

DATE OF DECISION: 12/18/20

DATE OF MAILING: 12/18/20

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

**RE: APPLICATION OF ANTHONY McELROY FOR THE  
PROPERTY LOCATED AT 300 PHEASANT RUN DRIVE,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-28-57**

**FINDINGS OF FACT**

1. On Thursday, November 19, 2020 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 Anthony McElroy (the “Applicant”).

2. The Applicant and Jessica Tennett (“Tennett”) are the record co-owners of the property located at 300 Pheasant Run Drive, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-28-57 (the “Property”). The Property is the subject of the instant application.

3. Notice of the November 19, 2020 hearing was published in advance of the hearing in the Thursday, November 5, 2020 and Thursday, November 12, 2020 editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-6.

4. Notice of the November 19, 2020 hearing was sent by first class mail on November 6, 2020 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 November 19, 2020 hearing on the Property on November 10, 2020 at 2:23 p.m. *See* Exhibit B-10.

6. As required by Act 15 of 2020, the Board allowed for public participation at the November 19, 2020 hearing through the submission of written questions or comments to the Board delivered by regular mail or email to Harris’s attention at New Britain Township.

7. As a record co-owner of the Property, the Applicant has the requisite standing to prosecute this zoning hearing board application.

8. The Property is located in the RR, Residential, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

9. The Applicant proposes a residential accessory storage shed (use H2) on a property which is improved with an existing single-family detached dwelling that is part of a cluster subdivision (use B2). Such uses and structures are permitted in the RR zoning district. *See* Zoning Ordinance §27-901.

10. To permit the storage shed, the Applicant seeks variances from the following sections of the Zoning Ordinance:

- a. from §27-305.H2.a to permit the storage shed to be 216 square feet in floor area, where the maximum permitted building coverage for a storage shed is 200 square feet;
- b. from §27-305.H2.b.1 and §27-902.c.1 to permit the storage shed to be within the Property's front yard(s) along Pueblo Road; and
- c. from §27-902.c.2 to permit the storage shed to be located next to the side and rear walls of the existing dwelling, where the shed is required to be at least 15 feet from the rear and side of the primary dwelling.

11. 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.

12. The Applicant testified in support of the application at the hearing.

13. James McGroarty ("McGroarty"), a neighbor residing at 304 Pheasant Run Drive, appeared at the hearing to comment in support of the application. New Britain Township took no position on the application.

14. The Property is lot 210 of the Fairwoods subdivision plan, which was recorded on July 13, 1979 in the Office of the Recorder of Deeds for Bucks County in Plan Book 185, page 17. The Board takes judicial notice of the Fairwoods subdivision record plan. *See* 42 Pa.C.S §6102.

15. The Property is primarily improved with a two-story single-family detached dwelling constructed in or around 1983. The Applicant and Tennett acquired the Property in or around August 2020.

16. According to the Applicant and Bucks County records, the Property is approximately .285 acres. The dwelling contains 1,356 square feet of living area. The dwelling is served by public water and public sewer systems. *See* Exhibit B-1, Application.

17. The Property is shaped like a quarter-circle. The Property is located along a wide curve of the intersection of Pheasant Run Drive and Pueblo Road. *See* Exhibits B-5, Plan; and B-11 Aerial Viewer.

18. The Property is considered a corner lot under the Zoning Ordinance. The tangents to the curves at the points where Property's side and rear lot lines meet Pheasant Run Drive and Pueblo Road intersect at an angle that is less than 135 degrees. *See* Exhibit B-5, Plan; *see also* Zoning Ordinance §27-201.

19. As a corner lot, each of the Property's yards that abuts Pheasant Run Drive and Pueblo Road is considered a front yard. The owner of a corner lot has the option of choosing which of the two lot lines that are not street lines is to be considered a rear lot line. *See* Exhibit B-5, Plan; *see also* Zoning Ordinance §27-201.

20. As constructed, the dwelling's front wall is oriented toward the intersection of Pheasant Run Drive and Pueblo Road. The Applicant stated, and the Board finds, that the yard behind the house's rear wall is treated as the rear yard. *See* Exhibit B-5, Plan.

21. A driveway located in the front yard accesses the Property. It connects to a single-car front entry attached garage. A screened-in porch abuts the dwelling's rear wall. *See* Exhibit B-5, Plan.

22. The Applicant stated, and the Board finds, that the yards behind and to the side of the dwelling are small. A large swale runs along the longer rear lot line, carrying rainwater to an inlet in Pueblo Road. *See* Exhibit B-5, Plan

23. The Property's abuts other properties in the Fairwoods subdivision that are improved with similar style single-family detached residential dwellings. *See* Exhibit B-5, Plan.

24. The Applicant proposes a one-story residential accessory storage shed structure (use H2). The shed will be 216 square feet, measuring 12 feet by 18 feet. *See* Exhibit B-5, Plan.

25. The Applicant stated, and the Board finds, that the shed will be located next to the existing garage. The shed's rear wall will align with the plane of the garage's rear wall. *See* Exhibit B-5, Plan.

26. The Applicant stated, and the Board finds, that the garage is 11 feet wide by 24 feet long. The shed's front wall will be recessed 6 feet behind the front wall of the adjoining garage. The driveway will not be extended to reach shed's front wall. *See* Exhibit B-5, Plan.

27. The Applicant stated, and the Board finds, that the front of the shed will be roughly 50 feet from Pueblo Road. *See* Exhibit B-5, Plan.

28. The Applicant stated, and the Board finds, that the shed will be a prefabricated model, either of wood or vinyl exterior design, made to complement the existing dwelling's architecture.

29. The Applicant stated, and the Board finds, that the shed will contain personal and household items. The pre-fabricated shed must exceed 200 square feet to accommodate their reasonable storage needs.

30. The Applicant stated, and the Board finds, that as a pre-fabricated structure, the shed cannot be custom made to be reduced by 16 square feet in floor area.

31. The Applicant stated, and the Board finds, that the shed cannot be moved elsewhere on the Property to provide the requisite 15 feet separation distance from the side and rear of the dwelling. Placing the shed in the rear yard at least 15 feet behind the dwelling will compromise the drainage swale. *See* Exhibit B-5, Plan.

32. The Applicant stated, and the Board finds, that he and Tennett have spoken with their neighbors, and they are agreeable the proposed shed and its location. McGroarty lives near the Property, and spoke in favor of the shed and its location.

33. Due to the Property being an oddly shaped corner lot, the Property does not have a location to build an accessory shed structure in compliance with the Zoning Ordinance's floor area, building separation and front yard regulations.

34. The Property contains unique physical characteristics that support relief for the proposed residential accessory shed to exceed 200 square feet in floor area, be located adjacent to the existing garage, and within the front yard along Pheasant Run Drive and Pueblo Road.

35. The Zoning Ordinance's dimensional limitations found at Zoning Ordinance impose a hardship on the Property and the Applicant that prevent a reasonably sized residential accessory storage shed on a Property with an existing detached single-family residential dwelling with limited living space.

36. Subject to the conditions imposed herein, the proposed residential accessory storage shed, 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 advanced public notice of the date, time and location of the November 19, 2020 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 floor area, building separation and front yard 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 the Property’s odd shape, the fact that the Property is a corner lot, the limited floor area in the dwelling, and the location of the existing swale in the rear yard establish a hardship under the *Hertzberg* standard sufficient to justify the variances requested.

8. Based on the credible testimony presented, the Board concludes that the Property’s only open area to locate the shed is in the front yard along Pheasant Run Drive next to the existing garage. *See Exhibit B-5, Plan*.

9. The Board concludes that shed’s floor area must necessarily be larger than the 200 square feet permitted under the Zoning Ordinance to accommodate the Applicant’s reasonable storage needs.

10. Provided the Applicant complies with the reasonable conditions attached to the relief granted herein, the Applicant has met the Zoning Ordinance and Pennsylvania law requirements for the variance, including hardship, to construct and install a residential accessory storage shed next to the existing garage on the Property.

11. 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.

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

13. The conditions and circumstances imposing a hardship upon the Property for the approved variances are not of the Applicant’s own doing.

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

**DECISION**

AND NOW, this 18<sup>th</sup> day of December, 2020, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the Applicant's requests for variances from the Zoning Ordinance to allow the proposed residential accessory storage shed as follows:

a. A variance is granted from §27-305.H2.a to permit the storage shed to be 216 square feet in floor area;

b. A variance is granted from §27-305.H2.b.1 and §27-902.c.1 to permit the storage shed to be within the Property's front yard along Pueblo Road; and

c. A variance is granted from §27-902.c.2 to permit the storage shed to be located next to the side and rear wall of the existing dwelling.

The relief granted above is subject to the following conditions:

1. The proposed residential accessory storage shed's dimensions, size, location and appearance shall be in accordance with the 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.

NEW BRITAIN TOWNSHIP  
ZONING HEARING BOARD

DATE: 12/18/20

/s/ Chuck Coxhead  
Chuck Coxhead, Chair

DATE: 12/18/20

/s/ Catherine B. Basilio  
Catherine B. Basilio, Member

DATE: 12/18/20

/s/ Jim Scanzillo  
Jim Scanzillo, Member

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 10/22/20. Attachments to Application: <ul style="list-style-type: none"><li>• Sheet of submitted zoning permit application</li><li>• Agreement of Sale, dated 7/20/20</li><li>• List titled “Neighbors Approval”</li></ul>
B-2	Hand-drawn sketch plan
B-3	Zoning Officer Determination dated 10/6/20 with accompanying documents
B-4	Letter to The Intelligencer dated 10/30/20 forwarding public notice of hearing for advertisement
B-5	Public Notice of the hearing on 11/19/20
B-6	Proof of publication of public notice in 11/5/20 and 11/12/20 editions of The Intelligencer
B-7	Letter to Applicant dated 11/2/20 providing notice of the hearing
B-8	List of the record owners of all properties surrounding the Property
B-9	Affidavit of mailing to property owners – notice mailed on 11/6/20
B-10	Affidavit of posting of public notice at property – notice posted on 11/10/20
B-11	Bucks County Floodplain Viewer – Aerial Photograph of Property