

DATE OF DECISION: APRIL 28, 2016

DATE OF MAILING: APRIL 29, 2016

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

**RE: APPLICATION OF MARK AND VICTORIA NEWBOLD FOR THE
PROPERTY LOCATED AT 729 HARVEST HILL DRIVE, CHALFONT,
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-3-164**

FINDINGS OF FACT

1. On Thursday, March 17, 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 Mark and Victoria Newbold (the “Applicants”).

2. The Applicants are the record co-owners of the property located at 729 Harvest Hill Drive¹, Chalfont, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-3-164 (the “Property”).

3. Notice of the March 17, 2016 hearing was published in advance of the hearing in the Thursday, March 3, 2016 and Thursday, March 10, 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 March 2, 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 March 4, 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 WS, Watershed, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

8. The Applicants propose an accessory structure consisting of a deck and non-commercial swimming pool (use H4) on a property with an existing single-family detached dwelling (use B1).

¹ The Board notes that the application states the Property’s address is 729 Harvest Hill **Road**, which is the address set forth in the public notice. The Applicants stated that the correct street designation is “Drive.” As there was no confusion at the hearing as to the identity of the Property that is the subject of the application, any error is harmless.

9. The Applicants seek a variance from Zoning Ordinance §27-502(d)(2) to permit the accessory swimming pool and deck structure to be located to the side of the dwelling, where the structure is required to be located at least 15 feet behind the rear of the primary dwelling, and at least 15 feet from the rear and side lot lines.

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 and Brian Wolfgang (“Wolfgang”), their pool contractor, 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 is a large pie-shaped lot at the end of Harvest Hill Drive, a cul-de-sac street. The Property’s area is 5 acres. It is improved with a single-family detached dwelling and a detached garage constructed in or around 1995. *See* Exhibit B-1, Site Plan.

14. A single-family detached dwelling (use B1) with an accessory detached garage (use H1) are uses permitted by right in the WS zoning district. *See* Zoning Ordinance §27-501(a).

15. As constructed, the dwelling’s front wall is oriented toward Harvest Hill Drive. A lengthy driveway connecting to the side of the dwelling accesses Harvest Hill Drive. *See* Exhibit B-1, Site Plan.

16. The Property’s rear lot line abuts the North Branch of the Neshaminy Creek. The Applicants stated, and the Board finds, that a stormwater detention area and alluvial soils are located throughout the Property’s rear yard. *See* Exhibit B-1, Site Plan.

17. The Applicants stated, and the Board finds, that the proposed pool is an “endless” modular pool. It is designed to be an exercise body of water, with a propulsion housing located at one end. *See* Exhibit B-1, Swim Spa Schematic.

18. The Applicants stated, and the Board finds, that Mark Newbold has experienced severe knee problems in recent years. The “endless” pool will be an exercise body of water, designed to assist Mr. Newbold in his rehabilitation.

19. The pool is 15 feet in length by 10 feet in width. The pool is 4 feet 6 inches in height. The pool will sit on a concrete slab, and have a drainage outflow pipe. *See* Exhibit B-1, Swim Spa Schematic.

20. The deck surrounding the pool consists of a 20 feet by 22 feet composite elevated structure that will be at grade with the top of the pool level. A fence will surround the deck. Steps from the deck next to the dwelling wall will lead down to the ground level. *See* Exhibit B-1, Location Drawing.

21. The deck and pool will be located adjacent to the dwelling’s side wall. Wolfgang stated, and the Board finds, that access to the deck will be through an existing door on the dwelling. *See* Exhibit B-1, Site Plan.

22. The Applicants stated, and the Board finds, that the deck and pool will be located at least 50 feet from the nearest side yard lot line. Fully grown mature trees along this lot line will fully shield view of the deck and pool from the adjoining property. *See* Exhibit B-1, Site Plan.

23. The Applicants and Wolfgang stated, and the Board finds, that they investigated installing the pool and deck behind the dwelling's rear wall. However, permanent structures of any type cannot be located in the rear yard due to the alluvial soils and stormwater management conditions.

24. 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 pool and deck's location. *See* Exhibit A-1, Letter.

25. Due to the Property being an oddly-shaped corner lot and the alluvial soils in the rear yard, the Property does not have a location to build a residential accessory pool and surrounding deck structure at least 15 feet behind the dwelling in compliance with the Zoning Ordinance's building separation regulations.

26. The Property contains unique physical characteristics that support relief for the proposed residential accessory pool and surrounding deck structure to be located adjacent to the side wall of the existing dwelling, and not at least 15 feet behind or from the dwelling's side or rear wall.

27. The dimensional building separation limitation found at Zoning Ordinance §27-502(d)(2) imposes a hardship on the Property and the Applicants in that this regulation prevents a reasonably sized residential accessory pool and surrounding deck structure on a Property with an existing detached single-family residential dwelling.

28. Subject to the conditions imposed herein, the proposed residential accessory pool and surrounding deck 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 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 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 Property’s odd shape, being located on part of a cul-de-sac street, and the presence of alluvial soils in the rear yard establish a hardship under the *Hertzberg* standard.

8. Due to the existing mature trees along the side lot line, views of the residential accessory pool and surrounding deck structure will be shielded from the closest neighboring property.

9. Based on the credible testimony presented, the Board concludes that the Property does not have any reasonably accessible open area to locate the accessory pool and surrounding deck structure that is at least 15 feet behind or from the dwelling’s side or rear wall.

10. 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 pool and surrounding deck structure within 15 feet of the dwelling’s side and/or rear wall.

11. 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.

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

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

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

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DECISION

AND NOW, this 28th day of APRIL, 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 §27-502(d)(2) to allow the residential accessory pool and surrounding deck structure to be located to the side of the existing primary dwelling, but not in the rear yard at least 15 feet from the dwelling's side or rear wall, subject to the following conditions:

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

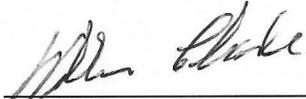
2. This decision does not waive any requirements of any other applicable New Britain Township Ordinance(s); and the proposed pool and deck structures must meet all other applicable federal, state, county and New Britain Township regulations and codes.

NEW BRITAIN TOWNSHIP
ZONING HEARING BOARD

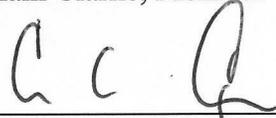
DATE: 4/28/16


Catherine B. Basilio, Chair

DATE: 4/28/16


William Clarke, Member

DATE: 4/28/16


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 February 11, 2016. Attachments to Application: <ul style="list-style-type: none">• Zoning Officer Determination dated February 3, 2016• Above-ground modular swim spa schematic dated 1/8/16• Portions of Site Plan showing general location of proposed pool/deck• Location and Layout drawing consisting of 3 sheets• Deed dated September 12, 2006• Title insurance policy for property
B-2	Letter to The Intelligencer dated February 22, 2016 forwarding public notice of hearing for advertisement
B-3	Public Notice of the hearing on March 17, 2016
B-4	Proof of publication of public notice in 3/3/16 and 3/10/16 editions of The Intelligencer
B-5	Letter to Applicants dated February 22, 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 March 2, 2016
B-8	Affidavit of posting of public notice at property – notice posted on March 4, 2016 at 10:00 a.m.
B-9	Email message from E. Bradley regarding no position of Board of Supervisors
A-1	Letter from Edwin and Helen Brooks, 144 Creek Road