

DATE OF DECISION: 9/25/2023

DATE OF MAILING: 9/25/2023

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

**RE: APPLICATION OF STEPHEN BARCI FOR THE
PROPERTY LOCATED AT 17 KATHRYN ROAD, NEW
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-21-38**

FINDINGS OF FACT

1. On Thursday, August 17, 2023, 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 Stephen Barci (the “Applicant”).

2. The Applicant and Susan Barci (“Susan”) are the record co-owners of the property located at 17 Kathryn Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-21-38 (the “Property”). The Property is the subject of the instant application.

3. Notice of the August 17, 2023, hearing was published in advance of the hearing in the Thursday, August 3, 2023, and Thursday, August 10, 2023, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the August 17, 2023, hearing was sent by first class mail on August 3, 2023, by Ryan Gehman (“Gehman”), the New Britain Township Assistant Planning and Zoning Officer, to (a) all record owners of properties in New Britain Township within 500 feet of 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 August 17, 2023, hearing on the Property on August 4, 2023, at 3:24 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 Property is improved with a single-family detached residential dwelling (use B1) and a detached accessory residential storage shed (use H2). Such uses and structures are permitted by right in the RR zoning district. *See* Zoning Ordinance §27-901.a.

9. The Applicant proposes an addition to the existing storage shed. To permit the addition, the Applicant seeks a variance from Zoning Ordinance §27-305.H.H2.b.1 to permit the shed with the addition to be in the front yard facing Ashley Drive, where a shed is prohibited in the front yard.

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 testified in support of the application at the hearing. No other individuals appeared at the hearings to request party status, register a position, or comment or ask questions on the application before the Board. New Britain Township took no position on the application.

12. The Property is lot 60 in Section #2 of the Tower Hill Homes residential subdivision. The Applicant and Susan acquired the Property in April 1987. *See Exhibit B-2, Deed.*

13. The dwelling was built in or around 1969. It is a ranch style dwelling containing approximately 1,739 square feet of living space. It is served by public water and public sewer. *See Exhibits B-1, Deed.*

14. The Property is shaped like a rectangle. Its base site area is roughly 28,000 square feet. The Property is a corner lot, having frontage along both Kathryn Road and Ashley Drive. *See Exhibits A-3, Plan; and B-10 Viewer.*

15. On a corner lot, the yards adjoining the streets are both considered front yards. The owner of a corner lot has the option of choosing which of the 2 side lot lines that are not street lines is to be considered a rear lot line. *See Zoning Ordinance §27-201.*

16. The dwelling's front wall is oriented to Kathryn Road. The Applicant stated, and the Board finds, that the yard behind the house's rear wall is treated as a rear yard. *See Exhibits A-3, Plan; and A-1, Photo.*

17. The Property has 128.93 feet of linear frontage along Ashley Drive, and 166.74 feet of linear frontage along Kathryn Road. At the intersection of these 2 streets, the Property has 29.98 feet of curvilinear frontage. *See Exhibit B-10, Viewer.*

18. The side lot line is 144.27 feet long. The rear lot line is 200 feet long. *See Exhibits A-3, Plan; and B-10, Viewer.*

19. An asphalt driveway accessing Kathryn Road serves the dwelling and connects to the front-entry garage. A brick patio and open wood deck abut the dwelling's rear wall. *See Exhibit A-3, Plan.*

20. The storage shed is behind the dwelling in the functional rear yard. Its wall facing Ashley Drive is in line with or slightly behind the extended plane of the dwelling's side wall also facing Ashley Drive. *See Exhibits A-1 and A-2, Photos.*

21. The Applicant stated, and the Board finds, that the existing storage shed is 12 feet by 18 feet, for a floor area of 216 square feet. The proposed addition will attach to the shed's existing side wall facing Ashley Drive. *See Exhibit A-3, Plan.*

22. The Applicant stated, and the Board finds, that the proposed addition will be 20 feet wide and roughly 20 feet long. It will be one-story. Although the entire addition is considered to

be in a “front yard,” at its closest point, it will project only 4 feet into the required minimum 50 feet front yard, as measured from the right-of-way line of Ashley Drive. *See Exhibit A-3, Plan.*

23. The Applicant stated, and the Board finds, that the curb along Ashley Drive is 12 feet beyond the Ashley Drive right-of-way line. Said another way, the expanded shed will be roughly 58 feet from the Ashley Drive curblin. *See Exhibit A-3, Plan.*

24. The Applicant stated, and the Board finds, that the addition will have an overhead door to allow a small tractor and trailer to safely enter and exit. The driveway will not be expanded to reach the enlarged shed. *See Exhibits A-3, Plan; and B-2, Elevation.*

25. The Applicant stated, and the Board finds, that the expanded shed will provide additional storage space for common household items, as well as his building and hobby tools. *See Exhibit A-3, Plan.*

26. The Applicant stated, and the Board finds that he recently retired from the building contractor trade. He will not conduct any commercial activity in the expanded storage shed, convert the shed to living space, nor rent the shed to third parties. *See Exhibit A-3, Plan.*

27. The Applicant stated, and the Board finds, that the addition’s style will be similar to the existing shed and complementary to the dwelling. The existing shed is a pole-barn style structure. *See Exhibit A-3, Plan.*

28. The Applicant stated, and the Board finds, that neither the existing shed nor the addition can be relocated to another position on the Property to alleviate the yard incursion. If placed behind the house, the shed would occupy the functional rear yard. That is not a practical solution. *See Exhibit A-3, Plan.*

29. The surrounding properties consist of similar style residences and lots. The Applicant stated that no nearby residents have raised any objection to the proposed shed addition or its location. *See Exhibit A-5, Letters.*

30. Due to the Property being a corner lot, the Property contains unique characteristics that support relief for the existing shed and proposed shed addition to be located within the front yard along Ashley Drive with a front yard setback of 46 feet from the right-of-way line. *See Exhibit A-3, Plan.*

31. The Zoning Ordinance’s dimensional limitation and yard restriction impose a hardship on the Property and the Applicant in that they prevent a reasonably sized addition to an existing smaller residential storage shed.

32. Subject to the conditions imposed herein, the proposed shed addition, 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 August 17, 2023, 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 front yard variance 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. 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 (a) the economic detriment to the applicant if relief is denied; (b) the financial hardship created by any work necessary to bring the proposed improvements into strict compliance with the zoning requirements; and (c) the characteristics of the surrounding neighborhood. *See Hertzberg, supra*, at 47, 50.

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

8. The Board concludes that as a corner lot, the Property's yard along Ashley Drive, while legislatively classified as a front yard, functions as side yard and partial rear yard. The Zoning Ordinance imposes a stricter requirements on a front yard than on a side or rear yard. *See Zoning Ordinance §27-305.H.H2.b.*

9. The Board concludes that the fact that the Property is a corner lot, as well as the location of the existing shed, establish a hardship under the *Hertzberg* standard sufficient to justify the variance requested.

10. Based on the credible testimony presented, the Board concludes that the Property does not have any reasonably accessible open area to locate the addition that complies with the front yard prohibition without adversely impacting the Property's other improvements.

11. 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 shed addition within the front yard along Ashley Drive.

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 Applicant's 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 25th day of September, 2023, 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 §27-305.H.H2.b.1 to permit the shed with the addition to be in the front yard along Ashley Drive, subject to the following conditions:

1. The proposed shed and addition, fence, shed, and the related improvements' dimensions, size, location and appearance shall be in accordance with plans, evidence, representations and credible testimony made at the hearing.

2. At its closest point, the shed and addition shall be 46 feet from the right-of-way line along Ashley Drive.

3. The storage shed will be used for residential and personal purposes only. No commercial operations will be conducted in the storage shed.

4. No portion of the shed shall be converted to a dwelling unit nor used for habitation purposes. No portion of the shed shall be leased or rented to third parties.

5. This decision does not waive any requirements of any other applicable New Britain Township Ordinance(s); and the proposed use(s) and/or structure(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.

DocuSigned by:

By: _____
David Conroy
New Britain Township
Director of Planning and Zoning

Date: 9/25/2023

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.

SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application (dated 6/22/23). Attachments: <ul style="list-style-type: none">• Deed dated 4/29/1987• List of surrounding property owners• Elevation and Floor Plan
B-2	Site Plans of Property showing 2 options for shed addition
B-3	Letter to The Intelligencer dated 7/27/23 forwarding public notice of 8/17/23 hearing for advertisement
B-4	Public Notice of the hearing on 8/17/23
B-5	Proof of publication of public notice in 8/3/23 and 8/10/23 editions of The Intelligencer
B-6	Letter to Applicant dated 7/28/23 providing notice of the hearing
B-7	Township list of the record owners of all properties within 500 feet of the Property; map of properties
B-8	Affidavit of mailing to property owners on B-7 – notice mailed on 8/3/23
B-9	Affidavit of posting of public notice at property – notice posted on 8/4/23 at 3:24 a.m., with photo of posting
B-10	Bucks County Viewer Map and Aerial of Property
A-1	Photo
A-2	Photo
A-3	Site Plan (preferred option)
A-4	Site Plan (alternative option)
A-5	Letters

New Britain Township
Zoning Hearing Board

Signature Page

Re: Stephen Barci
17 Kathryn Road
New Britain Township
TMP No. 26-21-38

Date: September 25, 2023

Chuck Coxhead, Chair

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Charles A Coxhead
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Cathy Basilio, Vice Chair

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Cathy Basilio
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Scott Fischer, Member

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Scott Fischer
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Ryan Wantz, Alternate Member

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Ryan Wantz
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DATE OF DECISION: 9/25/2023

DATE OF MAILING: 9/25/2023

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

**RE: APPLICATION OF KASTRIOT ISAI FOR THE
PROPERTY LOCATED AT 104 SOUTH LIMEKILN PIKE,
NEW BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-8-143**

FINDINGS OF FACT

1. On Thursday, August 17, 2023, 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 Kastriot Isai (the “Applicant”).
2. The Applicant is a record co-owner¹ of the property located at 104 South Limekiln Pike, New Britain Township, further known as Bucks County Tax Map Parcel No. 26-8-143 (the “Property”). The Property is the subject of the instant application.
3. Notice of the August 17, 2023, hearing was published in advance of the hearing in the Thursday, August 3, 2023, and Thursday, August 10, 2023, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See Exhibit B-5.*
4. Notice of the August 17, 2023, hearing was sent by first class mail on August 3, 2023, by Ryan Gehman (“Gehman”), the New Britain Township Assistant Planning and Zoning Officer, to (a) all record owners of properties in New Britain Township within 500 feet of the Property; and (b) to the adjoining municipality for any similarly situated properties that are located in that municipality. *See Exhibit B-8.*
5. Gehman posted notice of the August 17, 2023, hearing on the Property on August 4, 2023, at 3:31 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 property is improved with a single-family detached residential historic dwelling (use B1), an accessory barn and accessory detached garage. Such uses and structures are permitted in the RR zoning district. *See Zoning Ordinance §27-901.*

¹ The deed (dated June 17, 2022) submitted with the application lists the Applicant as the only record owner of the Property. However, the Bucks County Board of Assessment lists 3 additional individuals as record co-owners effective March 1, 2023. The Applicant shall clarify the Property’s record ownership status with the Township.

9. The Applicant proposes to subdivide the Property into 3 lots. One lot ("Lot 1") will contain the existing dwelling and out-buildings. The other 2 lots ("Lot 2" and "Lot 3") will each contain one new single-family semi-detached residential dwelling (use B3). *See* Exhibit B-2, Plan.

10. To permit the subdivision and create the 3 lots, the Applicant seeks a special exception pursuant to §27-901.b and §27-3103 to permit the single-family semi-detached residential dwelling use (use B3) on Lot 2 and Lot 3.

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 and Scott McMackin, P.E. ("McMackin"), professional civil engineer, testified in support of the application at the hearing. The Board received McMackin as an expert in civil engineering.

13. No persons requested party status to the application. A few nearby residents attended the hearing to ask questions and to comment on the application before the Board. New Britain Township took no position on the application and did not participate in the hearing.

14. The Property's site area is 3.702 acres. Excluding the area within the ultimate right-of-way of South Limekiln Pike, the Property's base site area is 2.8144 acres. *See* Exhibit B-2, Plan.

15. The Property's is a large oddly shaped lot. It has 385.33 feet of curvilinear frontage along South Limekiln Pike. *See* Exhibits B-2, Plan; and B-10, Viewer.

16. The Property's southern side lot line is straight and has only 1 section. It is 306.65 feet long. It intersects South Limekiln Pike at roughly at 45-degree angle. *See* Exhibit B-2, Plan.

17. The Property's functional rear lot line has 5 separate directional sections. The lengths travel in a waxing-crescent like path. In the aggregate, these sections are 555.38 feet long. *See* Exhibit B-2, Plan.

18. The Property's northern side lot line as 3 sections. The longest section is 256.11 feet long. This portion intersects South Limekiln Pike at roughly a 90 degree angle. *See* Exhibit B-2, Plan.

19. The middle section of the northern side lot line runs generally parallel to South Limekiln Pike. It is 77.78 feet long. The side lot line then turns west roughly 90 degrees and travels 175 feet until it intersects with the rear lot line. *See* Exhibit B-2, Plan.

20. McMackin stated, and the Board finds, that the Property contains woodlands and steep slopes. These protected resources are primarily on Lot 1. *See* Exhibit B-2, Plan.

21. McMackin stated, and the Board finds, that Lot 1 will contain the existing dwelling and other buildings. Its base site area will be 1.4768 acres. It will have 174.3 feet of frontage along South Limekiln Pike. *See* Exhibit B-2, Plan.

22. McMackin stated, and the Board finds, that Lot 2 and Lot 3 will be created from the southern half of the Property. The base site area for Lot 2 and Lot 3 will be 0.4693 acres and 0.8682 acres, respectively. *See* Exhibit B-2, Plan.

23. McMackin stated, and the Board finds, that Lot 2 and Lot 3 each exceed the required minimum 15,000 square feet lot area and otherwise satisfy all dimensional criteria applicable to a B3 use in the RR zoning district. *See* Exhibit B-2, Plan.

24. McMackin stated, and the Board finds, that the B3 dwellings will straddle the common side lot line shared by Lot 2 and Lot 3. The B3 dwellings will share a common vertical unpierced fire wall. Only 1 side yard will be adjacent to each dwelling. *See* Exhibit B-2, Plan.

25. McMackin stated, and the Board finds, that the shared driveway serving the dwellings will also lie on both sides of the common side lot line. Each driveway will have a separate side / turn-around parking space. *See* Exhibit B-2, Plan.

26. McMackin stated, and the Board finds, that the 2 new B3 use dwellings will each be served by public water and public sewer facilities. *See* Exhibit B-2, Plan.

27. Upon questioning by the Board, McMackin stated that the stormwater management facilities for the B3 dwellings have not been designed. BMP facilities will likely be installed under the new driveway. The related subdivision and land development plans are being prepared.

28. McMackin stated, and the Board finds, that the surrounding properties are improved with the single-family detached dwellings on large lots. The proposed B3 use dwellings will be compatible with the nearby environs.

29. Subject to the conditions imposed herein, the proposed subdivision of the Property and the B3 uses, their sizes and locations, 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 August 17, 2023, hearing was made by sufficient advanced publication, posting and mailing to affected property owners.

2. When a landowner applies for a special exception, the Board's function is to determine that such specific facts, circumstances and conditions exist which comply with the standards of the Zoning Ordinance and merit the granting of the special exception. *See Broussard v. Zoning Board of Adjustment of City of Pittsburgh*, 907 A.2d 494 (Pa. 2006).

3. As previously noted, a single-family semidetached dwelling use (use B3) is permitted in the RR zoning district by special exception. *See* Zoning Ordinance §27-901.b.

4. Zoning Ordinance §27-3103.a provides that "the Board shall grant a special exception only if it finds adequate evidence that any proposed development submitted will meet all of the following general requirements as well as any specific requirements and standards listed [in this Zoning Ordinance] for the proposed use."

5. Regarding the general criteria applicable to a special exception, Zoning Ordinance §27-3103.a provides that the Board shall, among other things, require the proposed use and location to be:

- a. in accordance with the New Britain Township Comprehensive Plan and consistent with the spirit, purposes and intent of [the Zoning Ordinance];
- b. in the best interests of [New Britain] Township, the convenience of the community, the public welfare and be a substantial improvement to the property in the immediate vicinity;
- c. suitable for the property in question and designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance to the existing or intended character of the general vicinity;
- d. in conformance with all applicable requirements of [the Zoning Ordinance];
- e. suitable in terms of effects on highway traffic and safety with adequate access arrangements to protect streets from undue congestion and hazard; and
- f. in accordance with sound standards of subdivision practice where applicable.

6. Zoning Ordinance §27-305.B.B3 defines a “single-family semidetached dwelling” as “one dwelling unit accommodating one family that is attached to another unit and completely separated from that unit by a vertical unpierced fire wall.”

7. Regarding the specific criteria applicable to a B3 use, the Zoning Ordinance provides, in relevant part, the following specific regulations:

- a. Only one additional unit and one side yard shall be adjacent to each dwelling unit. (§27-305.B.B3).
- b. Each unit shall be on a separate lot (§27-305.B.B3).

8. If an applicant demonstrates that the proposal meets the specific and general criteria of Zoning Ordinance, and no evidence is presented that requires a finding that the proposal is detrimental to the public interest, the Board must find that the proposed B3 use is permitted. *See Lafayette College v. Zoning Hearing Board of City of Easton*, 588 A.2d 1323 (Pa. Commw. 1991).

9. Under Pennsylvania law, the Board may refuse an application for special exception only if (a) the application fails to meet or secure a variance from an applicable zoning regulation; or (b) opponents to the application establish by a preponderance of evidence that the application is contrary to the health, safety and morals of the general welfare of the community at large. *See Lafayette College, supra*.

10. No relevant evidence was presented by any objecting or protesting party to show that the proposed B3 uses on Lot 2 and Lot 3 is detrimental to the public interest, or contrary to the health, safety and morals the community.

11. The Board concludes that the proposed B3 uses on Lot 2 and Lot 3 satisfy the general and specific conditions of the Zoning Ordinance required for the special exception.

12. Subject to the conditions attached hereto, the proposed subdivision of the Property and B3 uses on Lot 2 and Lot 3 are in accordance with the New Britain Township Comprehensive Plan and are consistent with the spirit, purposes and intent of the Zoning Ordinance.

13. Subject to the conditions attached hereto, the proposed B3 uses on Lot 2 and Lot 3 are suitable for the Property; and will be designed, constructed, operated and maintained in harmony with and appropriate in appearance to the general vicinity's character.

14. Provided the proposed B3 uses on Lot 2 and Lot 3 are conducted in accordance with the conditions attached herein, the uses are suitable in terms of effects on highway traffic and safety.

15. As nearby properties exhibit uses and sizes similar to the Property, provided the proposed B3 uses on Lot 2 and Lot 3 are conducted in accordance with the conditions attached herein, the uses will be harmonious with the surrounding neighborhood.

DECISION

AND NOW, this 25th day of September, 2023, upon consideration of the foregoing Findings of Fact and Conclusions of Law, the New Britain Township Zoning Hearing Board hereby **GRANTS** the special exception pursuant to §27-901.b and §27-3103 to permit a single-family semidetached dwelling use (use B3) on Lot 2 and Lot 3, subject to the following conditions:

1. The proposed B3 use on Lot 2 and Lot 3, their dimensions, sizes, locations, improvements, operations and appearances, shall be consistent with and in accordance with the definitive plans, representations, photographs, evidence and credible testimony made at the hearing.

2. This decision does not waive any requirements of any other applicable New Britain Township Ordinance(s); and the proposed use(s) and/or improvement(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.

DocuSigned by:

By: _____
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David Conroy
New Britain Township
Planning and Zoning Director

Date: 9/25/2023

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 7/12/23). Attachments to Application: <ul style="list-style-type: none">• Deed dated 6/17/2022• List of owners of property within 500 feet
B-2	Zoning Exhibit Plan, 1 sheet, prepared by Cowan Associates, Inc., dated 7/14/23
B-3	Letter to The Intelligencer dated 7/27/23 forwarding public notice of the 8/17/23 hearing for publication
B-4	Public Notice of the 8/17/23 hearing
B-5	Proof of publication of public notice in 8/3/23 and 8/10/23 editions of The Intelligencer
B-6	Letter to Applicant dated 7/28/23 providing notice of the hearing
B-7	Township list of the record owners of all properties within 500 feet of the Property
B-8	Affidavit of mailing to property owners – notice mailed on 8/3/23
B-9	Affidavit of posting of public notice at property – notice posted on 8/3/23 at 3:31 p.m.
B-10	Bucks County Floodplain Viewer Map and Aerial of Property

New Britain Township
Zoning Hearing Board

Signature Page

Re: Kastriot Isai
104 South Limekiln Pike
New Britain Township
TMP No. 26-8-143

Date: September 25, 2023

Chuck Coxhead, Chair

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Charles A Coxhead
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Cathy Basilio, Vice Chair

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Cathy Basilio
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Scott Fischer, Member

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Scott Fischer
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Ryan Wantz, Alternate Member

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Ryan Wantz
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DATE OF DECISION: 9/25/2023

DATE OF MAILING: 9/25/2023

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

**RE: APPLICATION OF JANE MOHLER FOR THE
PROPERTY LOCATED AT 84 CALLOWHILL ROAD, NEW
BRITAIN TOWNSHIP, BUCKS COUNTY, PENNSYLVANIA,
FURTHER IDENTIFIED AS TAX MAP PARCEL NO. 26-3-142**

FINDINGS OF FACT

1. On Thursday, August 17, 2023, 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 Jane Mohler (the “Applicant”).

2. The Applicant is the record owner of the property located at 84 Callowhill Road, New Britain Township, also known as Bucks County Tax Map Parcel No. 26-3-142 (the “Property”). The Property is the subject of the instant application.

3. Notice of the August 17, 2023, hearing was published in advance of the hearing in the Thursday, August 3, 2023, and Thursday, August 10, 2023, editions of The Intelligencer, a newspaper publication of general circulation in New Britain Township. *See* Exhibit B-5.

4. Notice of the August 17, 2023, hearing was sent by first class mail on August 3, 2023, by Ryan Gehman (“Gehman”), the New Britain Township Assistant Planning and Zoning Officer, to (a) all record owners of properties in New Britain Township within 500 feet of the Property; and (b) to the adjoining municipality for any similarly situated properties that are located in that municipality. *See* Exhibit B-8.

5. Gehman posted notice of the August 17, 2023, hearing on the Property on August 4, 2023, at 3:19 p.m. *See* Exhibit B-9.

6. As the record owner of the Property, the Applicant has 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). Such use and structure are permitted by right in the WS zoning district. *See* Zoning Ordinance §27-501.a.

9. The Applicant proposes a fence (use H3) in the front yards along Callowhill Road and Creek Road. A fence is an accessory use permitted by right in the WS zoning district. *See* Zoning Ordinance §27-501.a.

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

- a. from 27-305.H3.b.1(a) to permit the fence in the front yards to be 6 feet high, where the maximum permitted fence height in the front yard is 4 feet; and
- b. from §27-305.H3.b.1(a) to permit the fence to have an opaque (solid) to non-opaque (clear) areas ratio of greater than 4:1, where the required minimum ratio is 4:1.¹

11. At the hearing, the Applicant requested, and the Board granted, leave to amend her application to include the request for the variance regarding the fence's opacity.

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 Applicant and Peter Stolvoort ("Peter"), her spouse, testified in support of the application at the hearing.

14. No other individuals appeared at the hearing to request party status, register a position, or comment or ask questions on the application before the Board. New Britain Township took no position on the application and did not participate in the hearing.

15. According to the Applicant and Bucks County records, the Applicant acquired the Property in or around November 2011. The Property's most recent deed of record is from October 2016. The dwelling was constructed in or around 1962. *See Exhibit B-1, Deed.*

16. The Property is shaped like a trapezoid. Its lot area is 0.81 acres (35,284 square feet). As the minimum lot area is 80,000 square feet for a tract improved with a B1 use in the WS district, the Board finds that the Property is a lawful non-conforming undersized lot. *See Zoning Ordinance §27-502.b.1(a).*

17. The Property is a corner lot, having frontage along both Callowhill Road and Creek Road. *See Exhibits B-2, Plan; and B-10, Viewer.*

18. Per the Zoning Ordinance, with a corner lot, the yards adjoining the streets are both considered front yards. The owner of a corner lot has the option of choosing which of the 2 side lot lines that are not street lines is to be considered a rear lot line. *See Zoning Ordinance §27-201.*

19. The house is located in the center of the Property. The Property slopes downward and away from the adjoining streets. The dwelling is at a lower grade than where the Property abuts the street intersection. *See Exhibit B-10, Viewer.*

¹ The Zoning Ordinance does not define "opaque." "Opacity" is used to measure the "openness" of the fence, or how much can be seen through it. "Opacity" is the "solid space" as a percentage of the fence's total surface. *See Merriam-Webster dictionary.* The Board interprets this Zoning Ordinance language to mean that front yard fences may not be more than 80% opaque.

20. The dwelling's front door and wall are oriented to Creek Road, but the driveway and kitchen door entrance face Callowhill Road. The Applicant and Peter use the kitchen door, not the front door, to enter and exit the house *See Exhibits B-2, Plan; and B-10, Viewer.*

21. The Applicant and Peter stated, and the Board finds, that a small outdoor paver sitting area abuts the wall facing Callowhill Road. Flower beds and trees further surround this sitting area. *See Exhibits B-2, Plan; and B-10, Viewer.*

22. The Applicant and Peter stated, and the Board finds, that they wish to install the fence to protect the sitting area from the heavy traffic along Callowhill Road and Creek Road, and for safety and privacy reasons.

23. The Applicant and Peter stated, and the Board finds, that the proposed fence is a 6 feet high vinyl privacy fence. The first 5 vertical feet are solid and 100% opaque. The top 1 foot is lattice and partially opaque. The fence color will be adobe white.

24. The Applicant and Peter stated, and the Board finds, that the fence will be shaped like the capital letter "L." The section parallel to Callowhill Road will be 24 feet long. The section parallel to Creek Road will be 16 feet long. *See Exhibit B-2, Plan.*

25. At its closest point, the fence will be roughly 50 feet from the cartway along Callowhill Road, and 75 feet from the cartway along Creek Road. The Applicant and Peter acknowledged that these were not precise measurements. *See Exhibit B-2, Plan.*

26. The Applicant and Peter stated, and the Board finds, that the fence facing Creek Road will stop approximately 15 feet from the house corner. It will also project a few feet past the extended plane of the house wall facing Creek Road. This gap is needed to protect the existing landscaping.

27. The Applicant and Peter stated, and the Board finds, that applying the Zoning Ordinance's height and opaqueness restrictions produces a fence that is not suitable for an undersized corner lot located at a busy intersection. *See Exhibit B-2, Plan.*

28. The surrounding properties consist of similar style residences and lots. The Applicant and Peter stated that no nearby residents have raised any objection to the proposed fence, its height, opacity or location.

29. Due to the Property being a corner lot with a non-conforming lot area and downward slope, the Property contains unique characteristics that support relief for the 6 feet high, opaque fence to be within the front yards along Callowhill Road and Creek Road. *See Exhibit B-2, Plan.*

30. Subject to the conditions imposed herein, the proposed fence, its size, opacity 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 August 17, 2023, 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 fence height and opacity 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. 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 (a) the economic detriment to the applicant if relief is denied; (b) the financial hardship created by any work necessary to bring the proposed improvements into strict compliance with the zoning requirements; and (c) the characteristics of the surrounding neighborhood. *See Hertzberg, supra*, at 47, 50.

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

8. The Board concludes that as a corner lot, the Property's yard along Creek Road, while legislatively classified as a front yard, functions as side yard and partial rear yard. The Zoning Ordinance imposes a stricter setback requirements on a front yard than on a side or rear yard. *See Zoning Ordinance §27-502.b.1.*

9. Based upon the credible evidence and testimony provided, the Board concludes that the fact that the Property is a corner lot, the non-conforming lot area, and the slope establish a hardship under the *Hertzberg* standard sufficient to justify the variances requested.

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 variances, including hardship, to install the 6 feet high, mostly opaque fence within the front yards along Callowhill Road and Creek Road.

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 variance that will afford relief and represent the least modification of the zoning regulations under the circumstances.

DECISION

AND NOW, this 25th day of September, 2023, 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 variances from the Zoning Ordinance as follows:

- a. A variance is granted from Zoning Ordinance §27-305.H3.b.1(a) to permit the fence in the front yards to be up to 6 feet high; and
- b. A variance is granted from Zoning Ordinance §27-305.H3.b.1(a) to permit the fence to have an opaque (solid) to non-opaque (clear) areas ratio of greater than 4:1.

The relief granted above is subject to the following conditions:

1. The proposed fence's dimensions, size, materials, location, opacity, 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.

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.

DocuSigned by:

By: _____
David Conroy
New Britain Township
Director of Planning and Zoning

Date: 9/25/2023

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.

SCHEDULE A – TABLE OF EXHIBITS

Exhibit	Description
B-1	Zoning Hearing Board application dated 7/20/23. Attachments to Application: <ul style="list-style-type: none">• Deed dated 10/31/2016• List of property owners within 500 feet
B-2	Hand Drawn Site Plan
B-3	Letter to The Intelligencer dated 7/27/23 forwarding public notice of 8/17/23 hearing for advertisement
B-4	Public Notice of the hearing on 8/17/23
B-5	Proof of publication of public notice in 8/3/23 and 8/10/23 editions of The Intelligencer
B-6	Letter to Applicant dated 7/28/23 providing notice of the 8/17/23 hearing
B-7	Township list of the record owners of all properties within 500 feet of the Property
B-8	Affidavit of mailing to property owners on Exhibit B-7 – notice mailed on 8/3/23
B-9	Affidavit of posting of public notice at property – notice posted on 8/4/23 at 3:19 p.m., together with photo of notice on post in the yard
B-10	Bucks County Viewer Map and Aerial

New Britain Township
Zoning Hearing Board

Signature Page

Re: Jane Mohler
84 Callowhill Road
New Britain Township
TMP No. 26-3-142

Date: September 25, 2023

Chuck Coxhead, Chair

DocuSigned by:
Charles A Coxhead
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Cathy Basilio, Vice Chair

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Cathy Basilio
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Scott Fischer, Member

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Scott Fischer
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Ryan Wantz, Alternate Member

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Ryan Wantz
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