

DATE OF DECISION: JUNE 17, 2021

DATE OF MAILING: JUNE 18, 2021

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

**RE: APPLICATION OF KATHARINE BROWN AND RICHARD  
KARASZKIEWICZ FOR THE PROPERTY LOCATED  
AT 1 FERRY ROAD, NEW BRITAIN TOWNSHIP,  
BUCKS COUNTY, PENNSYLVANIA, FURTHER  
IDENTIFIED AS TAX MAP PARCEL NO. 26-11-67**

**FINDINGS OF FACT**

1. On Thursday, May 20, 2021, 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 Katharine Brown and Richard Karaszkiwicz (the "Applicants").

2. The Applicants are the record co-owners of the property located at 1 Ferry Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-11-67 (the "Property"). The Property is the subject of the instant application.

3. Notice of the May 20, 2021, hearing was published in advance of the hearing in the Thursday, May 6, 2021, and Thursday, May 13, 2021, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the May 20, 2021, hearing was sent by first class mail on May 3, 2021, by Kelsey Harris ("Harris"), 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. *See* Exhibit B-8.

5. Harris posted notice of the May 20, 2021, hearing on the Property on May 4, 2021, at 12:06 p.m. *See* Exhibit B-9.

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 Property is improved with a single-family detached residential dwelling (use B1), together an accessory storage shed (use H2). Such uses are permitted by right in the WS zoning district. *See* Zoning Ordinance §27-501.a.

9. The Property is also improved with a fence (use H3). A fence is an accessory use permitted by right in the WS zoning district. *See* Zoning Ordinance §27-501.a.

10. At the time the application was submitted, the fence was in the front yards along Ferry Road and a short portion of Park Avenue. *See* Exhibit B-1, Photos.

11. The fence along Ferry Road and Park Avenue was installed by the Applicants prior to receipt of all applicable and required New Britain Township permits and approvals.

12. The Applicants also propose to extend the fence further along Park Avenue to connect to the existing previously installed fence. *See* Exhibit B-2, Plan.

13. To permit the existing and proposed fence, the Applicants seek variances from the following sections of the Zoning Ordinance:

- a. from 27-305.H3.b.1(a) to permit the fence in the front yards to be greater than 4 feet high, where the maximum permitted fence height in the front yard is 4 feet; and
- b. from §27-305.H3.b.1(a) to permit the fence to have an opaque (solid) to non-opaque (clear) areas ratio of greater than 4:1, where the required minimum ratio is 4:1.<sup>1</sup>

14. 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.

15. The Applicants testified in support of the application at the hearing. No other individuals appeared at the May 20, 2021, hearing to request party status, register a position, or comment or ask questions on the application before the Board.

16. According to the Applicants and Bucks County records, the Applicants acquired the Property in or around September 2018. The original historic section of the dwelling was constructed in or around 1790.

17. The Property is shaped like a rectangle. Its lot area is 1.498 acres. The Property is a corner lot, having frontage along both Ferry Road and Park Avenue. *See* Exhibits B-2, Plan; and B-10, Viewer.

18. Per the Zoning Ordinance, with a corner lot, the yards adjoining the streets are both considered front yards. The owner of a corner lot has the option of choosing which of the 2 side lot lines that are not street lines is to be considered a rear lot line. *See* Zoning Ordinance §27-201.

19. As constructed, the dwelling's front wall is oriented to Ferry Road. The Applicants stated, and the Board finds, that the yard behind the house's rear wall is treated as a rear yard. *See* Exhibits B-1, Photos; and B-10, Viewer.

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<sup>1</sup> The Zoning Ordinance does not define "opaque." "Opacity" is used to measure the "openness" of the fence, or how much can be seen through it. "Opacity" is the "solid space" as a percentage of the fence's total surface. *See* Merriam-Webster dictionary. The Board interprets this Zoning Ordinance language to mean that front yard fences may not be more than 80% opaque.

20. The Property has 313.35 feet of frontage along Ferry Road and 191.35 feet of frontage along Park Avenue. The opposite lot lines are similar in length. *See Exhibits B-2, Plan; and B-10, Viewer.*

21. The historic house is located very close to the actual intersection of Ferry Road and Park Avenue. The front and side walls are set back much less than 100 feet from these streets. The Board finds that these front yard setback dimensions are lawful non-conformities. *See Exhibit B-10, Viewer.*

22. A driveway connects Ferry Road to a parking area near the storage shed behind the dwelling. An addition to the original historic dwelling is on the Park Avenue side wall and along the rear wall. *See Exhibit B-1, Photos.*

23. The Applicants stated, and the Board finds, that they installed and wish to install the fence to replace existing deteriorating fencing, to enclose the Property's rear yard, to protect their family from the heavy traffic along Ferry Road and Park Avenue, and for safety and privacy reasons.

24. The Applicants stated, and the Board finds, that they were unaware of their obligation to obtain a permit to replace a fence, as well as the special treatment afforded corner lots under the Zoning Ordinance. They did not intentionally intend to avoid obtaining permits.

25. Regarding the installed fence along Ferry Road, the Applicants stated, and the Board finds, that this fence is a 6 feet high wooden tongue-and-groove privacy fence. It is a solid fence that is fully and 100% opaque. *See Exhibits B-2, Plan and Photos.*

26. The Applicants stated, and the Board finds, that one section of the Ferry Road fence leads from the dwelling's side wall to the driveway. This fence portion begins at the dwelling's front corner and travels perpendicular to Ferry Road for a short distance. *See Exhibit B-2, Plan and Photos.*

27. The Applicants stated, and the Board finds, that at a point close to Ferry Road, the fence turns and travels parallel to Ferry Road until it reaches the driveway. *See Exhibits B-2, Plan and Photos.*

28. The Applicants stated, and the Board finds, that this new fence replaced an existing deteriorated chain link fence that was overgrown with vegetation. The new fence was installed in the same location as the prior chain link fence. *See Exhibit B-2, Plan and Photos.*

29. The Applicants stated, and the Board finds, that the fence between the dwelling's side wall and Park Avenue is also new. To their knowledge, no fence was previously in this location. *See Exhibits B-2, Plan and Photos.*

30. The Applicants stated, and the Board finds, that this fence section connects to the front corner of the dwelling. It has the same front yard setback from Ferry Road as the dwelling. *See Exhibits B-2, Plan and Photos.*

31. The Applicants stated, and the Board finds, that the fence travels parallel to Ferry Road until the last panel closest to Park Avenue. This panel is at slight angle to remain out of the intersection's sight triangle. *See Exhibits B-2, Plan and Photos.*

32. The Applicants stated, and the Board finds, that the proposed fence along Park Avenue will tie into the end of the angled panel fence section. It will run parallel along Park Avenue until roughly the Property's rear lot line. *See Exhibit B-2, Plan and Photos.*

33. The Applicants stated, and the Board finds, that the fence to be installed along Park Avenue will replace an existing deteriorated fence that is covered in vines and weeds. This fence will be the same height, design, materials and opacity as the fence installed along Ferry Road. *See Exhibits B-2, Plan and Photos.*

34. The Applicants stated, and the Board finds, that there are mature trees along the Property's Park Avenue and Ferry Road frontage. Many of these trees will obscure views of the existing and proposed fence. *Sees Exhibit B-2, Photos; and B-10 Viewer.*

35. The Applicants stated, and the Board finds, that applying the Zoning Ordinance's height and opaqueness restrictions produces a fence that is not suitable for a large lot with a historic dwelling located at a busy intersection. *See Exhibit B-2, Plan.*

36. The surrounding properties consist of similar style residences and lots. The Applicants stated that no nearby residents have raised any objection to the installed and proposed fence, its height, opacity or location.

37. Due to the Property being a corner lot with a non-conforming dwelling location, the Property contains unique characteristics that support relief for the 6 feet high, fully opaque fence to be within the front yard setbacks along Ferry Road and Park Avenue. *See Exhibit B-2, Plan.*

38. Subject to the conditions imposed herein, the existing and proposed fence, its size, opacity and location, 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 date, time and location of the May 20, 2021, hearing was made by sufficient advanced 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 fence height and opacity variances requested are dimensional variances. A dimensional variance involves a request to adjust or vary a zoning ordinance provision by degree to be able to otherwise use a property consistent with the regulations. *See Dunn v. Middletown Township Zoning Hearing Board*, 143 A.3d 494 (Pa. Commw. 2015); *see also 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. The Board concludes that as a corner lot, the Property’s yard along Park Avenue, while legislatively classified as a front yard, functions as side yard and partial rear yard. The Zoning Ordinance imposes a stricter setback requirements on a front yard than on a side or rear yard. *See Zoning Ordinance §27-502.b.1*.

8. While the Board does not condone any applicant beginning construction of any improvements prior to securing all required permits and approvals, based upon the credible evidence and testimony provided, the Board concludes that the fact that the Property is a corner lot, as well as the non-conforming location of the historic dwelling, establish a hardship under the *Hertzberg* standard sufficient to justify the variances requested.

9. Based upon the credible testimony provided, the Board concludes that the installed and to be installed wooden fence are in essentially the same non-conforming locations, with the same height, as the prior chain link and other fence. *See Exhibit B-2, Plan*.

10. Critical to the Board's conclusion is that the new fence will be a wooden tongue and groove fence, instead of a chain link fence. This type of fence, although fully opaque, is more in keeping with the historic and rural nature of Property and the surrounding neighborhood.

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 variances, including hardship, to maintain the 6 feet high, fully opaque fence within the front yards along Ferry Road and Park Avenue.

12. 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.

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

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

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

#### DECISION

AND NOW, this 17<sup>th</sup> day of JUNE, 2021, 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 the Zoning Ordinance as follows:

- a. A variance is granted from Zoning Ordinance §27-305.H3.b.1(a) to permit the fence in the front yards to be up to 6 feet high; and
- b. A variance is granted from Zoning Ordinance §27-305.H3.b.1(a) to permit the fence to have an opaque (solid) to non-opaque (clear) areas ratio of greater than 4:1 (i.e., be 100% opaque).

The relief granted above is subject to the following conditions:

1. The existing and proposed fence's dimensions, size, materials, location, opacity, and appearance shall be in accordance with the definitive plans, evidence, representations, exhibits and credible testimony made and submitted at the hearing.

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

The signatures of the New Britain Township Zoning Hearing Board members that appear on the following page attached hereto and incorporated herein, confirms the Board's decision and order.

By: Kelsey Harris  
Kelsey Harris  
New Britain Township Zoning Officer

Date: 6/17/2021

Thomas J. Walsh III, Esquire  
Solicitor, New Britain Township Zoning Hearing Board  
3655 Route 202, Suite 105  
Doylestown, PA 18902

**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

<b>Exhibit</b>	<b>Description</b>
B-1	Zoning Hearing Board application dated 4/16/21. Attachments to Application: <ul style="list-style-type: none"><li>• Deed dated 9/20/2018</li><li>• Letter outlining relief requested and aerial photo</li><li>• Tax Map plan with hand drawn location of existing and proposed fence</li><li>• 4 photos of existing fence</li></ul>
B-2	Zoning Officer Determination, letter dated 4/8/21
B-3	Letter to The Intelligencer dated 4/27/21 forwarding public notice of 5/20/21 hearing for advertisement
B-4	Public Notice of the hearing on 5/20/21
B-5	Proof of publication of public notice in 5/6/21 and 5/13/21 editions of The Intelligencer
B-6	Letter to Applicants dated 4/27/21 providing notice of the 5/20/21 hearing
B-7	List of the record owners of all properties within 500 feet of the Property
B-8	Affidavit of mailing to property owners – notice mailed on 5/3/21
B-9	Affidavit of posting of public notice at property – notice posted on 5/4/21 at 12:06 p.m., together with photo of notice on post in the yard
B-10	Bucks County Viewer Map and Aerial

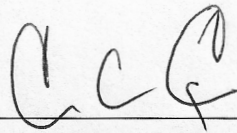
**New Britain Township**  
**Zoning Hearing Board**

**Signature Page**

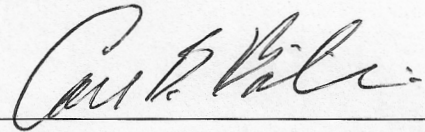
Re: Katharine Brown and Richard Karaszkiwicz  
1 Ferry Road

Date: JUNE 17, 2021

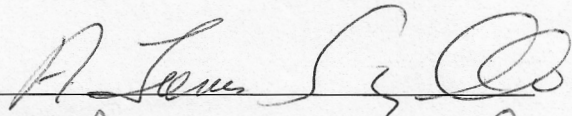
Chuck Coxhead, Chair



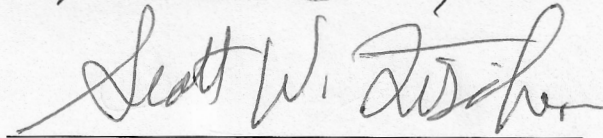
Cathy Basilio, Vice Chair



Jim Scanzillo, Member



Scott Fischer, Alternate Member





DATE OF DECISION: JUNE 17, 2021

DATE OF MAILING: JUNE 18, 2021

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

**RE: APPLICATION OF ALLEN AND GAY TATE, AND  
MATTHEW MANNHERZ, FOR THE PROPERTIES LOCATED AT  
1 NAOMI LANE (TAX MAP PARCEL NO. 26-10-9) AND  
2 NAOMI LANE (TAX MAP PARCEL NO. 26-10-10),  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,**

**FINDINGS OF FACT**

1. On Thursday, May 20, 2021, 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 Allen and Gay Tate (the “Tates”) and Matthew Mannherz (“Mannherz”).
2. The Tates and Mannherz are collectively referred to in this Decision as the “Applicants.”
3. Mannherz is the record owner of the property located at 1 Naomi Lane, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-10-9 (the “Mannherz Lot”).
4. The Tates are the record co-owners of the property located at 2 Naomi Lane, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-10-10 (the “Tate Lot”).
5. The Mannherz Lot and the Tate Lot are collectively referred to in this Decision as the “Properties.”
6. Notice of the May 20, 2021, hearing was published in advance of the hearing in the Thursday, May 6, 2021, and Thursday, May 13, 2021, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.
7. Notice of the May 20, 2021, hearing was sent by first class mail on May 3, 2021, by Kelsey Harris (“Harris”), the New Britain Township Zoning Officer, to (a) all record owners of properties within New Britain Township surrounding the Properties; and (b) to the adjoining municipality for any surrounding properties that are located in that municipality. *See* Exhibit B-8.
8. Harris posted notice of the May 20, 2021, hearing on the Properties on May 4, 2021, at 12:14 p.m. *See* Exhibit B-9.
9. As the record owners of the Properties, the Applicants have the requisite standing to prosecute this zoning hearing board application.

10. The Properties are located in the SR-2, Suburban Residential, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

11. Each of the Properties is improved with a single-family detached dwelling (use B1). Such use is permitted by right in the SR-2 zoning district. *See* Zoning Ordinance §27-801.a.

12. The Applicants propose a lot line change to adjust a common boundary line between the Properties. To permit the lot line change, the Applicants seek variances from the following sections of the Zoning Ordinance:

- a. From §27-802.b to permit the Mannherz Lot to be reduced in lot area to 38,430 square feet, where the existing lot area is 41,010 square feet, and where the required minimum lot area is 2 acres; and
- b. From §27-802.b to permit the Mannherz Lot to have a lot width at the front building setback line of 175 feet, where the current lot width is 185 feet, and where the required minimum lot width at the front building setback line is 200 feet.

13. 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.

14. Allen Tate (“Allen”), a co-Applicant; and Jonathan J. Tabas, P.E., P.L.S. (“Tabas”), professional civil engineer; and Mannherz, a co-Applicant, testified in support of the application at the hearing.

15. No persons requested party status to the application. A few individuals attended the hearing to ask questions and/or comment on the application before the Board. New Britain Township (the “Township”) took no position on the application.

16. The Properties are adjacent lots that each front on Naomi Lane. The Tate Lot is shaped like a rectangle. The Mannherz Lot resembles an obtuse trapezoid. *See* Exhibit B-2, Plan.

17. The Mannherz Lot is 41,010 square feet. The Tate Lot is 55,219 square feet. Each of the Properties is lawfully non-conforming as to the required minimum lot area. *See* Exhibit B-2, Plan.

18. The Mannherz Lot is 175.8 feet long along the Naomi Lane ultimate right-of-way line. The Tate Lot has 175.54 feet of curvilinear frontage along the Naomi Lane ultimate right-of-way line. *See* Exhibits B-2, Plan; and B-10, Viewer.

19. The Mannherz Lot and Tate Lot are roughly 185 feet wide and 171 feet wide, respectively, at the front building setback line. The Board finds that these features are lawful non-conforming dimensions. *See* Exhibit B-2, Plan.

20. On the Mannherz Lot, the dwelling is located near the 50 feet front building setback line. Due to the Mannherz Lot’s odd shape, a portion of the dwelling is outside the building envelop. *See* Exhibit B-2, Plan.

21. On the Tate Lot, the home is roughly in the center of the building envelope, 105 feet from the Naomi Lane ultimate right-of-way line. A small shed and in-ground pool are located behind the dwelling. *See Exhibit B-2, Plan.*

22. The Mannherz Lot and the Tate Lot share a common interior side lot line. This side lot line is 326.72 feet long. *See Exhibits B-2, Plan; and B-10, Viewer.*

23. Allen and Tabas stated, and the Board finds, that the driveway serving the house on the Tate Lot is close to this common side lot line. At roughly the 50 feet front yard setback line, a portion of the driveway crosses over the lot line on to the Mannherz Tract. *See Exhibit B-2, Plan.*

24. Allen and Tabas stated, and the Board finds, that the apron is almost equally on both the Mannherz Lot and the Tate Lot where the driveway intersects with Naomi Lane. *See Exhibit B-2, Plan.*

25. Allen and Mannherz stated, and the Board finds, that they recently settled an action to quiet title filed with the Bucks County Court of Common Pleas involving the Properties and the location of the common side lot line.

26. Allen, Mannherz and Tabas stated, and the Board finds, that pursuant to the settlement, the common side lot shared by the Properties will be moved 10.63 feet to the west.

27. Tabas stated, and the Board finds, that the new side lot line will have the same rear origin pin as the current lot line. The new line will travel at a slight angle for 65.47 feet. It will then travel toward Naomi Lane 266.18 feet to intersect with the front lot line. *See Exhibit B-2, Plan.*

28. Tabas stated, and the Board finds, that relocating the side lot line will place the driveway serving the Tates' dwelling entirely on the Tate Lot. *See Exhibit B-2, Plan.*

29. Tabas stated, and the Board finds, that relocated the side lot line will deduct 2,580 square feet of area (the "Premises") from the Mannherz Lot. The Premises will never be a stand-alone lot, as it will immediately be combined with and added to the Tate Lot. *See Exhibit B-2, Plan.*

30. Tabas stated, and the Board finds, that deducting the Premises will cause the Mannherz Lot to have a lot area of 38,430 square feet; and a lot width at the front building setback line of 175 feet. *See Exhibit B-2, Plan.*

31. Tabas, Allen, and Mannherz stated, and the Board finds, that other than the driveway, no improvements are located in the Premises. No construction or development of any kind is proposed in connection with the lot line change. *See Exhibit B-2, Plan.*

32. Tabas and Mannherz stated, and the Board finds, that none of the physical features on the Mannherz Lot are affected by the lot line change. The only impact of conveying the Premises is to increase the non-conforming lot area and lot width deficiencies of the Mannherz Lot. *See Exhibit B-2, Plan.*



33. Behind (i.e., to the north) of the Tate Lot is a tract previously owned by the North Wales Water Authority, also known as Tax Map Parcel No. 26-10-10-1 (the “Authority Lot”). The Tates acquired the Authority Lot in 1997. *See* Exhibit B-2, Plan.

34. Allen and Tabas stated, and the Board finds, that following subdivision approval of the lot line change by New Britain Township, the Tates intend to merge the Premises and the Authority Lot with the Tate Lot to create a single parcel. *See* Exhibit B-2, Plan.

35. Allen, Mannherz and Tabas stated, and the Board finds, that the existing non-conforming nature of the Properties precludes either tract from possessing the required 2 acres minimum lot area or the 200 feet minimum lot width at the front building setback line, even after the lot line change is effectuated. *See* Exhibit B-2, Plan.

36. The surrounding properties consist of similar style residences and similar sized lots. The Applicants stated, and the Board finds, that no other nearby property owners have spoken to either of them to object to the proposed lot line change.

37. Due to the Properties’ odd shapes, their respective non-conforming physical features, and the encroaching location of the driveway serving the Tate Lot, the Properties contain unique physical characteristics that support relief for the lot area and lot width variances for the Mannherz Tract in connection with the proposed lot line change.

38. Subject to the conditions imposed herein, the proposed lot line change, and the resulting dimensions of the Mannherz Lot and the Tate Lot, are consistent with uses of other properties in the surrounding neighborhood.

### **CONCLUSIONS OF LAW**

1. Required public notice of the date, time and location of the May 20, 2021, hearing was made by sufficient advanced 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 lot area and lot width variances requested for the Mannherz Lot are dimensional variances. A dimensional variance involves a request to adjust or vary a zoning ordinance provision by degree to be able to otherwise use a property consistent with the regulations. *See Dunn v. Middletown Township Zoning Hearing Board*, 143 A.3d 494 (Pa. Commw. 2015); *see also 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. Nevertheless, the reasons for granting a variance must be substantial, serious and compelling. The party seeking the variance bears the burden of proving that (a) unnecessary hardship will result if the variance is denied; and (b) the proposed use will not be contrary to the public interest. *See Wilson v. Plumstead Township Zoning Hearing Board*, 936 A.2d 1061 (Pa. 2007).

8. The Board concludes that the Properties’ odd shapes, the existing non-conforming lot areas and lot widths, and the off-site location of the driveway serving the Tate Lot, establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

9. The Board concludes that the Mannherz Lot’s proposed 38,430 square feet lot area following the lot line change and conveyance of the Premises does not materially alter the size of the Mannherz Lot. Removing the Premises to create a 38,430 square feet tract is only a 6.3% reduction in size. *See Exhibit B-2, Plan*.

10. Addressing the lot width variance, the Board notes that the minimum lot width is measured at the required building setback line. “Building setback line” is the “rear line of the minimum front yard...measured at a distance equal to and no greater than the minimum front yard from the street line.” *See Zoning Ordinance §27-201*.

11. “Street line” is defined as the “right-of-way line of a street. Where an ultimate right-of-way line is established, the ultimate right-of-way line shall be the street line.” *See Zoning Ordinance §27-201*.

12. Applying these definitions, the Board concludes that the Mannherz Lot's existing 185 width at the front building set back line is a lawful non-conformity. The fact that the Mannherz Lot will be 175 feet wide following the lot line change plan is simply a continuation of this non-conforming feature.

13. Critical to the Board's conclusions herein is that the lot line change and conveyance of the Premises will place the Tate's driveway fully on the Tate Lot. To relocate the driveway is an impractical solution.

14. The Board concludes that the proposed lot line change and conveyance of the Premises presents the smallest alteration of the Zoning Ordinance's provisions to accomplish this objective.

15. Based on the credible testimony presented, the Board concludes that the requested lot area and lot width variances propose reasonable adjustments to the Zoning Ordinance in connection with the lot line change plan.

16. 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 effect the proposed lot line change between the Properties, with the resulting tract dimensions and sizes as shown on the definitive plan identified as Exhibit B-2.

17. The approved variances will not alter the essential character of the neighborhood in which the Properties are located nor substantially impair the appropriate use or development of adjacent properties.

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

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

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

### DECISION

AND NOW, this 17<sup>th</sup> day of JUNE, 2021, 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 the Zoning Ordinance as follows:

a. A variance is granted from §27-802.b to permit the Mannherz Lot (1 Naomi Lane) to have a lot area of 38,340 square feet; and

b. A variance is granted from §27-802.b to permit the Mannherz Lot (1 Naomi Lane) to have a lot width at the front building setback line of 175 feet.

The relief granted above is subject to the following conditions:

1. The proposed lot line change plan for the Properties, and the resulting layout of the Mannherz Lot (1 Naomi Lane) and the Tate Lot (2 Naomi Lane), shall be in accordance with definitive plan marked as Exhibit B-2, the other evidence, 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 use(s) and/or improvement(s) must meet all other applicable federal, state, county and New Britain Township regulations and codes.

The signatures of the New Britain Township Zoning Hearing Board members that appear on the following page attached hereto and incorporated herein, confirms the Board's decision and order.

By: Kelsey Harris  
Kelsey Harris  
New Britain Township Zoning Officer

Date: 6/17/21

Thomas J. Walsh III, Esquire  
Solicitor, New Britain Township Zoning Hearing Board  
3655 Route 202, Suite 105  
Doylestown, PA 18902

**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

<b>Exhibit</b>	<b>Description</b>
B-1	Zoning Hearing Board (ZHB) application dated 3/18/21. Included with the Application: <ul style="list-style-type: none"><li>• Rider outlining requested relief</li><li>• Proof of payment of fees</li></ul>
B-2	Lot Line Change Plan, prepared by Jonathan J. Tabas, P.E. P.L.S., consisting of 1 sheet, dated 9/1/2020
B-3	Letter to The Intelligencer dated 4/27/21 forwarding public notice of 5/20/21 hearing for publication
B-4	Public Notice of the hearing on 5/20/21
B-5	Proof of publication of public notice in 5/6/21 and 5/13/21 editions of The Intelligencer
B-6	Letter to Applicants and Attorneys dated 4/27/21 providing notice of the 5/20/21 hearing
B-7	List of the record owners of all properties surrounding the Property
B-8	Affidavit of mailing to property owners – notice mailed on 5/3/21
B-9	Affidavit of posting of public notice at properties – notice posted on 5/4/21 at 12:45 p.m., together with photos of the notice
B-10	Bucks County Viewer Aerial and Map of Properties

**New Britain Township**  
**Zoning Hearing Board**

**Signature Page**

Re: Allen and Gay Tate, 2 Naomi Lane  
Matthew Mannherz, 1 Naomi Lane

Date: JUNE 17, 2021

Chuck Coxhead, Chair

CCQ

Cathy Basilli, Vice Chair

Cathy Basilli

Jim Scanzillo, Member

Jim Scanzillo

Scott Fischer, Alternate Member

Scott W. Fischer