

DATE OF DECISION: July 16, 2020

DATE OF MAILING: July 17, 2020

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

**RE: APPLICATION OF GREGORY AND MICHELLE DELAN
FOR THE PROPERTY LOCATED AT 159 KING ROAD,
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-4-98-1**

FINDINGS OF FACT

1. On Thursday, June 18, 2020 at 7:30 p.m., the New Britain Township Zoning Hearing Board (“Board”) held a duly noticed hearing on the application of Gregory and Michelle DeLan (the “Applicants”).

2. The Board conducted the hearing through the use of an authorized telecommunications device¹, specifically the Zoom meetings platform. Such platform permits video and audio communication between individuals over a computer application.

3. The Board, the Board’s stenographer, the Applicants, the Applicants’ representatives, and interested members of the public were all able to view, hear and communicate with each other over the authorized telecommunications device.

4. The Applicants are the record co-owners of the property located at 159 King Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-4-98-1 (the “Property”). The Property is the subject of the instant application.

5. Notice of the June 18, 2020 hearing was published in advance of the hearing in the Thursday, June 4, 2020 and Thursday, June 11, 2020 editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See Exhibit B-7.*

6. Notice of the June 18, 2020 hearing was sent by first class mail on June 15, 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-10.*

7. Harris posted notice of the June 18, 2020 hearing on the Property on June 3, 2020 at 9:45 a.m. *See Exhibit B-11.*

¹ During the pendency of the Governor’s emergency declaration regarding the COVID-19 virus, Act 15 of 2020 (“Act 15”) authorizes the Board to conduct a hearing through the use of an “authorized telecommunication device,” defined as “any device which permits, at a minimum, audio communication between individuals.” Hearings conducted pursuant to Act 15 do not require individual Board members to be physically present at the same location to achieve a quorum.

8. Pursuant to Act 15, notice of the June 18, 2020 hearing was posted on the New Britain Township website. The notice described the authorized telecommunications device technology (Zoom platform) to be used at the hearing.

9. The Board allowed for public participation at the June 18, 2020 hearing through both the authorized communications device, and/or through the submission of written questions or comments to the Board delivered by regular mail or email to Harris’s attention at Northampton Township.

10. As the record co-owners of the Property, the Applicants have the requisite standing to prosecute this zoning hearing board application.

11. The Property is located in the WS, Watershed, zoning district under the New Britain Township Zoning Ordinance (the “Zoning Ordinance”).

12. The Applicants propose accessory structures consisting of a non-commercial swimming pool (use H4), pool patio and pool house on a property with an existing single-family detached dwelling (use B1). Such uses are permitted by right in the WS zoning district. *See* Zoning Ordinance §27-501.a.

13. To permit the swimming pool, patio and pool house, the Applicants seek a variance from Zoning Ordinance §27-502.b.1(h)2) to permit an impervious surface ratio of 8.94% on the Property, where the maximum impervious surface ratio permitted by right is 8% (applicable to resident).

14. The Applicants also request a variance from Zoning Ordinance §27-3005 requiring construction of the non-commercial swimming pool and related improvements, if approved, to be commenced within 18 months after the issuance of the applicable zoning permit. As explained elsewhere in this Decision, the Board finds that this request is premature.

15. Lastly, the Applicants appealed Harris’s determination dated April 16, 2020 finding that the maximum impervious surface ratio permitted by right on the Property is 8%. The Applicants withdrew this appeal at the commencement of the hearing. *See* Exhibit B-2, Determination.

16. 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.

17. The Applicants and Cynthia Smith, P.E. (“Smith”), professional civil engineer, testified in support of the application at the hearing.

18. A few individuals appeared at the hearing via the authorized telecommunications device to observe and listen to the hearing, and to comment on the application before the Board. No persons appearing at the hearing requested party status to the application.

19. According to the Applicants and Bucks County records, the Applicants acquired the Property in or around August 2018. The dwelling was constructed in or around 2000.

20. The Property is lot 2 in that certain minor residential subdivision plan recorded in 2010 in the Office of the Recorder of Deeds of Bucks County in Plan Book 382, Page 76. This plan created the Property and the adjacent tract (“Lot 1”) to the west, identified as Bucks County Tax Map Parcel No. 26-4-98. *See* Exhibit B-1, Record Plan.

21. The Property is shaped like a rectangle. Its site area (gross) is 255,009 square feet (5.854 acres). Deducting the 40,381 square feet on the Property that are within the ultimate right-of-way of King Road, easements and preserved lands, the Property’s base site area is 214,381 square feet (4.921 acres). *See* Exhibit A-5, Building Permit Plan.

22. The Property has 724.74 feet of frontage along King Road, and is 732.84 feet wide along its rear lot line. The side lot lines are 350 feet and 349.91 feet long. *See* Exhibits A-4, Deed; and A-5, Building Permit Plan.

23. The dwelling is located in the center of the Property, oriented at a slight angle toward King Road. A driveway to King Road travels in front of the dwelling and connects to a detached garage. *See* Exhibits A-1, Record Plan; and A-5, Building Permit Plan.

24. An existing hardscape patio abuts the dwelling’s rear wall. Walkways connect the house to the driveway and rear patio. *See* Exhibit A-5, Building Permit Plan.

25. A 20 feet wide stormwater easement travels from the center of the Property’s rear yard to a detention basin on Lot 1. A swale is within this easement on the Property. *See* Exhibit A-5, Building Permit Plan.

26. The Applicants and Smith stated, and the Board finds, that this detention basin serves the Property as well as Lot 1. It is sized to handle the stormwater management needs as if both tracts exhibited impervious surface ratios of 12%. *See* Exhibits B-1, Record Plan; and A-5, Building Permit Plan.

27. A septic system easement is located in the Property’s southwest corner to support the primary on-lot sewage disposal system. A conservation easement is located in Property’s northwest corner along King Road to protect natural resources. *See* Exhibit A-5, Building Permit Plan.

28. The Applicants and Smith stated, and the Board finds, that the proposed pool, patio and pool building will be in the Property’s rear yard behind the dwelling. The new pool and patio will be behind the bump-out along the dwelling’s rear wall. *See* Exhibits A-5, Building Permit Plan; and A-10, Renderings.

29. The Applicants and Smith stated, and the Board finds, that the pool house will be 688 square feet. It will be a roof with no walls. Retaining walls will support the new patio and stairs leading to the existing patio, as well as the entire rear and sides of the pool improvements. *See* Exhibit A-10, Renderings.

30. The Applicants and Smith stated, and the Board finds, that the pool, pool deck, and pool house will be inside an area surrounded by a fence, in accordance with all applicable and required ordinances. *See* Exhibit A-5, Building Permit Plan.

31. The Applicants and Smith stated, and the Board finds, that the Property contains 15,170 square feet of existing impervious surfaces. These surfaces consist of the dwelling (4,871 square feet); detached garage (994 square feet); driveway (7,218 square feet); front walk (115 square feet); and rear patio and walkway (1,972 square feet). *See* Exhibit A-11, Calculations.

32. These existing impervious surfaces produce a ratio of 7.08%. This meets the maximum 8% impervious surface ratio permitted for a B1 use that is applicable a lot owned by the resident. *See* Exhibit A-5, Building Permit Plan; and A-11, Calculations.

33. The proposed pool and surrounding patio and coping (3,025 square feet), pool house (688 square feet), and additional patio and walkways (272 square feet) will add 3,985 square feet of new impervious surfaces to the Property. This produces a ratio of 8.94%. *See* Exhibits A-5, Building Permit Plan; and A-11, Calculations.

34. The Board finds that 8% is the impervious surface ratio applicable to the Property. The alternative ratios in the WS zoning district are 6% (applicable to lot being developed by a developer); and 12% (applicable to a parent site being developed by a developer). *See* Zoning Ordinance §27-502.b.1(h).

35. Regarding existing stormwater drainage patterns at the Property, the Applicants stated, and the Board finds, that the Property suffers from no runoff issues. Water from the Property generally leads to the rear yard swale. This swale empties into the basin on Lot 1. *See* Exhibit A-5, Building Permit Plan.

36. The Applicants and Smith stated, and the Board finds, that the final grade following installation of the improvements will direct runoff toward the existing swale. The swale and basin on Lot 1 are designed and built to handle runoff as if both the Property and Lot 1 each exhibited a 12% impervious surface ratio. *See* Exhibit A-5, Building Permit Plan.

37. At this size, Smith stated, and the Board finds, that the swale and basin are more than adequately sized to attend to the increased runoff. No additional stormwater management facilities are necessary on the Property to manage the runoff. *See* Exhibit A-5, Building Permit Plan.

38. Lastly, the Board finds that Zoning Ordinance §27-3005 applies only to zoning permits issued by the zoning officer. It does not apply to decisions rendered by the Board. Since no permit has yet to be issued by Harris for the proposed improvements, the request for a variance from the provisions affecting the life and validity of a zoning permit is premature.

39. The surrounding properties consist of similar style residences and lots. The Applicants stated that no nearby residents have raised any objection to the proposed pool, pool house, patio, and related improvements. *See* Exhibit B-5, Building Permit Plan.

40. The Property contains unique physical characteristics that support relief for the proposed accessory non-commercial pool, patio, pool house and related improvements that produce an impervious surface ratio of 8.94%.

41. The Zoning Ordinance’s dimensional limitations impose a hardship on the Property and the Applicants in that these regulations prevent a reasonably sized residential accessory pool, pool patio and pool house structure on large property in the WS zoning district.

42. Subject to the conditions imposed herein, the proposed accessory non-commercial swimming pool, patio and pool house, their 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 hearing was made by sufficient advanced publication, posting and mailing to affected property owners.

2. Required advanced notice of the authorized telecommunications device to be used at the hearing was made by sufficient posting on the New Britain Township publicly accessible internet website.

3. As required by Act 15, allowance for public participation at the hearing was made through the authorized telecommunications device and/or through the submission of written comments or questions by regular mail or email to Harris’s attention at New Britain Township.

4. 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.

5. 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).

6. 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.

7. 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).

8. 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.

9. The Board concludes that the several easements on the Property, including the stormwater easement leading to the basin on Lot 1, establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

10. The Board concludes that the Applicants have established a hardship to justify an impervious surface ratio of 8.94%. The Applicants will alleviate any runoff hazards by directing the runoff toward the swale in the rear yard so it reaches the basin on Lot 1.

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

12. 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.

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

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

15. 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 16th day of JULY, 2020, 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 §27-502.b.1(h)2) to permit an impervious surface ratio of 8.94% on the Property, subject to the following conditions:

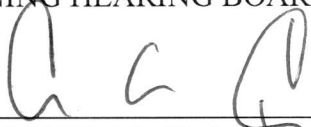
1. The proposed accessory non-commercial swimming pool, pool patio, pool house, and related improvements' dimensions, size, location and appearance shall be in accordance with the plans, evidence, representations, exhibits and credible testimony made and submitted at the hearing.

2. The Applicants and Smith shall submit a breakdown of the existing and proposed impervious surfaces on the Property. Such document shall be pre-marked as Exhibit A-11.

3. 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: 7/16/2020



Chuck Coxhead, Chair

DATE: 7/16/2020



Cathy Basillii, Member

DATE: 7/16/2020



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

Exhibit	Description
B-1	Zoning Hearing Board application dated 5/25/20. Attachments to Application: <ul style="list-style-type: none">• Outline of relief requested• Email correspondence between engineers• Copy of Record Subdivision Plan, dated 9/15/2005, last revised, 11/2/2010• Authorization from Applicants for attorney to file application• Current Deed dated 8/17/2018• List of surrounding property owners
B-2	Determination by Zoning Officer dated 4/16/2020
B-3	Building Permit Plan / DeLan Pool, dated 9/26/19, last revised 5/8/20, prepared by Horizon Engineering
B-4	Suder Pools, Inc., pool design and construction details plan (undated)
B-5	Letter to The Intelligencer dated 6/1/20 forwarding public notice of 6/18/20 hearing for advertisement
B-6	Public Notice of the hearing on 6/18/20
B-7	Proof of publication of public notice in 6/4/20 and 6/11/20 editions of The Intelligencer
B-8	Letter to Applicants and Attorney dated 6/1/20 providing notice of the 6/18/20 hearing
B-9	List of the record owners of all properties within 500 feet of the Property
B-10	Affidavit of mailing to property owners – notice mailed on 6/1/20
B-11	Affidavit of posting of public notice at property – notice posted on 6/3/20 at 9:45 a.m.
A-1	Zoning Hearing Board application with attachment
A-2	Owner authorization to sign Zoning Hearing Board application
A-3	C.V. of Cynthia D. Smith, P.E.

Exhibit	Description
A-4	Deed for Subject Property
A-5	Building Permit Plan prepared by Horizon Engineering, last revised 5/8/20
A-6	Pool Plan prepared by Cowan Associates, Inc. for Suder Pools, Inc.
A-7	5/12/20 email from Zoning Officer
A-8	5/12/20 email from Cynthia Smith re confirmation
A-9	Google aerial of Property
A-10	Pictures of proposed pool (3)
A-11	Impervious surface calculations