

DATE OF DECISION: FEB 18, 2022

DATE OF MAILING: FEB 18, 2022

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

**RE: APPLICATION OF THOMAS AND ANNE MARIE LITCHKO  
FOR THE PROPERTY LOCATED AT 5 NAOMI LANE,  
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,  
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-10-23**

**FINDINGS OF FACT**

1. On Thursday, January 20, 2022, 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 Thomas and Anne Marie Litchko (the “Applicants”).

2. The Applicants are the record co-owners of the property located at 5 Naomi Lane, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-10-23 (the “Property”). The Property is the subject of the instant application.

3. Notice of the January 20, 2022, hearing was published in advance of the hearing in the Thursday, January 6, 2022, and Thursday, January 13, 2022, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the January 20, 2022, hearing was sent by first class mail on January 5, 2022, by Ryan Gehman (“Gehman”), the New Britain Township Assistant Planning and 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. Gehman posted notice of the January 20, 2022, hearing on the Property on January 5, 2022, at 1:45 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 SR-2, Suburban Residential, 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) with an attached garage, together an accessory detached garage (use H1). Such uses are permitted by right in the SR-2 zoning district. *See* Zoning Ordinance §27-801.a.

9. At the time the application was submitted, the accessory detached garage was in the side and rear yards. The garage was installed by the Applicants prior to receipt of all applicable and required New Britain Township permits and approvals. *See* Exhibit A-3, Photos.

10. To permit the accessory detached garage in its present location, the Applicants seek a variances from Zoning Ordinance §27-804.c to permit the garage to have a side yard setback of 5.5 feet and a rear yard setback of 7.9 feet, where the required minimum setback is 15 feet from the rear and side lot lines.

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. Anne Marie Litchko ("Anne"), a co-Applicant, testified in support of the application at the hearing.

13. No persons requested party status to the application. Two (2) individuals attended the hearing to ask questions and comment on the application before the Board. New Britain Township (the "Township") took no position on the application.

14. According to Anne and Bucks County records, the dwelling was constructed in or around 2004. The Applicants acquired the Property in December 2003. *See* Exhibit B-1, Deed.

15. The Property is a flag lot. It has a lane that is approximately 130 feet long and 25 feet wide. The lane accesses Naomi Lane. The Property's net lot area, exclusive of the lane, is 1.8123 acres. *See* Exhibit B-2, Plan.

16. Where the Property widens at the end of the lane, the Property is shaped like a rectangle. The lane connects to the Property's wider section at the northeast corner. *See* Exhibit B-2, Plan.

17. Where the Property provides the minimum lot width, the Property's front lot line is 303.09 feet long. The rear lot line is 340.09 feet long. The southern side lot line is 282.49 feet long. *See* Exhibit B-2, Plan.

18. The Property's northern side lot line is a continuation of the access lane. Excluding the lane portion, this side lot line is roughly 201 feet long. *See* Exhibit B-2, Plan.

19. A paved driveway occupies much of the lane's width. A spur off the driveway lane leads to a parking area in front of the dwelling's attached garage. *See* Exhibit B-2, Plan.

20. The paved driveway continues past the house until it reaches the front of the accessory detached garage. A wider concrete apron connects the driveway to the garage. *See* Exhibits B-2, Plan; and A-2, Photos.

21. The dwelling is located in the north and front center portion of the wider section of the Property. Its front wall is oriented toward the lot separating the Property's wider section from Naomi Lane. *See* Exhibits B-2, Plan; and A-2, Photos.

22. The yard behind the house's back wall functions as a rear yard. A pool, brick patio, and pergola are in the rear yard. *See* Exhibits B-2 Plan; and A-2, Photos.

23. The existing on-lot septic system, stormwater basin and drainage easement are in the Property's southern side yard. This side yard slopes downward approximately 20 feet from the edge of the septic system to the drainage easement. *See Exhibit B-2, Plan.*

24. Anne stated, and the Board finds, that the garage was built sometime in 2017. It is one story. The garage has 2 bays and an overhang along the side wall that covers a concrete pad. It is 24 deep and 32 feet wide, for a footprint of 768 square feet. *See Exhibits B-2, Plan; and A-2, Photos.*

25. Anne stated, and the Board finds, that the garage sits on a concrete slab and has no utilities. Common household items are stored in the garage. While the garage could accommodate a vehicle, none is presently parked inside. *See Exhibits B-2, Plan; and A-2, Photos.*

26. Anne stated, and the Board finds, that the Applicants mistakenly believed the garage was 15 feet from the nearest side and rear lot lines when built. They had the Property surveyed after construction which yielded the setback deficiencies. *See Exhibit B-2, Plan.*

27. The garage is at an angle to the side lot line. The garage's far rear corner is 5.5 feet from the side lot line at its closest point. The setback increases toward the garage's front corner, but is still less than the required 15 feet. *See Exhibit B-2, Plan.*

28. The garage is relatively parallel to the rear lot line. It is setback 7.9 feet from this boundary. Anne stated, and the Board finds, that dense trees on the adjoining rear tract shield views of the garage from the lot behind the Property. *See Exhibits B-2, Plan; and A-3, Aerial Photos.*

29. The detached garage is visible from TMP No. 26-10-22, the abutting lot. Anne stated, and the Board finds, that she spoke with the owners of this tract and they have no objection to the garage in its present location. *See Exhibits B-2, Plan; and A-4, Tobey Email.*

30. Anne stated, and the Board finds, that the Applicants are removing 828 square feet of gravel and installing a seepage bed to handle the stormwater runoff generated by the garage. *See Exhibit B-2, Plan.*

31. Anne stated, and the Board finds, that the Applicants investigated relocating the garage to comply with the 15 feet lot line setback. They determined that the garage cannot be moved due to the Property's physical characteristics.

32. Moving the garage further away from the nearest lot lines adversely impacts the existing pool and other rear yard amenities. The garage cannot be placed in the opposite side yard due to the slope, septic system, stormwater management facility, and drainage easement. *See Exhibit B-2, Plan.*

33. The tracts on all sides of the Property consist of similar style residences and lots. The lots behind the Property are large, wooded tracts.

34. Due to the Property's shape and slope, the Property contains unique physical characteristics that support relief for the existing accessory detached to be located 5.5 feet from the nearest side lot at its closest point, and 7.9 feet from the rear lot line.

35. The Zoning Ordinance's rear yard setback dimensional limitation imposes a hardship on the Property and the Applicants in that this regulation prevents a reasonably sized accessory detached garage on the Property.

36. Subject to the conditions imposed herein, the accessory detached garage, 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 date, time and location of the January 20, 2022, 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 side and rear yard setback variances 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. An applicant can demonstrate "unnecessary hardship" for a use or dimensional variance by showing that: (a) a property's physical characteristics are such that the property cannot be used for any permitted use or purpose; (b) the property can only conform to a permitted use or purpose at prohibitive expense; or (c) that the property has either no value or only distress value for any permitted purpose. *See Nowicki v. Zoning Hearing Board of Monaca Borough*, 91 A.3d 287 (Pa. 2014).

5. 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 or improvement will not be contrary to the public interest. *See Wilson v. Plumstead Township Zoning Hearing Board*, 936 A.2d 1061 (Pa. 2007).

8. While the Board does not condone any applicant beginning construction of any improvements prior to securing all required permits and approvals, the Board concludes that the Property's flag lot shape, the downward slope, and the location of the existing side and rear yard improvements, establish a hardship under the *Hertzberg* standards sufficient to justify the variances requested.

9. Based on the credible testimony presented, the Board concludes that the Property does not have a reasonably accessible open area to locate the accessory detached garage that complies with the 15 foot side and rear yard setbacks without adversely impacting the Property's stormwater drainage patterns and septic system.

10. The Board concludes that the Applicants will alleviate any runoff hazards created by the new impervious surfaces by removing the gravel area and installing the stormwater seepage bed shown on the Stormwater Management Plan. *See Exhibit B-2, Plan*.

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 accessory detached garage in the side and rear yards.

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 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 FEBRUARY, 2022, 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 §27-804.c to permit a side yard setback of 5.5 feet and a rear yard setback of 7.9 feet for the existing accessory detached garage, subject to the following conditions:

1. The accessory detached garage's dimensions, size, location and appearance shall be in accordance with the definitive plan(s), evidence, representations, exhibits and credible testimony made and submitted at the hearing.
2. The Applicants shall remove 828 square feet of gravel and install the stormwater management seepage bed as shown on the definitive plan, Exhibit B-2, Stormwater Management Plan.
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.

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: /s/ Thomas J. Walsh III, Esq.

Date: 02/18/2022

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 (received on 11/21). Attachments to Application: <ul style="list-style-type: none"><li>• Current deed dated 12/18/2003</li><li>• List of property owners within 500 feet</li></ul>
B-2	Stormwater Management Plan, 1 sheet, prepared by ProTract Engineering, dated 10/30/20, last revised 2/5/21
B-3	Letter to The Intelligencer dated 12/27/21 forwarding public notice of 1/20/22 hearing for advertisement
B-4	Public Notice of the hearing on 1/20/22
B-5	Proof of publication of public notice in 1/6/22 and 1/13/22 editions of The Intelligencer
B-6	Letter to Applicants and Attorney dated 12/27/21 providing notice of the 1/20/22 hearing
B-7	List of the record owners of all properties within 500 feet of Property, map
B-8	Affidavit of mailing to property owners – notice of hearing mailed on 1/5/2022
B-9	Affidavit of posting of public notice at property – notice of hearing posted on 1/5/22 at 1:45 p.m.
B-10	Bucks County Viewer Map and Aerial of Property
A-1	ZHB Application and attachments
A-2	Photographs of garage (taken January 2022)
A-3	Aerial Photographs
A-4	Email from Lisa Tobey, dated 1/10/22

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

**Signature Page**

Re: Thomas and Anne Marie Litchko  
5 Naomi Lane  
New Britain Township  
TMP No. 26-10-23

Date: FEB 18, 2022

Chuck Coxhead, Chair

CCF

Cathy Basilli, Vice Chair

Cathy Basilli

Jim Scanzillo, Member

Jim Scanzillo

Scott Fischer, Alternate Member

Scott W. Fischer