

DATE OF DECISION: MAY 20, 2016

DATE OF MAILING: MAY 20, 2016

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

**RE: APPLICATION OF JAMES AND KATHLEEN JOHNSON FOR THE
PROPERTY LOCATED AT 196 LENAPE DRIVE, CHALFONT,
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-22-193**

FINDINGS OF FACT

1. On Thursday, April 28, 2016 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 James and Kathleen Johnson (the “Applicants”).
2. The Applicants are the record co-owners of the property located at 196 Lenape Drive, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-22-193 (the “Property”).
3. Notice of the April 28, 2016 hearing was published in advance of the hearing in the Thursday, April 14, 2016 and Thursday, April 21, 2016 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 April 12, 2016 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 April 13, 2016 at 10:30 a.m.
6. As the record co-owners of the Property, the Applicants have the requisite standing to prosecute this zoning hearing board application.
7. The Property is located in the RR, Residential, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).
8. The Applicants propose a residential accessory storage shed (use H2) on a property which is improved with an existing single-family detached dwelling that is part of a cluster subdivision (use B2).

9. The Applicants seek a variance from Zoning Ordinance §§§§27-902(c), 27-903¹, 27-804(a) and 27-2108(a) to permit the residential accessory storage shed to be located within the minimum front yard setback area along Pheasant Run Road.

10. 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.

11. The Applicants testified in support of the application at the hearing.

12. No other persons requested party status to the application, or appeared at the hearing to comment on the application. New Britain Township took no position on the application.

13. The Property consists of lot 263 of the Fairwoods subdivision plan, which was recorded on July 13, 1979 in the Office of the Recorder of Deeds for Bucks County in Plan Book 185, page 17. The Board takes judicial notice of the Fairwoods subdivision record plan. *See* 42 Pa.C.S §6102.

14. The Property is primarily improved with a two-story single-family detached dwelling constructed in or around 1983. A single-family detached dwelling developed as part of a cluster subdivision (use B2) is permitted by right in the RR zoning district. *See* Zoning Ordinance §27-901(a).

15. According to the Applicants and Bucks County records, the Property is approximately .345 acres. The dwelling is served by public water and public sewer systems.

16. The Property is generally shaped like a rectangle, with curvilinear frontage at the intersection of Lenape Drive and Pheasant Run Drive. The Property is a corner lot, having frontage along both Lenape Drive and Pheasant Run Drive. *See* Exhibit B-1, Sketch Plan.

17. Per the Zoning Ordinance, with a corner lot, the yards adjoining the streets are both considered front yards. *See* Zoning Ordinance §27-201. The owner of a corner lot has the option of choosing which of the two lot lines that are not street lines is to be considered a rear lot line.

18. As constructed, the dwelling's front wall is oriented to Lenape Drive. The Applicants stated, and the Board finds, that the yard behind the house's rear wall is treated as the rear yard.

19. A driveway located in the front yard adjacent to Lenape Drive accesses the Property. A patio and in-ground pool with a surrounding concrete deck occupies most of the yard behind the house. *See* Exhibit B-1, Sketch Plan.

¹ The Board notes that the public notice contains a typographical error. The public notice refers to Zoning Ordinance §27-**904(i)**. The correct citation is §27-903. As the relief requested is unaffected by this error, it is harmless.

20. An existing shed storing the pool equipment and other household items is located in the yard behind the house, at the end of the pool that is furthest from Pheasant Run Drive. *See* Exhibit B-1, Sketch Plan.

21. The Applicants stated, and the Board finds, that an existing 5 feet high picket fence is located essentially around the Property's rear yard. The portions of the fence running along Pheasant Run Road are located 8 feet from the curbline.

22. The Applicants stated that a dense row of spruce trees, generally 12 feet in height, is located just behind the fence line for the entire length of the fence. The trees provide privacy and shield views of the existing pool. *See* Exhibit B-1, Sketch Plan.

23. The Property's rear and side lot lines abut other properties in the Fairwoods subdivision that are improved with similar style single-family detached residential dwellings. *See* Exhibit B-1, Sketch Plan.

24. The Applicants propose a second one-story residential accessory storage shed structure (use H2). The shed will be 96 square feet, measuring 8 feet by 12 feet. *See* Exhibit B-1, Sketch Plan.

25. The Board finds that the Zoning Ordinance permits two (2) residential accessory storage shed structures on a property. *See* Zoning Ordinance §27-2108(c)(1)(c).

26. The Applicants stated, and the Board finds, that the shed will be a prefabricated model, either of wood or vinyl exterior design, made to complement the existing dwelling's architecture. No concrete slab will be under the shed.

27. The proposed shed will be located at the end of the pool closest to Pheasant Run Drive. The proposed shed will be located 12 feet from the existing fence line and approximately 30 feet from Pheasant Run Drive. *See* Exhibit B-1, Sketch Plan.

28. The Zoning Ordinance provides that the front yard setback is 40 feet for any property improved with a single-family detached dwelling that is part of a cluster subdivision (use B2), where the dwelling is served by public water and public sewer facilities. *See* Zoning Ordinance §27-903.

29. The Applicants stated, and the Board finds, that the proposed residential accessory storage shed structure will contain personal and household items. The Applicants stated that to accommodate the accessibility needs of the Applicants, their disabled daughter and elderly parents, items must be moved from the existing attached garage to the new shed.

30. The Applicants stated, and the Board finds, that views of the proposed storage shed will be largely screened by the mature spruce trees along the fence.

31. The surrounding properties consist of similar style residences and lots. The Applicants stated, and the Board finds, that they have spoken with their neighbors, and they are generally agreeable the proposed shed and its location.

32. Due to the Property being a corner lot with existing pool, shed and patio improvements in the rear yard, the Property does not have a location to build a second accessory shed structure in compliance with the Zoning Ordinance's front yard setback regulations.

33. The Property contains unique physical characteristics that support relief for the proposed residential accessory shed to be located adjacent to the existing pool, within the front yard setback along Pheasant Run Drive.

34. The dimensional limitation found at Zoning Ordinance §§§§27-902(c), 27-903, 27-804(a) and 27-2108(a) imposes a hardship on the Property and the Applicants in that this regulation prevents a reasonably sized residential accessory storage shed on a Property with an existing detached single-family residential dwelling.

35. Subject to the conditions imposed herein, the proposed residential accessory storage shed, 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 variance, use or dimensional, 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 building separation 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 Constantino v. ZHB of Forest Hills Borough*, 636 A.2d 1266 (Pa. Commw. 1994).

4. Ordinarily, an applicant can demonstrate "unnecessary hardship" for a use or dimensional 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. As a threshold issue, the Board notes that the numbering of the applicable Zoning Ordinance provisions require clarification. As found in previous applications, the Board is unable to determine whether the error is in the adopted ordinance or the codification of the ordinance.

8. The Property is located in the RR, Residential, zoning district. In prescribing area and dimensional requirements for accessory structures and uses, Zoning Ordinance §27-902(c) refers to and incorporates the provisions set forth in §27-805(3)(a), (b) and (c).

9. However, there is no §27-805(3) in the codified ordinances of New Britain Township. The provision at issue is actually §27-804. The prohibition against any accessory residential structures being located within the front yard setback area is found at Zoning Ordinance §27-804(a) (as well as §27-2108(a)).

10. The Board concludes that the Property's odd shape, the fact that the Property is a corner lot, and the location of the existing improvements in the rear yard establish a hardship under the *Hertzberg* standard.

11. Due to the existing mature trees along the fence along Pheasant Run Drive, views of the residential accessory storage shed will be shielded from the street and the closest neighboring properties.

12. Based on the credible testimony presented, the Board concludes that the Property's only open area to locate the shed is in the front yard along Pheasant Run Drive, roughly 30 feet from the street.

13. 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, to construct and install a residential accessory storage shed with a front yard setback of 30 feet in the yard along Pheasant Run Drive.

14. 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.

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

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

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

DECISION

AND NOW, this 20th day of MAY, 2016, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicants' request for a variance from Zoning Ordinance §§§§27-902(c), 27-903, 27-804(a) and 27-2108(a) to allow the proposed residential accessory storage shed to be located in the front yard adjacent to Pheasant Run Drive, with a setback of approximately 30 feet, subject to the following conditions:

1. The proposed residential accessory storage shed's dimensions, size, location and appearance shall be in accordance with plans and representations made at the hearing.

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

NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD

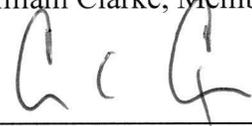
DATE: 5/20/16


Catherine B. Basilli, Chair

DATE: 5/20/16


William Clarke, Member

DATE: 5/20/16


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.

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SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application dated March 11, 2016. Attachments to Application: <ul style="list-style-type: none">• Zoning Officer Determination dated December 4, 2015• Deed dated July 2, 2003• Hand-drawn sketch plan
B-2	Letter to The Intelligencer dated April 5, 2016 forwarding public notice of hearing for advertisement
B-3	Public Notice of the hearing on April 28, 2016
B-4	Proof of publication of public notice in 4/14/16 and 4/21/16 editions of The Intelligencer
B-5	Letter to Applicants dated April 5, 2016 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 April 12, 2016
B-8	Affidavit of posting of public notice at property – notice posted on April 13, 2016 at 10:30 a.m.
B-9	Email message from E. Bradley regarding no position of Board of Supervisors