

DATE OF DECISION: JUNE 30, 2015

DATE OF MAILING: JUNE 30, 2015

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

**RE: APPLICATION OF STEPHEN AND KATHLEEN KATSARAKES FOR
VARIANCES FOR THE PROPERTY LOCATED AT 779 NORTH LIMEKILN PIKE,
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA, FURTHER
IDENTIFIED AS TAX MAP PARCEL NO. 26-3-42-2**

FINDINGS OF FACT

1. On Thursday, May 28, 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 Stephen and Kathleen Katsarakes (the "Applicants").
2. The Applicants are the record co-owners of the property located at 779 North Limekiln Pike, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-3-42-2 (the "Property").
3. Notice of the May 28, 2015 hearing was published in advance of the hearing in the Thursday, May 14, 2015 and Thursday, May 21, 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 May 14, 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 May 18, 2015 at 10:33 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 WS, Watershed, zoning district under the New Britain Township Zoning Ordinance (the "Zoning Ordinance").
8. The Applicants seek variances from Zoning Ordinance §§27-502(d)(2) and 27-2108(c) to permit a detached residential accessory storage shed structure (use H2) on a property with an existing single-family detached dwelling, where the shed is required to be located a minimum of 15 feet to the rear of the primary dwelling.
9. 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.

10. Stephen Katsarakes (“Stephen”) and Kathleen Katsarakes (“Kathleen”) testified in support of the application at the hearing.

11. 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.

12. The Property is primarily improved with a split-level single-family detached dwelling constructed in or around 1971. A single-family detached dwelling (use B1) is permitted by right in the WS zoning district. *See Zoning Ordinance §27-501(a).*

13. According to the Applicants and Bucks County records, the Property is approximately 2.931 acres.

14. The Property’s shape most closely resembles a trapezoid. The Property has approximately 171 feet of frontage along North Limekiln Pike. A macadam driveway accesses North Limekiln Pike. *See Exhibit B-1, Plot Plan.*

15. The Property’s side lot lines are roughly parallel. One side lot line is 262 feet in length; the other side lot line is 514 feet. The angled rear lot line is approximately 372 feet long. *See Exhibit B-1, Plot Plan.*

16. A creek runs through the rear yard. The creek runs generally parallel to North Limekiln Pike, and extends the full width of the Property’s rear yard. A drainage swale is also in the rear yard, and it connects to the creek at about its mid-point. *See Exhibit B-1, Plot Plan.*

17. The Applicants stated, and the Board finds, that the dwelling is on a private septic system. The drainage field for the septic system is located in the rear yard behind the dwelling, but in front of the creek. *See Exhibit B-1, Plot Plan.*

18. Stephen stated, and the Board finds, that the septic system is an older system. It is not a conventional system (such as a sand mound). It is a tank with a drainage field.

19. The only other existing improvement on the Property is a small accessory storage shed located next to the creek, roughly 78 feet directly behind the end of the driveway. This shed is 180 square feet (10 feet by 18 feet), and is used to store a lawn mower and other outdoor equipment. *See Exhibit B-1, Plot Plan.*

20. The Applicants propose a one-story residential accessory storage shed structure (use H2). The shed will be 540 square feet, measuring 18 feet by 30 feet. The shed will be located in the side yard at the end of the driveway. *See Exhibit B-1, Plot Plan.*

21. The Applicants stated, and the Board finds, that the shed will resemble the elevation submitted with the application. The shed will contain normal household items, as well as items that Kathleen uses in her no-impact home based business. *See Exhibit B-1, Elevation.*

22. The Applicants stated, and the Board finds, that the proposed shed will be located about 24 feet from the closest side of the primary dwelling. The shed will be about 50 feet from the nearest side yard lot line. *See Exhibit B-1, Plot Plan.*

23. The shed's front wall will be roughly parallel with the dwelling's rear wall. The shed's rear wall will be nearly along the same plane as the wooden deck and brick patio behind the dwelling. *See Exhibit B-1, Plot Plan.*

24. The Applicants stated, and the Board finds, that no area exists on the Property that is at least 15 feet behind the dwelling but in front of the creek to place the shed. Stephen stated, and the Board finds, that the septic system's drainage field occupies this much of this area of the rear yard. *See Exhibit B-1, Plot Plan.*

25. The Applicants stated, and the Board finds, that placing the shed on the *opposite* side of the creek is not feasible. Although the shed would be 15 feet behind the dwelling, placing the shed in this area would make it inaccessible without crossing the creek.

26. The Applicants stated, and the Board finds, that the shed will be placed outside any floodplain area or alluvial soils on the Property. The only alluvial soils on the Property are located in the vicinity of the creek. *See Exhibit B-1, Environmental Report.*

27. Ambron and the Applicants each stated, and the Board finds, that the New Britain Township Fire Marshall and Building Code departments have no objection to the shed's proposed location.

28. The surrounding properties consist of similar style residences and lots. The Applicants stated, and the Board finds, that they have not heard any objections from surrounding property owners to the proposed shed's location.

29. Due to the large septic system drainage field, and the creek and swale that essentially bisect the Property's rear yard, the Property does not have a location to build a residential accessory shed structure in compliance with the Zoning Ordinance's building separation regulations.

30. The Property contains unique physical characteristics that support relief for the proposed residential accessory shed structure to be located in the side yard but not the rear yard at least 15 feet behind the dwelling's rear wall.

31. The dimensional building separation limitations found at Zoning Ordinance §§27-502(d)(2) and 27-2108(c) impose a hardship on the Property and the Applicants in that these provisions prevent a reasonably sized residential accessory shed structure on a Property with an existing detached single-family residential dwelling.

32. Subject to the conditions imposed herein, the proposed residential accessory shed structure, 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 variances requested are dimensional variances. 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 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. The Board concludes that the septic system’s drainage field in the rear yard, as well as the existing creek and swale, establish a hardship under the *Hertzberg* standard.

8. The Property’s only clear open area in the rear yard at least 15 feet behind the dwelling’s rear wall is on the opposite side of the creek. Installing the shed in this area would render access to the shed almost impossible, as it would require installing a means to cross the creek.

9. 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 variances, including hardship, to construct and install a residential accessory shed structure that is not at least 15 feet behind the dwelling's rear wall.

10. The approved variances 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.

11. The approved variances will not be detrimental to the public welfare.

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

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

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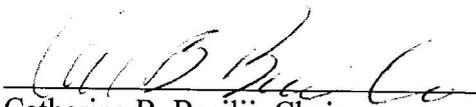
DECISION

AND NOW, this 30th day of JUNE, 2015, 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 variances from Zoning Ordinance §§27-502(d)(2) and 27-2108(c) to allow a residential accessory shed structure (use H2) to be located to the side of the existing primary dwelling, but not in the rear yard at least 15 feet behind the dwelling's rear wall, subject to the following conditions:

1. The proposed residential accessory shed structure'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 addition must meet all other applicable federal, state, county and New Britain Township regulations and codes.

NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD

DATE: 6/30/15


Catherine B. Basillii, Chair

DATE: 6/30/15


William Clarke, Member

DATE: 6/30/15


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.

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SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application dated May 3, 2015. Attachments to Application: <ul style="list-style-type: none">• Deed dated October 2, 1995• Zoning Officer Determination dated May 1, 2015• Plot Plan showing existing and proposed improvements• Elevations of proposed shed structure• Environmental Report Letter dated March 25, 2015
B-2	Letter to The Intelligencer dated May 5, 2015 forwarding public notice of hearing for advertisement
B-3	Public Notice of the hearing on May 28, 2015
B-4	Proof of publication of public notice in 5/14/15 and 5/21/15 editions of The Intelligencer
B-5	Letter to Applicants dated May 5, 2015 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 May 14, 2015
B-8	Affidavit of posting of public notice at property – notice posted on May 18, 2015 at 10:33 a.m.