dwelling.

12. The approved variance will not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of adjacent properties.

13. The approved variance will not be detrimental to the public welfare.

14. The conditions and circumstances imposing a hardship upon the Property for the approved variance are not of the Applicants' own doing.

15. The approved variance represents the minimum variances that will afford relief and represent the least modification of the zoning regulations under the circumstances.

### DECISION

AND NOW, this 12<sup>th</sup> day of FEBRUARY, 2015, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicants' requests for a variance from Zoning Ordinance §27-802(b) to permit a minimum front yard setback of 23.04 feet, where 50 feet is required, in connection with an addition to an existing single-family detached residential dwelling, subject to the following conditions:

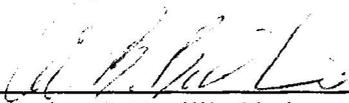
1. The proposed addition to the side of existing single-family detached residential dwelling, its dimensions, size, location, improvements, operations and appearance, shall be consistent with the plans and representations made at the hearing.

2. The required stormwater management facility shall meet the minimum requirements of the New Britain Township Stormwater Management ordinance, and shall be approved by the Township's engineer.

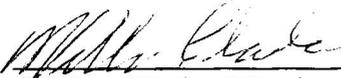
3. This decision does not waive any requirements of any other applicable New Britain Township Ordinance(s); and the proposed addition must meet all other applicable federal, state, county and New Britain Township regulations and codes.

NEW BRITAIN TOWNSHIP  
ZONING HEARING BOARD

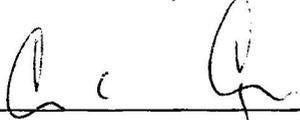
DATE: 2/12/15

  
Catherine B. Basilli, Chair

DATE: 2/12/15

  
William Clarke, Member

DATE: 2/12/15

  
Chuck Coxhead, Member

Thomas J. Walsh III, Esquire  
Solicitor, New Britain Township Zoning Hearing Board  
2500 York Road, Suite 120  
Jamison, PA 18929

**Note to Applicant:** This Decision is NOT an authorization to build. Zoning and building permits must be obtained from New Britain Township prior to the commencement of any construction.

## SCHEDULE A – TABLE OF EXHIBITS

| <b>Exhibit</b> | <b>Description</b>                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| B-1            | Zoning Hearing Board application dated December 11, 2014. Attachments to Application: <ul style="list-style-type: none"><li>• Deed for Property dated June 12, 2009</li><li>• Portion of tax maps showing surrounding property owners</li><li>• Zoning Plan, dated October 22, 2014, prepared by Showalter Associates</li><li>• Bucks County Conservation District letter dated September 4, 2014</li></ul> |
| B-2            | Letter to The Intelligencer dated December 23, 2014 forwarding public notice of hearing for advertisement                                                                                                                                                                                                                                                                                                   |
| B-3            | Public Notice of the hearing on January 15, 2015                                                                                                                                                                                                                                                                                                                                                            |
| B-4            | Proof of publication of public notice in 1/1/15 and 1/8/15 editions of The Intelligencer                                                                                                                                                                                                                                                                                                                    |
| B-5            | Letter to Applicants dated December 23, 2014 providing notice of the hearing                                                                                                                                                                                                                                                                                                                                |
| B-6            | List of the record owners of all properties surrounding the Property                                                                                                                                                                                                                                                                                                                                        |
| B-7            | Affidavit of mailing to property owners – notice mailed on January 5, 2015                                                                                                                                                                                                                                                                                                                                  |
| B-8            | Affidavit of posting of public notice at property – notice posted on January 5, 2015 at 8:30 a.m.                                                                                                                                                                                                                                                                                                           |
| B-9            | Gilmore Engineering review letter dated December 23, 2014                                                                                                                                                                                                                                                                                                                                                   |