

DATE OF DECISION: JULY 27, 2016

DATE OF MAILING: JULY 28, 2016

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

**RE: APPLICATION OF NEW BRITAIN TOWNSHIP FOR  
THE PROPERTY LOCATED AT THE INTERSECTION OF  
NEW GALENA ROAD AND WALTER ROAD, NEW BRITAIN TOWNSHIP,  
BUCKS COUNTY, PENNSYLVANIA, FURTHER IDENTIFIED  
AS TAX MAP PARCEL NO. 26-1-149**

**FINDINGS OF FACT**

1. On Thursday, June 16, 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 New Britain Township (the "Township").
2. The Township is a long-term tenant of the property located at the intersection of New Galena Road and Walter Road, New Britain Township, further known as Bucks County Tax Map Parcel No. 26-1-149 (the "Property").
3. The County of Bucks (the "County") is the record owner of the Property. Submitted with the application is a Lease Agreement between the Township and the County, dated May 20, 2015 (the "Lease").
4. The Lease grants the Township the right to occupy the Property for a term of ninety-nine (99) years, and to use the Property for a public recreational facility. *See* Exhibit B-1, Lease.
5. As the Township has express authorization from the County through the Lease, the Township possesses the requisite standing to prosecute this zoning hearing board application.
6. Notice of the June 16, 2016 hearing was published in advance of the hearing in the Thursday, June 2, 2016 and Thursday, June 9, 2016 editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township.
7. Notice of the hearing was sent by first class mail on June 1, 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.
8. Ambron posted notice of the hearing on the Property on June 2, 2016 at 1:41 p.m.
9. The Property is located in the CR, Conservation and Recreation, zoning district under the New Britain Township Zoning Ordinance (the "Zoning Ordinance").

10. The Township proposes a public recreation facility (use E1) on the Property, with walking trails, gazebo, tot lot, parking areas and a rain garden stormwater management facility. A public recreation facility is a use permitted by right in the CR zoning district. *See* Zoning Ordinance §27-401(a).

11. To permit the public recreation facility use and related improvements, the Township seeks the following variances from the Zoning Ordinance:

- a. from §§27-302.L1.b.1 and 27-402(b) to permit the non-residential accessory gazebo structure to have a front yard setback of 70 feet from Walter Road, where the required minimum front yard setback is 100 feet; and
- b. from §27-2400(c) to alter, regrade, fill and build upon 1,492 square feet of floodplain (alluvial) soles, where such disturbance is prohibited except as permitted by the Pennsylvania Department of Environmental Protection.

12. 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.

13. The following individuals testified on behalf of the Township in support of the application at the hearing:

- a. Eileen Bradley (“Bradley”), Township manager.
- b. Janene Marchand, P.E., (“Marchand”), Township engineer.

14. No persons requested party status to the application. A few individuals appeared at the hearing to ask questions about and comment on the application.

15. The Property is approximately 31.45 acres. The Property is undeveloped. The Property is a corner lot, as it has frontage along both Walter Road and New Galena Road. *See* Exhibit B-1, Grading Plan.

16. An unnamed tributary to the Neshaminy Creek cuts through the Property, separating a triangular shaped section at the road intersection from the remainder of the Property. *See* Exhibit B-1, Grading Plan.

17. Bradley and Marchand testified, and the Board finds, that the Township has devised a two-phase project to construct and implement the public recreation use in the triangular portion of the Property.

18. The project is a passive recreation facility, supported and partially funded by local veterans’ groups. The park will be known as “Veterans’ Park” or some similar designation. No lighting or any active ballfield is proposed or contemplated. *See* Exhibit B-1, Grading Plan.

19. Bradley stated, and the Board finds, that Phase I of the project will develop the triangular portion of the Property created by the tributary with the gazebo, tot lot, perimeter walking trails and a parking lot. *See* Exhibit B-1, Grading Plan.

20. Bradley stated, and the Board finds, that Phase II of the project is presently in the concept phase. Bradley stated that Phase II envisions more walking trails on other areas of the Property.

21. Bradley and Marchand stated, and the Board finds, that Phase I of the project will install a 16 space parking lot, accessible from Walter Road, in the northern section of the triangular area of the Property. The parking lot will contain 2 handicapped designated spaces. *See* Exhibit B-1, Grading Plan.

22. The tot lot will be installed at the far (western) end of the parking lot. The gazebo will be installed on the southern side of the parking lot. The gazebo structure will be 70 feet from the ultimate right-of-way of Walter Road. *See* Exhibit B-5, Grading Plan.

23. Bradley stated, and the Board finds, that to comply with federal accessibility regulations, the gazebo must be located close to the handicapped designated spaces. If the gazebo were moved to comply with the 100 feet setback, the accessibility criteria would not be met.

24. To account for the increased impervious surfaces generated by the parking area, tot lot and gazebo, Bradley and Marchand stated, and the Board finds, that a small rain garden stormwater facility will be installed behind the tot lot. *See* Exhibit B-1, Grading Plan.

25. Marchand stated, and the Board finds, that a berm will be installed between the rain garden and the unnamed tributary. The berm's purpose is to capture the water runoff within the rain garden for infiltration. *See* Exhibit B-1, Grading Plan.

26. Due to the rain garden's location near the unnamed tributary, the rear of the berm will be located within alluvial soils. Marchand stated, and the Board finds, that the berm's slope has been designed so as to minimize the disturbance of these soils. *See* Exhibit B-1, Grading Plan.

27. Bradley and Marchand stated, and the Board finds, that relocating the rain garden and berm to remove it from the alluvial soils will render the necessary stormwater management ineffective.

28. No evidence was introduced that the Pennsylvania Department of Environmental Protection has object to or disapproved of the soil disturbance or the proposed public recreation use.

29. The individuals who appeared at the hearing to ask questions concerning the application raised issues that pertained mostly to non-zoning matters.

30. The Property contains unique physical circumstances that support relief for the front yard setback for the gazebo and disturbing the alluvial soils in connection with the proposed public recreation use.

31. The accessory gazebo structure setback limitation found at §§27-302.L1.b.1 and 27-402.b and alluvial soil disturbance restriction found at §27-2400(c) impose multiple hardships on the Property and the Township in that these prevent the reasonable use of the Property as a public recreational facility.

32. Subject to the conditions imposed herein, the proposed accessory gazebo structure location and alluvial soil disturbance are 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 accessory structure front yard setback and floodplain (alluvial) soil disturbance 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 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. Based upon the credible evidence presented, the Board concludes that Property's frontage along two (2) streets, as well as the existence of the unnamed tributary to the Neshaminy Creek bisecting the Property, establish a hardship under the *Hertzberg* standards.

8. Provided the Township complies with the reasonable conditions attached to the relief granted herein, the Township has met the Zoning Ordinance and Pennsylvania law requirements for the variances, including hardship, to disturb the alluvial soils in connection with a rain garden stormwater management facility; and to install an accessory gazebo structure with a 70 feet front yard setback, all in connection with a public recreation facility use on the Property.

9. 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.

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

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

12. 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 27<sup>th</sup> day of JULY, 2016, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Township's requests for variances from Zoning Ordinance §§27-302.L1.b.1 and 27-402.b to permit the non-residential accessory gazebo structure to have a front yard setback of 70 feet from Walter Road; and from Zoning Ordinance §27-2400(c) to alter, regrade, fill and build upon 1,492 square feet of floodplain (alluvial) soils, subject to the following conditions:

1. The proposed public recreation facility use's dimensions, size, location, improvements, operations and appearance shall be consistent with the plans, representations and credible testimony 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

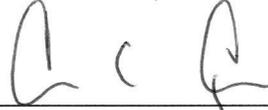
DATE: 7/27/16

  
Catherine B. Basilio, Chair

DATE: 7/27/16

  
William Clarke, Member

DATE: 7/27/16

  
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.

## SCHEDULE A – TABLE OF EXHIBITS

<b>Exhibit</b>	<b>Description</b>
B-1	Zoning Hearing Board application dated May 18, 2016. Attachments to Application: <ul style="list-style-type: none"><li>• Lease Agreement dated May 20, 2015</li><li>• Grading and PCSM Plan, dated 4/22/16, consisting of 1 sheet</li></ul>
B-2	Letter to The Intelligencer dated May 27, 2016 forwarding public notice of hearing for advertisement
B-3	Public Notice of the hearing on June 16, 2016
B-4	Proof of publication of public notice in 6/2/16 and 6/9/16 editions of The Intelligencer
B-5	Letter to Applicant dated May 27, 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 June 1, 2016
B-8	Affidavit of posting of public notice at property – notice posted on June 2, 2016 at 1:41 p.m.