

DATE OF DECISION: 4/13/20

DATE OF MAILING: 4/13/20

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

**RE: APPLICATION OF SAMUEL SALTZMAN FOR  
THE PROPERTY LOCATED AT 17 TOWER HILL ROAD,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-21-43**

**FINDINGS OF FACT**

1. On Thursday, March 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 Samuel Saltzman (the “Applicant”).

2. The Applicants and Stephanie Saltzman (“Stephanie”) are the record co-owners of the property located at 17 Tower Hill Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-21-43 (the “Property”). The Property is the subject of the instant application.

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

4. Notice of the March 19, 2020 hearing was sent by first class mail on February 25, 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-8.

5. Harris posted notice of the March 19, 2020 hearing on the Property on February 26, 2020 at 1:40 p.m. *See* Exhibit B-9.

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

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

8. The Applicant proposes an accessory non-commercial swimming pool (use H4) on a lot improved with an existing single-family detached dwelling developed as part of a cluster subdivision (use B2). Such accessory use is permitted by right in the RR zoning district. *See* Zoning Ordinance §27-901.a.

9. To permit the non-commercial swimming pool, the Applicant seeks a variance from Zoning Ordinance §27-903.a and §27-2105 to permit a rear yard setback of 15 feet, where the required minimum rear yard setback is 40 feet.

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 Applicant and Stephen Fahs (“Fahs”), pool contractor, testified in support of the application at the hearing.

12. No other persons appeared at the March 19, 2020 hearing to request party status, to comment on the application, nor register a position before the Board. New Britain Township took no position on the application.

13. The Property is Lot 74 in Section 2 of the Tower Hill Woods subdivision, the plan for which was recorded in the Office of the Recorder of Deeds of Bucks County in Plan Book 69, page 9. The Board takes judicial notice of the Tower Hill Woods record subdivision plan. *See* 42 Pa.C.S. §6102.

14. The Tower Hill Woods subdivision is a cluster subdivision (use B2) under the Zoning Ordinance. The Property is primarily improved with a split-level single-family detached dwelling. A single-family detached dwelling that is part of a cluster subdivision (use B2) is permitted by right in the RR zoning district. *See* Zoning Ordinance §27-901.a.

15. According to the Applicant and Bucks County records, the split-level single-family dwelling was constructed in or around 1972. The Applicant and Stephanie acquired the Property in May 2018. *See* Exhibit B-1, Deed.

16. The Property is shaped like a rectangle. Its lot area is 20,000 square feet. It has 100 feet of frontage along Tower Hill Road, and is 100 feet wide along its rear lot line. Each side lot line is 200 feet long. *See* Exhibits B-2, Plan.

17. The dwelling is located in the front center portion of the Property, oriented toward Tower Hill Road. A macadam driveway to Tower Hill Road runs along the northern side lot line and connects to a side-entry garage. *See* Exhibit B-2, Plan.

18. An existing concrete walkway connects the driveway to the dwelling’s front door. A wood deck patio abuts the dwelling’s rear wall. A small storage shed is located at the end of the driveway. *See* Exhibit B-2, Plan.

19. The Applicant stated, and the Board finds, that the dwelling is served by public water and public sanitary sewer facilities.

20. The Applicant and Fahs stated, and the Board finds, that the proposed pool and surrounding coping will be in the Property’s rear yard in the southeast rear corner. The edge of the pool will be 75 feet behind the dwelling’s rear wall. *See* Exhibit B-2, Plan.

21. Measured from the water's edge, the pool will be setback 15 feet from the Property's rear lot line and 15 feet from the closest side lot line. The equipment pad will be located along the southern side lot line. *See Exhibit B-2, Plan.*

22. The Applicant and Fahs stated, and the Board finds, that an existing fence surrounds the Property's rear yard. The fence will be increased in height around the pool and pool coping, to comply with all applicable and required ordinances. *See Exhibit B-2, Plan.*

23. The Applicant and Fahs stated, and the Board finds, that the Property slopes downward from the southern side lot line to the northern side lot line. Topography notations on the definitive plan indicate the Property has roughly a 3 feet drop in elevation. *See Exhibit B-2, Plan.*

24. The Applicant and Fahs stated, and the Board finds, that the adjoining lot to the south is at a higher grade than the Property. Stormwater and a sump pump from this tract sheet flows across the Property's rear yard from south to north. *See Exhibit B-2, Plan.*

25. The Applicant stated, and the Board finds, that the Property contains approximately 3,549 square feet of existing impervious surfaces. These surfaces consist of the dwelling (1,775 square feet); driveway (1,510 square feet); walkway and patio (100 square feet); and accessory shed and garage (164 square feet). *See Exhibit B-2, Plan.*

26. These existing impervious surfaces produce a coverage ratio of 17.7%. This complies with the maximum 30% impervious surface ratio permitted by right. *See Exhibit B-5, Plan.*

27. Installation of the proposed pool, coping and equipment pad will add 450 square feet of impervious surfaces, producing a total of 3,999 square feet of impervious surfaces. This total produces an impervious surface ratio of 19.9%. *See Exhibit B-2, Plan.*

28. To account for the runoff generated by the new impervious surfaces, the Applicant and Fahs stated, and the Board finds, that 8 new coniferous (evergreen) arborvitae trees will be installed on the Property. The new trees will next to the pool in the northeast rear corner, on the downhill slope. *See Exhibits B-2, Plan.*

29. The Applicant and Fahs stated, and the Board finds, that they investigated installing the pool and coping in a different location to increase the required rear yard setback. No such alternative location is possible on the Property.

30. The Applicant and Fahs stated, and the Board finds, that if the pool were relocated further into the Property to comply with the required minimum 40 feet rear setback, the pool will negatively impact the Property's existing stormwater drainage patterns. *See Exhibit B-2, Plan.*

31. The tracts on either side of the Property consist of similar style residences and lots. The lot to behind the Property is a large 3 acre wooded lot. The Applicant stated that no nearby residents have raised any objection to the proposed pool or its location.

32. Due to the Property's slope and lower proximity to the adjoining tract, the Property contains unique physical characteristics that support relief for the proposed accessory non-commercial swimming pool to be located 15 feet from the rear lot line.

33. The Zoning Ordinance's rear yard setback dimensional limitation imposes a hardship on the Property and the Applicant in that this regulation prevents a reasonably sized accessory non-commercial swimming pool and related coping on the Property.

34. Subject to the conditions imposed herein, the proposed accessory non-commercial swimming pool and coping, 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 requested rear yard setback variance is a 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 age of the existing dwelling, downward slope, lower elevation, and the existing stormwater runoff patterns establish a hardship under the *Hertzberg* standards sufficient to justify the variance requested.

8. 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 coping that complies with the 15 feet rear yard setback without adversely impacting the Property’s stormwater drainage patterns.

9. The Board concludes that the Applicant will alleviate any runoff hazards created by the new impervious surfaces by installing the plantings shown on the Pool Permit Plan. *See Exhibit B-2, Plan*.

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 the proposed accessory non-commercial swimming pool and coping in the rear yard.

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 Applicant’s 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.

**DECISION**

AND NOW, this 13<sup>th</sup> day of April, 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 request for a variance from Zoning Ordinance §27-903.a and §27-2105 to permit a rear yard setback of 15 feet for the proposed accessory non-commercial swimming pool and coping, subject to the following conditions:

1. The proposed accessory non-commercial swimming pool, coping and related improvement's 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. 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: 4/13/20

/s/ Chuck Coxhead  
Chuck Coxhead, Chair

DATE: 4/13/20

/s/ Cathy Basilli  
Cathy Basilli, Member

DATE: 4/13/20

/s/ Scott Fischer  
Scott Fischer, Alternate 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 2/18/20 (received on 2/19/20). Attachments to Application: <ul style="list-style-type: none"><li>• Attachment outlining relief requested</li><li>• Current deed dated 5/11/2018</li><li>• List of surrounding property owners</li></ul>
B-2	Pool Permit Plan (dated 1/20/20; revised 2/12/20); and Construction Details Sheet (undated; revised 6/12/2013), prepare by Kenneth Seely
B-3	Letter to The Intelligencer dated 2/24/20 forwarding public notice of 3/19/20 hearing for advertisement
B-4	Public Notice of the hearing on 3/19/20
B-5	Proof of publication of public notice in 3/5/20 and 3/12/20 editions of The Intelligencer
B-6	Letter to Applicant dated 2/24/20 providing notice of the 3/19/20 hearing
B-7	List of the record owners of all properties surrounding the Property
B-8	Affidavit of mailing to property owners – notice of 3/19/20 hearing mailed on 2/25/2020
B-9	Affidavit of posting of public notice at property – notice of 3/19/20 hearing posted on 2/26/20 at 1:50 p.m.