

DATE OF DECISION: MAY 20, 2021

DATE OF MAILING: MAY 21, 2021

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

**RE: APPLICATION OF MICHAEL AND JULIE DUFFEY FOR
THE PROPERTY LOCATED AT 522 FERRY ROAD, NEW
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-14-17**

FINDINGS OF FACT

1. On Thursday, April 15, 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 Michael and Julie Duffey (the “Applicants”).

2. The Applicants are the record co-owners of the property located at 522 Ferry Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-14-17 (the “Property”). The Property is the subject of the instant application.

3. Notice of the April 15, 2021, hearing was published in advance of the hearing in the Thursday, April 1, 2021, and Thursday, April 8, 2021, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-6.

4. Notice of the April 15, 2021, hearing was sent by first class mail on March 31, 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-9.

5. Harris posted notice of the April 15, 2021, hearing on the Property on April 7, 2021, at 2:13 p.m. *See* Exhibit B-10.

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), accessory storage shed (use H2), driveway, covered patio and deck. These uses and structures are permitted by right in the WS zoning district. *See* Exhibit B-3, Plan; *see also* Zoning Ordinance §27-501.a.

9. The Applicants propose an accessory non-commercial swimming pool (use H4) and related improvements. Such accessory use is permitted by right in the WS zoning district. *See* Zoning Ordinance §27-501.a.

10. To permit the proposed pool and the existing improvements, the Applicants seek a variance from Zoning Ordinance §27-502.b.1(h)2) to permit an impervious surface ratio of 13.56% on the Property, where the existing ratio is 13.1%, and the maximum impervious surface ratio permitted by right is 12%.¹

11. In their original application, the Applicants also included an appeal from the Zoning Officer’s March 4, 2021, Determination that the proposed stormwater management facility was subject to review under the New Britain Township Stormwater Management Ordinance. The Applicants withdrew this appeal on the record. *See* Exhibit B-2, Determination.

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 Applicants and Vincent Fioravanti, P.E. (“Fioravanti”), professional engineering, testified in support of the application at the hearing.

14. No other individuals appeared at the April 15, 2021, hearing to request party status, register a position, or comment or ask questions on the application before the Board.

15. Relevant to this application, the Property and the Applicants are the subject of a prior decision of the Board dated March 18, 2011 (the “2011 Decision.”). *See* Exhibit B-13, 2011 Decision.

16. In the 2011 Decision, the Applicants proposed a one-story addition to the east side of the existing dwelling. The addition protruded into the front and side yards. *See* Exhibit B-13, 2011 Decision.

17. To accommodate the addition, the Board granted variances to allow a side yard setback of 18 feet 1 inch and a front yard setback of 41 feet. No impervious surface ratio variance was necessary to permit the addition. *See* Exhibit B-13, 2011 Decision.

18. According to the Applicants and Bucks County records, the Applicants acquired the Property in or around December 2010. The Property is lot 54 in the LaCitadelle Manor Site residential subdivision.

19. The Applicants stated, and the Board finds, that the original dwelling was constructed in or around 1963. With the addition, the dwelling has roughly 3,400 square feet of living space.

¹ The public notice states that the existing actual ratio is 11.06% and that the maximum permitted rate is 8%. These typographical errors reflect plan data that was clarified at the hearing, as well as the previously allowable ratio prior to a recent Zoning Ordinance amendment. The errors are harmless.

20. The Property is long and narrow. It is shaped like a rectangle with an angled front lot line along Ferry Road. *See Exhibits B-3, Plan; and B-11, Viewer.*

21. The Property's lot area 50,325 square feet. The Property is a lawful undersized lot, as the minimum lot size is 80,000 square feet for a property improved with a B1 use in the WS zoning district. *See Exhibit B-3, Plan; see also Zoning Ordinance §27-502.b.1(b).*

22. The Property has 149 feet of frontage along Ferry Road. It is 140 feet wide along its rear lot line. The side lot lines are 332 feet and 387 feet long. *See Exhibits B-3, Plan; and B-11, Viewer.*

23. The dwelling is entirely within the front yard setback area. The original dwelling was constructed in this non-conforming location. The 2011 Decision permitted the addition to also be within the front yard setback. *See Exhibits B-3, Plan; and B-13, 2011 Decision.*

24. The Property has a severe slope. The Property's grade steadily rises roughly 60 feet from the Ferry Road frontage to the rear lot line. Due to this slope, the dwelling is between 10 and 20 feet above Ferry Road at the front building wall. *See Exhibit B-3, Plan.*

25. A covered patio and connecting deck abut the dwelling's rear wall. Behind these features are 2 landscaped tiers surrounded by retaining walls that are cut into the slope. The retaining walls are deteriorating. *See Exhibit B-3, Plan.*

26. The Applicants and Fioravanti stated, and the Board finds, that a pool was formerly in the higher of these 2 areas. A storage shed is next to the higher tiered area. *See Exhibits B-3, Plan; and B-11, Viewer.*

27. A driveway connects the dwelling's side-entry garage to Ferry Road. The driveway accesses Ferry Road at the Property' southwest corner and travels along the shorter side lot line. *See Exhibits B-3, Plan; and B-11, Viewer.*

28. The Applicants and Fioravanti stated, and the Board finds, that the rear section of the driveway was expanded sometime after the issuance of the 2011 Decision. The Applicants confirmed that 1,028 square feet of driveway paving was added without securing a permit. *See Exhibit B-3, Plan.*

29. The Property's rear section is a natural vegetative area. Large trees are along both side lot lines. The Applicants stated, and the Board finds, that the Property's improvements are barely visible from adjoining tracts. *See Exhibit B-3, Plan.*

30. The Applicants and Fioravanti stated, and the Board finds, that the intend to stabilize the landscaped terrace areas and walls, and remove the shed. A new curved retaining wall will be installed in a slightly different location between tiers. *See Exhibit B-3, Plan.*

31. The Applicants and Fioravanti stated, and the Board finds, that the pool will be installed in the newly constructed upper tier area. The pool will be 500 square feet. It will have only modest surrounding coping. It will not have a deck. *See Exhibit B-3, Plan.*

32. The Applicants and Fioravanti stated, and the Board finds, that at the time the 2011 Decision was issued, the Property contained 5,565 square feet of existing impervious surfaces.

This produced a ratio of 11.06%, which met the maximum 12% permitted ratio. *See Exhibit B-3, Plan.*

33. The expanded driveway, together with the proposed pool and multi-level patio improvements, will add 1,257 square feet of net new impervious surfaces to the Property. This produces a new aggregate of 6,822 square feet, for a final ratio of 13.56%. *See Exhibit B-3, Plan.*

34. Regarding existing stormwater drainage patterns at the Property, Fioravanti stated, and the finds, that the water runs downhill off the Property. It flows from the rear lot line to the southeast corner fronting along Ferry Road. *See Exhibit B-3, Plan.*

35. To account for the additional stormwater runoff caused by the existing and proposed excess impervious surfaces on the Property, Fioravanti stated, and the Board finds, that a rain garden stormwater management BMP facility will be installed in the front yard next to the dwelling's side wall. *See Exhibit B-3, Plan.*

36. Fioravanti stated, and the Board finds, that the rain garden will be roughly 20 feet wide by 30 feet long by 1 feet deep. Downspouts from the dwelling will connect directly into the rain garden. The rain garden will eventually discharge into the nearby Pine Run creek. *See Exhibit B-3, Plan.*

37. The Applicants and Fioravanti stated, and the Board finds, that the finally designed and engineered rain garden stormwater BMP facility will infiltrate and control the amount of water runoff from the Property to produce an effective impervious surface ratio of not to exceed 12%. This accounts for both the *existing* excess and proposed net new impervious surfaces. *See Exhibit B-3, Plan.*

38. The surrounding properties consist of similar style residences and lots with pools. The Applicants stated that no nearby residents have raised any objection to the proposed pool and related improvements.

39. The Property contains unique physical characteristics that support relief for the existing expanded drive, proposed accessory non-commercial swimming pool and related improvements that produce an overall impervious surface ratio of 13.56%.

40. The Zoning Ordinance's dimensional limitations impose a hardship on the Property and the Applicants in that these regulations prevent a reasonably sized driveway and pool on an undersized lot with an older non-conforming residential dwelling.

41. Subject to the conditions imposed herein, the existing expanded driveway, together with the proposed accessory non-commercial pool, its size 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 April 15, 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 requested impervious surface ratio is a dimensional variance. 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 the Property’s dimensions, slope and non-conforming location of the existing dwelling establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

8. The Board concludes that while the Applicants have established a hardship to justify an impervious surface ratio of 13.56, the Applicants will alleviate the runoff hazards through the rain garden stormwater BMP facility identified on the Zoning Exhibit Plan and as

approved by New Britain Township to produce an effective and *de facto* impervious surface ratio of not to exceed 12%. See Exhibit B-3, Plan.

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 variance, including hardship, to construct and install the proposed accessory non-commercial swimming pool and related improvements.

10. 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.

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

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

13. 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, 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 a variance from Zoning Ordinance §27-802.b to permit an impervious surface ratio of 13.56% on the Property, subject to the following conditions:

1. The existing expanded driveway, proposed accessory non-commercial swimming pool, and related improvements' dimensions, size, location and appearance shall be in accordance with the definitive plans, evidence, representations, exhibits and credible testimony made and submitted at the hearing.

2. The Applicants and their design professional shall revise the Zoning Exhibit Plan (Exhibit B-5) and submit a certification letter (pre-marked as Exhibit B-5(A)), if necessary, to the satisfaction of Harris and the New Britain Township engineer, to confirm that the finally engineered and designed stormwater management improvements will produce an effective impervious surface ratio of not more than 12% on the Property.

3. The Applicants shall install, maintain and replace the stormwater management facility approved by New Britain Township on the Property in accordance with this Decision and all applicable New Britain Township ordinances.

4. 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: 5/20/21

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

Exhibit	Description
B-1	Zoning Hearing Board application, dated 3/19/21. Attachments to Application: <ul style="list-style-type: none">• Deed dated 7/11/2018• Proof of payment of application fees
B-2	Determination by Zoning Officer, dated 3/4/21
B-3	Zoning Exhibit Plan, 1 sheet, prepared by Fioravanti Engineering, Inc., dated 12/14/20, last revised 1/27/21
B-4	Letter to The Intelligencer dated 3/29/21 forwarding public notice of 4/15/21 hearing for advertisement
B-5	Public Notice of the hearing on 4/15/21
B-6	Proof of publication of public notice in 4/1/21 and 4/8/21 editions of The Intelligencer
B-7	Letter to Applicants dated 3/29/21 providing notice of the 4/15/21 hearing
B-8	List of the record owners of all properties within 500 feet of the Property
B-9	Affidavit of mailing to property owners – notice mailed on 3/31/21
B-10	Affidavit of posting of public notice at property – notice posted on 4/8/21 at 2:13 p.m., together with photos of notice on property
B-11	Bucks County Viewer Map and Aerial
B-12	Letter dated 4/9/21 from Township Solicitor
B-13	ZHB Decision dated 3/17/2011

New Britain Township
Zoning Hearing Board

Signature Page

Re: Michael and Julie Duffey
522 Ferry Road

Date: MAY 20, 2021

Chuck Coxhead, Chair

CCG

Cathy Basilli, Vice Chair

Cathy Basilli

Jim Scanzillo, Member

Jim Scanzillo

Scott Fischer, Alternate Member

Scott W. Fischer